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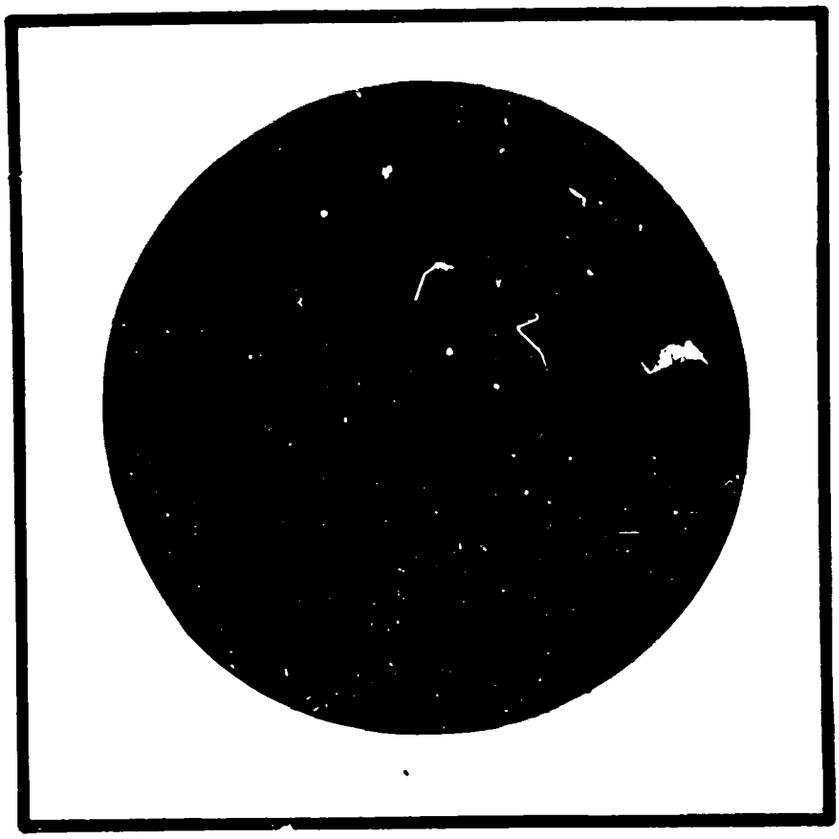

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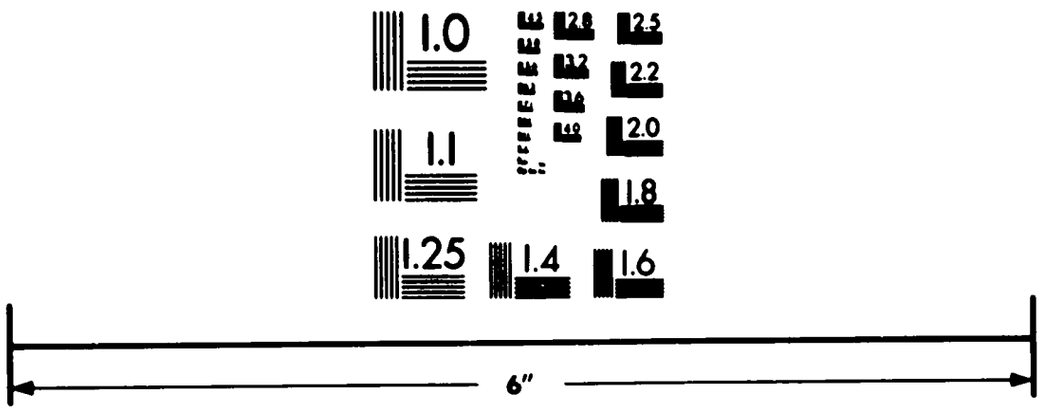

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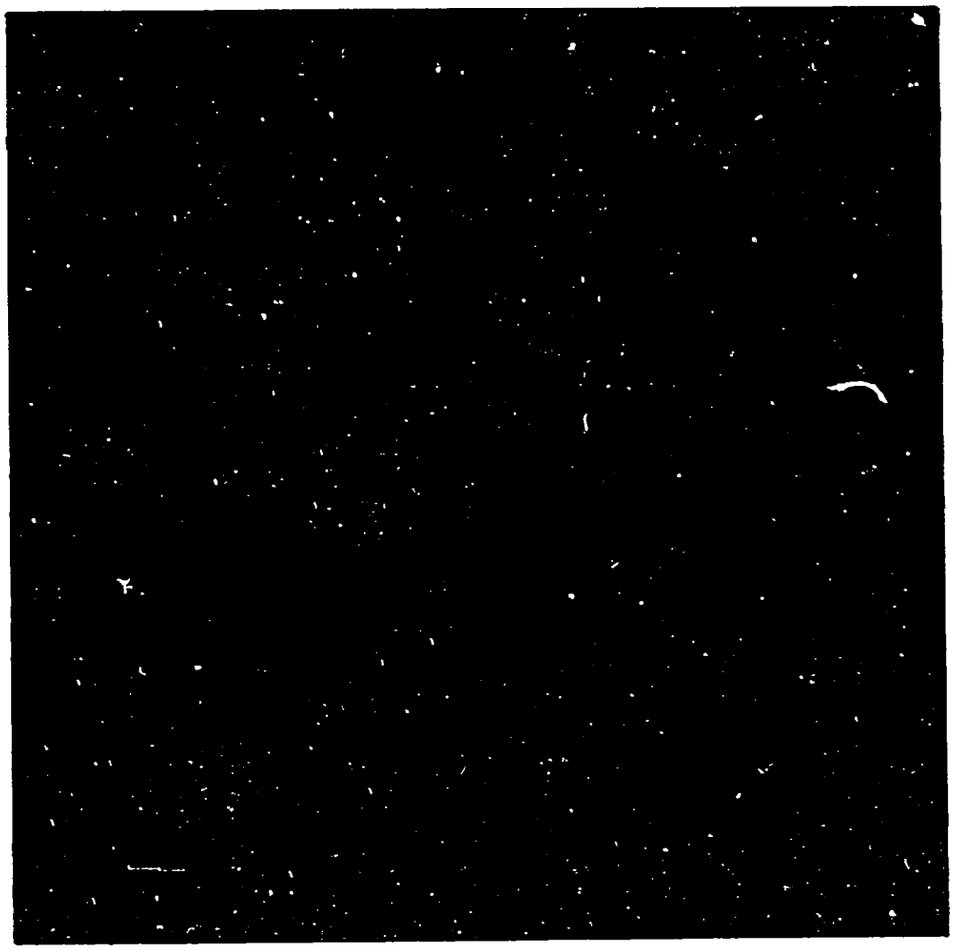

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME XXXIX

PAGES 2738 TO 2804 INCL.

DATE 26 December 1946

MANILA, P.I.

COPY NO. 10

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
26 December 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARKELEE, C/C, President and Law Member

MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	Japanese
PERTONILO VALLEJO	)	
CAESAR YO ALZONA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COM.
Kiyoshi Nishikawa			2739 (Cont'd)		
Yuzuru Nakajima	2752	2765			
Masao Nanjo	2768	2785	2801	2803	

DOCUMENTARY EVIDENCE

	INCORPORATED INTO THE RECORD
Special Orders (Extract) No. 294	2738

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P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0900 hours, 26 December 1946, in Court No.2, High Commissioner's Residence, Dewey Boulevard, Manila, P. I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that, with the exception of Lieutenant Colonel John B. Madden who has been excused from the Commission, all other members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

Sir, we offer to read into the record the extract of Special Orders No. 294:

"RESTRICTED

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC /1p

"Special Orders) "APO 707
: "24 December 1946
No. .....294) "EXTRACT

4. LT COL JOHN B MADDEN, CMF (FA), reld asgmt member Mil Commission aptd by par 3, SO 235, cs, this hq, as amended, effective 1300 hours, 23 Dec 46. (YAMAGUCHI)

"BY COMMAND OF MAJOR GENERAL MOORE:

"J G CHRISTIANSEN
Major General, USA
Deputy Commander, and
Chief of Staff

"OFFICIAL:

/s/ "Bruton B. Schardt
/t/ BRUTON B. SCHARDT
Captain, CAC
Actg Asst Adj Gen"

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KIYOSHI NISHIKAWA

a witness for the prosecution, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Vallejo:

REDIRECT EXAMINATION (Cont'd)

BY MAJOR FOJAS:

MAJOR FOJAS: May it please the Commission, during the last session, we came to an impasse in view of the question which the prosecution propounded to the witness, which defense counsel has strenuously objected to. The Commission has made a ruling allowing the question to be asked, but defense counsel insisted before the question is put to the witness, the Commission make a statement that the witness is hostile.

To avoid any further discussion on that matter, the prosecution is willing to withdraw that question, but the prosecution desires to state to the Commission that in view of the situation of the witness and his relation with the accused in this case, the prosecution should be allowed to ask this witness cross-questions because the prosecution believes that this witness being once under the command of the accused in this case, has a natural adverse feeling against the prosecution, and under the rules of evidence, the prosecution is allowed to ask him cross-questions when he is in that situation. Besides the prosecution believes that even if this witness is its own witness, we are allowed to show that this witness was in error in some specific instances without necessarily impeaching him. I state that in view of the particular circumstances, the prosecution is allowed to ask him cross-questions

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on the following authority: State v Benner, 64 Me. 279: "If the witness is from any cause adverse to the party calling him, the same reason which authorizes and sanctions cross-examination, more or less rigorous, equally require that when the party finds that the witness whom the necessities of his case has compelled him to call is averse in feeling, is reluctant to disclose what he knows, is evasive or false. Important as interrogation may be, if the witness is friendly, to remove uncertainty and indistinctness and to get fullness and clearness, doubly important is it, if the witness be dishonest and adverse, to extract from reluctant facts concealed from sympathy, secreted from interest or withheld from dishonesty. Cross-examination may be as necessary to elicit the truth from one's own as from one's opponent's witness." Under the rule established in the aforesaid case, we therefore request that the prosecution be allowed to present cross-questions to the witness.

COLONEL PARIELLE: This is to point out errors, is that correct?

MAJOR FOJAS: Yes, the specific error committed by the witness.

MR. BONDA: This is in line with the argument we had Tuesday in which I stated in order to permit cross-examination, the Court must say that the witness has become adverse. Now reading from the same reference the prosecution has, here are the elements that are necessary before the man can be declared adverse. This must be on a positive showing by the prosecution. He must be averse in feeling,

TS(R)ss

which means merely because he is of the same blood as the party against whom he has been called to testify, does not necessarily make him averse in feeling. As a matter of fact, we have a number of instances in which the subordinate of the accused has had the opposite feeling. It doesn't follow because he was a subordinate of the accused he necessarily is averse in feeling to the prosecution. It may be that some of us would naturally be inclined to find or to say those who are of the same blood are, but it doesn't necessarily follow. He must be reluctant to disclose what he knows. I challenge anyone to show where he has been reluctant. He answered every question put to him, and if he knows things that have not been disclosed, it is because the prosecutor or I have failed to put the question to him. That he is adverse, I challenge anybody to say that the testimony he has given has been false. Possibly there has been an error, but I deny that. I say that he is one of the most truthful witnesses we have had. There is no showing the testimony has been false. Under their own definition, what is required before they can cross-examine their witness, under their own definition, they have failed to show this man is adverse. The term used there is "averse in feeling." I don't want to get that confused. I maintain therefore, that this witness is neither averse in feeling and not reluctant, nor is he evasive or false. Failure to show both these things will now prevent the prosecution from cross-examining this witness.

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May I read further from Forrest Cool Law Review, reading from page 57 in his volume on Evidence. "A party is not permitted to impeach or discredit his own witness as a general rule. But by the weight of authority a party producing a witness may impeach him only by showing that at other times he has made statements inconsistent with his present testimony. And before impeachment will be permitted, the party must show that the evidence has taken him by surprise, and is contrary to an examination of the witness preparatory to the trial, or to what the party had reason to believe he would testify or that the witness had deceived him. Damage must usually be shown, for mere disappointment is not enough." Under that rule, you must show that they have examined the witness prior to coming into court, and state that the witness told them certain things during the examination, and he now comes in court and says something entirely different. Such a surprise as this would permit him to cross-examine. That would amount to deception under the definition given in the volume which I have just read. I say that it has not been shown that this man has shown any of the elements that would permit the Court to say that this man is hostile or adverse or a surprise witness. I submit he should not be cross-examined.

MAJOR FOJAS: I think we have made our position clear. We are not impeaching him as a hostile witness, we are only going to show specific errors without impeaching him. We are allowed to do so under the rules of evidence, as stated in the case I have cited, so that the last rule

read by defense counsel where it should be shown the prosecution considered him only adverse in view of his peculiar situation or relation with the accused in this case, he was under his command and he himself has been convicted of a war crime, there is no requirement that such facts should be shown. The Court in its own discretion after hearing the witness, and after knowing these circumstances, can allow or disallow testimony asked him by cross-questioning.

MR. BONDA: I don't understand the prosecutor. I thought I did, but now he said in one breath he is not asking for the right to cross-examine, or rather to impeach him, but for the right to cross-examine. Those two statements are inconsistent. You may show error on the part of your own witness; that is not cross-examination, that is something entirely different. Now he says he is averse in feeling. He is citing the very thing that permits him to make an adverse witness. Why is he reading that citation when he says he is averse in feeling? Because he is Japanese, that would show prejudice if the Court would rule he is an adverse witness. That would show he is prejudiced against the Japanese. If they say he is adverse because he has been convicted, that is, in the first place, I don't think --

COLONEL PARMELEE: That has not been mentioned.

MR. BONDA: Yes he did. He said he was convicted of a war crime. Will the reporter read the statement by the prosecutor, please?

(The statement was read as directed.)

MR. BONDA: That is the part that is pertinent to

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what I have just stated. He is basing it on that fact; he is basing it on the fact he is a Japanese and a subordinate of Colonel Yamaguchi, and none of those are valid arguments to show he is adverse.

We have had any number of instances where a subordinate has been antagonistic to the man to whom he has been a subordinate.

MAJOR FOJAS: He is confusing the two things. A hostile person is where a party calling him is allowed to impeach, and just an ordinary witness that is averse in feeling to the cause of the party calling him, in which case that party is allowed to ask him cross-questions without impeaching him to show a specific error in the testimony of the witness.

MR. BONDA: The defense has no further comment.

COLONEL PARTELEE: The Commission will now rule. Let the record show that from the time set for the Court to reconvene this morning until the time it actually did convene, that the prosecution and the defense and the Commission held a conference to give the opposing counsel an opportunity to compare their views of the law with the legal volumes that they had. For the Commission, there is a technical point involved which the Law Member doesn't feel qualified to rule on as would a judge in a Stateside trial, but from the standpoint of the Commission, the Commission is endeavoring to get the facts, all the information they can in this case to enable them to adjudicate fairly and expeditiously. The Commission would like to permit the prosecution to point out any errors or to refresh the memory of this witness, basing it on evidence that has already been brought forth in this trial. The Commission does not consider that necessarily will be impeachment. It may recall to memory certain information and certain events on which

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the witness has previously testifed he does not remember. The trial must go on and without any intention whatsoever of leading toward one side or the other. In the interest of the Commission endeavoring to get the facts, the ruling will be that the prosecution will be permitted to point out errors based upon evidence already in in this case, which will involve cross-questioning. The Commission is not ready to state that the witness is entirely hostile, but they feel that there is a possibility that he may have a feeling towards the accused that is probably stronger than he would have for the case of the state; that is a possibility.

Q During the last hearing you stated that in January, 1943, members of the Fukuda Battalion were not under the command of Colonel Yamaguchi, is that correct?

A Yes.

Q If I tell you that Captain Takahashi testified before this Commission to the effect that the members of the Fukuda Battalion were under the command of Colonel Yamaguchi in that month, January, 1943, will you still insist in your answer?

MR. BONDA: Objection. The statement of Captain Takahashi was that they were nominally under the command of Colonel Yamaguchi. I think that word was used.

COLONEL PARKELEE: The Commission will take a short recess.

(Short recess.)

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COLONEL PARMELEE: The Commission is in session.

Q Will you still insist on your answer if I should tell you that Captain Takahashi testified before this Commission to the effect that the Fukuda Battalion in January, 1943, came under the command of Colonel Yamaguchi?

MR. BONDA: Objection.

COLONEL PARMELEE: On what grounds?

MR. BONDA: For the reason that that is not a correct statement of what Captain Takahashi said. My recollection is that he said he came under the nominal command, and if that wasn't the exact words he used I think that all parties will agree with me that the sense of what he said, not the identical words, probably, but the sense of what he said was that Major Fukuda came under his nominal command on paper only on January 6, 1943, and that Colonel Yamaguchi did not take actual control, physical control of the area south of the Bago River until March of 1943. That was the purport of his testimony.

COLONEL PARMELEE: That is true, but nominal command is command.

MR. BONDA: Well, are we going to quarrel again about the use of words? There might be a different meaning as to the word "nominal." One person might have by actual command, and another by nominal command --

MAJOR FOJAS: But the testimony of this witness is that Fukuda's Unit never came under the command of Colonel Yamaguchi; at least, in that particular instance, his statement is in conflict with the statement of Takahashi. Whether

it was nominal or actual, it is still in conflict with the statement of Takahashi.

MR. BONDA: If the prosecution is going to insist on that, I am going to insist that the entire record of Takahashi be put before the witness. I am going to insist that the entire evidence be read. I have here on page 2562, Volume 35, the case of the United States of America versus Masakazu Yamaguchi, dated 20 December, 1946, the following questions and answers:

"Q After January 6, through January 31, 1943, was there any subordinate officer of Colonel Yamaguchi assigned to La Carlota?

"A No, I believe there wasn't; not that I know of.

"Q When was the first time that an officer of Colonel Yamaguchi was assigned in La Carlota?

"A I believe that was around March."

If we are going to ask him questions based on another man's testimony, either give it to him in the exact words, or read the entire volume. I think it would be better, in the interest of truth, that the entire testimony of Takahashi given at this trial be read into evidence.

MAJOR FOJAS: But that testimony is to the direct assignment of subordinate officers, and not as to the matter of command, and the question I have propounded is only did Fukuda come under the command of Colonel Yamaguchi.

COLONEL PARMELEE: All right, now, we have an objection to the question?

MR. BONDA: Yes, sir.

COLONEL PARMELEE: Objection overruled. The witness can explain, or testify to anything he wants to that answer. A request was made about reading all the record in?

MR. BONDA: The request was made that that is an improper question, because it is not the words that were asked of Takahashi, and it is not the answer that was given by Takahashi, either one of them, and if we are going to read something, let's read the entire volume.

COLONEL PARMELEE: Well, that would have no bearing on this particular question.

MR. BONDA: I think it would, sir. They are asking what another man said, whether it is true if another man said certain things, and unless we can clarify what he said it is an unfair question.

MAJOR FOJAS: I am not asking whether what Takahashi said was true or not. I am acquainting him with something Takahashi testified to, and if he would insist on his answer after that.

MR. BONDA: I maintain he didn't so testify.

COLONEL PARMELEE: Put the question.

(Translated to witness through Interpreter Vallejo.)

A I will still give the same answer, and I know that to be so because Colonel Yamaguchi himself has told me so, and as I was in Bago, and there being only telephone communications out of Bago, and not to La Carlota -- there were no communications between La Carlota, which was the headquarters of the Fukuda Battalion, and the headquarters of Colonel Yamaguchi were at Bago, and during the time I was at Bago I never saw any

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vehicles belonging to the Fukuda Unit ever pass by for communications to the headquarters of Colonel Yamaguchi, so I believe that there was no relation at all between the Fukuda Unit and the Yamaguchi Unit.

Q When you said you would give the same answer, you meant to say that the Fukuda Battalion was never under the command of Colonel Yamaguchi in January, 1943, is that correct?

A Yes.

Q When did you say you joined the Kono Brigade?

A That was on the 24th or 25th of December, 1944. That is my company.

Q And when you joined the Kono Brigade you were then classified under reserves, is that correct?

A Yes.

Q Until what time did you remain classified as reserve under the Kono Brigade?

A That was until about the time the Americans landed on the 26th or 27th of March, 1945.

Q During that time, from the time you joined the Kono Brigade as reserve, up to about the landing of the Americans in Negros, did you not consider Colonel Yamaguchi your commander?

A No, I was separated from Colonel Yamaguchi's Unit, and he was not my commander.

Q You mean to say that your company during the same period was no longer part of the Yamaguchi Battalion, is that correct?

A Yes.

MAJOR FOJAS: I have no further questions, sir.

COLONEL PARMELEE: Cross-examination?

MR. BONDA: No further questions by the defense, sir.

COLONEL PARMELEE: There are no questions by the Commission. The witness is excused.

(Witness excused.)

YUZURU NAKAJIMA,

a witness in behalf of the prosecution, having been first duly sworn, testified as follows through Interpreters Yamaroto and Vallejo:

DIRECT EXAMINATION

BY MAJOR FOJAS:

Q Will you state your name, please?

A Nakajima, Yuzuru.

Q Are you sometimes called also by the name "Nakashima"?

A My real name is Nakashima, but according to the reading of the Chinese characters it may be read as Nakashima or Nakajima, providing upon the provincialism of that particular district.

Q How old are you?

A Forty-two years old. That is the Japanese way of counting ages, which is actually forty-one years old by Army.

Q Were you formerly a member of the Imperial Japanese Army?

A Yes.

Q Were you ever assigned to the Philippines?

A I was in Negros.

Q When were you first assigned to Negros?

A I would like to have all questions which have been previously asked in my case skipped because they are supposed to be in the record. It is because I am sick.

COLONEL FARMELEE: I don't understand.

MAJOR FOJAS: May I request the Commission to instruct him he should answer the questions propounded to him now?

COLONEL FARMELEE: He made a request that the questions previously asked be stricken?

INTERPRETER YAMAMOTO: No, "skipped". They shouldn't be asked again.

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COLONEL FARRELLE: Oh, I know what he means, he means a lot of questions that were asked in the other case. Well, do you want to take time out to stipulate to a certain amount of things, where he served, and all that? You might save a lot of time. He might be in pain.

MAJOR FOJAS: Yes, we can do that.

COLONEL FARRELLE: Well, let's take a recess, and let the prosecution and defense go through some of the preliminary stuff and stipulate, and then bring him back in.

The Commission will take a short recess.

(Short recess.)

COLONEL FARRELLE: The Commission is in session.

MAJOR FOJAS: Will the interpreter remind the witness that he is still under oath. Tell him also that there is no objection on the part of the prosecution that he can testify while standing or leaning at the wall, or whatever is most comfortable for him.

MR. BONDA: The defense joins in that request.

COLONEL FARRELLE: Granted.

(Translated to witness through Interpreter Yamamoto.)

Q When were you first assigned to Negros?

A The 6th of January, 1943.

Q To what unit were you assigned on the 6th of January, 1943?

A With Yamaguchi.

Q Who was in command of that battalion?

A Colonel Masakazu Yamaguchi.

Q Is he present in the courtroom now?

A Yes.

Q Will you indicate him to the Commission?

(Witness indicating)

MAJOR FOJAS: May the record show that the witness indicated the accused in this case, Colonel Masakazu Yamaguchi.

Q What was your rank when you were assigned to the Yamaguchi battalion on January 6, 1943?

A I was 2nd Lieutenant.

Q What were your duties when you were assigned to the Yamaguchi unit on January 6, 1943?

A I was platoon leader.

Q And where did you have your headquarters at that time?

A There is no such thing as a platoon headquarters, but my company headquarters was at Bacolod.

Q Where in Bacolod?

A At the High School.

Q Do you know if Colonel Yamaguchi had his headquarters also in the Bacolod High School on that date?

A Yes.

Q Until what time did you remain platoon leader in the Yamaguchi battalion?

A Until the end of July, 1943.

COLONEL FARMELEE: What was that question?

(Question read.)

Q So that from January 6, 1943, to the end of July, 1943, you were platoon leader, and you had your headquarters at the High School in Bacolod, is that correct?

A That is right.

Q Did you become company commander on August 1st, 1943?

A I can't exactly say whether that was the 1st of August, but some time about that period I became company commander.

Q And until what time were you company commander in the Yamaguchi battalion?

A Until the cessation of hostilities.

Q When you became company commander, where did you establish your headquarters?

A In the Bacolod High School.

Q Until what time did you have your company headquarters in the Bacolod High School?

A I can't state it very clearly, but it must have been until about the end of January of 1944.

Q Now, after January, 1944, where did you have your company headquarters?

A In the Bacolod North Elementary School.

Q Can you recall from what date to what date you had your headquarters at the Bacolod North Elementary School?

A In the early part of February, 1944, to the end of the year.

Q You mean until December 31st, 1944?

A That was until about the end of the year. We had been moving from time to time, but in December of 1944 we moved to Bago.

Q What company was under you in the Yamaguchi unit during all the time that you were company commander?

A The 4th Company.

Q How many men did you have in that company?

A We did not have a fixed number, but at the peak of our strength we had about 150 men.

Q What was the average strength of that company?

A You mean the men who were always with the company?

Q Yes.

A You don't mean to include those who are assigned to us?

Q Everybody assigned to his company, the average strength of everybody assigned to that company?

A Do you want to include those serving the headquarters too?

Q Yes.

A About 180 men.

COLONEL FARMELEE: Does he understand? He gave the peak strength as 150 and now he gives the figure 180. Perhaps he doesn't understand.

A 180 men.

Q What did you mean when you said the peak of your company was 150 men? Does that not include the men in the headquarters?

A When I say 180, that includes all men who are assigned to us, all men from us who are in the hospital.

COLONEL FARMELEE: May I make a suggestion. If you are asking him for the peak, ask him what is the greatest number of men that he ever had under his command during that period, at that place, who were actually present for duty. The number of men, along that line, and the average monthly strength over that period.

MR. BONDA: I think active duty status would clear it up.

COLONEL FARMELLE: That would be the peak, but the average also, to take the strength each month of the people he actually had there to use, and not in the hospital. I don't know whether that is what the prosecution is after.

MAJOR FOJAS: Yes, sir.

COLONEL FARMELLE: And then divide by the months he considered. What we are interested in is getting the information, and obviously he is testifying to something which is based on a misunderstanding.

Q What was the highest number of men that were assigned to your company, and who were in active duty status during the time that you were company commander in the Yamaguchi Battalion?

A Do you mean those who are regularly in my unit, in my company and not including those who are on TDY from other companies?

Q Including those on TDY with other companies, but on active duty status with your company.

A Is it all right to include those who don't actually stay with the company, but do duty with the company?

COLONEL FARMELLE: Here is a suggestion. I don't know whether you can put this over, but say, "What is the greatest number of men that he controlled, or could order for some military duty during that period, at any time during that period." In other words, if he had a military mission to perform, or several of them during that period of time, what is the greatest number of men to whom he could say, "You do this," or, "You do that."

(Translated to witness through Interpreter Vallejo.)

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A Well, there were 150 men who belonged actually to the company and lived in the company barracks, 150 men, and there were about 100 men from the Standing Army, and a few belonging to the education department.

Q Were the members of the Standing Army under your control during all the time that you were company commander in the Yamaguchi Battalion?

MR. BONDA: May I have that question read back?

(Question read.)

MR. BONDA: Do you mean that members of the Standing Army to whom he referred, the 100, or all the Standing Army in Negros?

MAJOR FOJAS: The members of the Standing Army to whom he referred.

MR. BONDA: Will you put that in your question.

MAJOR FOJAS: It is in there.

A I was in charge of them. I was in charge of the training of these 100 men in the Standing Army.

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Q After their training, did these members of the standing army ever serve under you?

A Yes.

Q At the time you had your headquarters at the North Elementary School in Bacolod, did you maintain a sentry post at a place called Banago?

A Yes, we had a sentry post at Banago.

MR. BONDA: What specification are you inquiring on?

MAJOR FOJAS: Specification No. 16.

Q How many men did you have in that sentry post at Banago?

A The number of sentries varied according to the time, but we had about five Japanese soldiers and three members of the standing army, so all in all, there would be eight sentries.

Q Do you know a certain person, a certain Japanese, by the name of Tagoma who was in charge of the sentry post at Banago?

A No.

Q Who was the commander of the post at Banago? Between the 19th day of February to the 25th day of May, 1944?

MR. BONDA: Will you please read that question?

(Question was read as directed.)

A I.

Q Did you have any subordinate officer or enlisted man who was in charge of that post between the period 19th of April and 25 May 1944?

A The sentries at Banago were maintained for my unit,

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and so they were under my command.

Q During this period 19 April to 25 May 1944, was there anybody under you who was in charge at Banago?

A Do you mean whether we had somebody to go and inspect the sentries from the company headquarters?

MAJOR FOJAS: Somebody who was in charge of the sentries at Banago other than the company commander?

MR. BONDA: The personal interpreter says there was an error in the word "serve" which was omitted. That particular word was omitted in the question.

COLONEL PARMELEE: That was in the answer?

MAJOR FOJAS: No, it has never been translated.

MR. BONDA: It was not properly asked.

COLONEL PARMELLE: What question was that? Will the reporter read the last few questions and pick out the one to which it refers.

MR. BONDA: I think the words "in charge" were mistranslated.

(The questions and answers, which included the last three above written, were read as directed.)

COLONEL PARMELEE: The official interpretation then is correct?

INTERPRETER YAMAMOTO: Yes.

COLONEL PARMELEE: Very well.

A Aside from those who inspect the guards, there is a definite head of the sentries at that place.

Q That is what I am asking, who was the head of the sentries?

A The head of the detachment changed every week, so I

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cannot remember all the names.

Q Can you recall if sometime in March, 1944, you went with Colonel Yamaguchi on an expedition to Silay?

MR. BONDA: What specification are you questioning him on now?

MAJOR FOJAS: Specification Nos. 7, 8 and 9.

A I remember having gone to Silay with Colonel Yamaguchi.

Q And do you remember whether it was on March 7, 1944?

A It was about that time.

Q Do you recall also if you had been with Colonel Yamaguchi on an expedition to Talisay in the month of April, 1944?

A Yes.

Q Do you remember if it was on the 19th day of April, 1944?

A Yes.

Q Do you remember if on that occasion some prisoners were arrested and taken to Bacolod?

MR. BONDA: Isn't that kind of leading your witness, Mr. Prosecutor? Isn't there a proper way of examination to ask him what happened?

MAJOR FOJAS: If you want to, you can do it that way.

MR. BONDA: I have in mind what you are leading up to , but there should be a limit to that.

MAJOR FOJAS: I admit I am leading him on that point because I want to expedite arriving at that conclusion.

COLONEL PARMELEE: Probably asking him what military action was taken, would be better. It is a proper question

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but if the defense objects to it as leading, we will accede.

MR. BONDA: It is objectionable, sir; it is not a proper question.

COLONEL PARMLEE: It is a shortening question, is what it is, but if you want to lengthen it, it can be asked another way. Lead up to it.

MAJOR FOJAS: If you have an objection, I'll withdraw my question.

MR. BONDA: I cannot waive any rights of my client.

Q Do you know what was done, what military action was taken in Talisay on the 19th of April, 1944?

A The guerrillas had entered the town of Silay and endangered the security of the area, so we went out there to catch the guerrillas.

Q Was there anybody caught at that time?

A I cannot remember the exact number of men captured, but there were a little over twenty guerrillas or guerrilla suspects arrested.

Q Do you know where those persons arrested were taken after their arrest?

A I don't remember their names.

Q I am not asking for their names, I am asking you if you remember where they were taken after they were arrested?

A To Bacolod.

Q Can you recall if in April and May, 1944, you went with that expedition and Colonel Yamaguchi to Himamaylan and Kabankalan in Negros Occidental? That is Specification No. 17 and 18.

A Yes.

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Q Can you recall how many Japanese soldiers, more or less, went with that expedition?

A I don't remember the exact number, but there were between 250 and 300 men. But that refers only to the Yamaguchi unit.

Q Can you recall if on that expedition there were men from the Spiritual Training School and the Standing Army?

A I remember the Standing Army, but just what do you mean by Spiritual Training School?

Q Don't you know that there was a Spiritual Training School maintained in Bacolod sometime during 1944?

A You mean by the Yameguchi unit?

MAJOR FOJAS: Yes.

A Do you mean the school where the surrendered guerrillas were sent to?

Q Yes.

A Yes, there was one. There was such a school.

Q Now, do you recall if there were members of this school, men that had training in this school, who were with the expedition to Himamaylan and Kabankalan?

A I don't remember if there were.

MAJOR FOJAS: That is all with the witness.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will you please remind the witness that he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

COLONEL PARMELEE: Cross-examination?

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CROSS-EXAMINATION

BY MR. BONDA:

Q Do you know whether from about the 19th of April, 1944, to about the 25th of May, 1944, any soldiers under your command killed certain unarmed non-combatant Filipino civilians at Banago?

MAJOR FOJAS: I think I will have to object to that question because it is not covered by direct examination. That question calls for an answer that is limited to defense.

MR. BONDA: I specifically asked you what specification you were interrogating on, and you said Specifications Numbers 16 and 17. You went into the matter of certain persons who were there under his command.

MAJOR FOJAS: Yes.

MR. BONDA: Now, Specification No. 16 is the one you referred to and Specification No. 16 is the one on which I am questioning.

MAJOR FOJAS: So you want to bring up the matter as to whether these people killed anybody in that place. That is a proper matter for defense.

MR. BONDA: Why did you ask him who was there at that time?

MAJOR FOJAS: To determine whether he was assigned at that place at that time.

MR. BONDA: What was your purpose in that?

MAJOR FOJAS: I don't have to answer that question, but I submit that his question is tending to bring out matters

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pertinent to the defense.

COLONEL PARMELEE: Sustained for this reason: The question if asked would make this witness the one to determine whether these were unarmed non-combatant Filipino civilians --

MR. BONDA: The defense has no further cross-examination.

COLONEL PARMELEE (Continuing) -- as alleged. The objection is sustained because that must be a conclusion to be drawn by the Commission from all the evidence. As a matter of defense, I would say that is proper.

MR. BONDA: If it is a conclusion one way, it is a conclusion at another time. Many times the Commission said they can ask whether it is a conclusion, and they will determine whether it is based on what the witness said.

CODONEL PARMELEE: As I see it, the objection of the prosecution was to asking this witness about unarmed non-combatant Filipino civilians, is that correct?

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: In other words, the prosecution did not touch upon that in direct examination. He asked about where the witness was and --

MR. BONDA: The prosecution asked about that specification and he opened that up and I am quoting the words of the specification and have a right to go into it. If the Court overrules, that is okeh; I have no further cross-examination.

COLONEL PARMELEE: Then it would be a proper matter of defense; that is the basis of the ruling.

MR. BONDA: Is the Commission under the mis-

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apprehension that nothing in the way of defense can be asked of a prosecution witness? There is no question ever put by a lawyer, or shouldn't be put by a lawyer, on cross-examination that isn't a matter of defense. We are not limited to the matters brought up by the prosecution.

COLONEL PARKELEE: I will make the final say on that. This is cross-examination right now which is cross-questioning of anything this witness testified to, and this question had nothing to do with impeaching him or testing the credibility in the eyes of the Commission.

MR. BONDA: Well, why -- I have no further comment. The defense has no further cross-examination of this witness.

COLONEL PARKELEE: There being no questions by the Commission, the witness is excused.

(Witness excused.)

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MAJOR FOJAS: Our next witness is Masao Nanjo.

MASAO NANJO

a witness for the prosecution, having been first duly sworn, testified as follows through Interpreters Yamamoto and Vallejo:

DIRECT EXAMINATION

BY MAJOR FOJAS:

Q Will you state your name, please?

A Masao Nanjo.

Q Your age?

A Twenty-seven years old.

Q Were you formerly an officer in the Imperial Japanese Army?

A Yes.

Q Were you ever assigned to the Philippines?

A Yes.

Q When?

A October 9, 1943.

Q To what unit of the Imperial Japanese Army were you assigned on October 9, 1943?

A To the Yamaguchi unit.

Q Who was in command of that unit?

A Colonel Yamaguchi.

Q Do you mean Colonel Masakazu Yamaguchi, the accused in this case?

A Yes.

Q What was your rank when you were assigned to the Yamaguchi unit on October 9, 1943?

A I was a probationary officer.

Q Until what date did you serve as an officer in the Yamaguchi unit?

A Until August 30, 1945.

Q When you first arrived in the Philippines, and you were assigned to the Yamaguchi unit, in what place did you stay at that time?

A When?

Q October 9, 1943.

A I was at the battalion headquarters.

Q And where was the battalion headquarters located at that time?

A At Bacolod High School.

Q Until what time did you remain in the battalion headquarters at the Bacolod High School?

A On October 10, I went into the Takahashi unit, which is the 1st Company.

Q And how long did you stay there?

A All the time.

COLONEL PARMELEE: Now, is this the year 1943 only we are talking about?

MAJOR FOJAS: That is what I am going to ask him, sir.

Q So from October 10, 1943, to what date did you remain in the Takahashi unit?

A I was in the Takahashi unit until August 30, 1945.

Q Did you ever become a commander of any garrison in Negros during the period October 10, 1943, to December 31, 1944?

A Yes.

Q In what garrison were you commanding officer?

A The garrison at the reservoir.

Q Do you know if that garrison at the reservoir is called the Boroboro Garrison?

A Yes.

Q As garrison commander, were you aware of a standing order to the effect that the guerrillas were to be disposed of as the garrison commanders saw fit?

MR. BONDA: Will you read that question?

(Question read.)

MR. BONDA: I object. I don't know where that is in evidence. Where is that standing order in evidence?

MAJOR FOJAS: I am asking if he is aware of such an order.

MR. BONDA: Objection. It is not based on anything in evidence; it is a premise not in evidence in this case. The same thing as we have had before.

MAJOR FOJAS: I have no further comment to offer, sir. I am asking him if he is aware of something --

MR. BONDA: Objection.

MAJOR FOJAS: -- and he can say if he does know or he doesn't know.

MR. BONDA: Oh, sure, he can say, but you have no right to ask it.

MAJOR FOJAS: I do have a right to ask him, and he can say if he doesn't know.

MR. BONDA: Objection. There is no such order in evidence.

COLONEL PARMELEE: How would he get the order in?

MR. BONDA: I don't know. I don't know that they

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are supposed to get it in. There are a lot of things they want to get in.

COLONEL PARMELEE: It has to be brought in initially to be in evidence, and is this not a proper way to do it?

MR. BONDA: It certainly isn't, to ask him if he is aware of an order.

MAJOR FOJAS: I submit that is a question which is proper, and which can be asked of this witness.

MR. BONDA: I have my objection, and I will abide by the Court's ruling.

MAJOR FOJAS: As garrison commander, he can be asked the question.

COLONEL PARMELEE: Will you read the question?

(Question read.)

COLONEL PARMELEE: The witness can answer to the best of his knowledge and belief. Objection overruled.

A I think I've seen the order.

Q Can you recall when that order was promulgated?

MR. BONDA: Objection.

COLONEL PARMELEE: Objection overruled. He can answer to the best of his knowledge and belief.

MR. BONDA: May I be heard?

COLONEL PARMELEE: Yes.

MR. BONDA: That objection is based on an illegal line of questioning that I am sure will create error in this record. That is the most violent disregard of rules of evidence that I have ever heard of in my life.

MAJOR FOJAS: I am sure, sir, it is a proper question.

COLONEL PARMELEE: The witness has said that he --

MAJOR FOJAS: He has said that he knows.

MR. BONDA: He said that based on an illegal question, sir.

COLONEL PARMELEE: Very well.

MR. BONDA: And I am going to object to any question along that line from now on.

COLONEL PARMELEE: The witness can answer to the best of his knowledge.

(Translated to witness through Interpreter Yamamoto.)

A I believe it was in October.

Q What year?

A 1943.

Q Do you know who issued that order?

MR. BONDA: Objection.

COLONEL PARMELEE: Objection overruled.

A No.

Q Were you the same Masao Nanjo who was a defendant in the case of the United States of American vs Masao Nanjo?

A Yes.

Q Did you testify as a witness in that case?

MR. BONDA: If you are going to read from the record now I want a recess at this time, and I want to scan every word that you are going to read. I want to be told in advance what you are going to read from. We have had one experience where you read wrongly from the record.

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MAJOR FOJAS: I don't know what right defense counsel is invoking now.

COLONEL PARMELEE: The noon recess is now in order. Will the prosecution before we reconvene inform the defense as to what reading is going to be made by page number?

MAJOR FOJAS: Yes, sir. I will refresh the memory of this witness as to his previous testimony to the effect that he said the order came from the battalion headquarters.

MR. BONDA: You can call it refreshing; I call it cross-examination. We are going to run into the same thing we ran into before. The prosecution has no right to do it. I want to be advised as to what he is going to do.

MR. ADLER: If the Colonel remembers correctly, he stated that the witness may be questioned as to error in statements as to evidence given in this trial, but not as to any previous testimony given in any other trial, on a point in error.

MAJOR FOJAS: I am not impeaching the witness.

MR. ADLER: The error must be in this trial and not in any other trial in testimony given by Lieutenant Nanjo.

COLONEL PARMELEE: I believe you will find this, that the official record of any trial that resulted in the conviction, and that foundation was laid, I believe -- no, it was not; I am wrong. The official record was admissible --

MR. BONDA: Did I understand the Court correctly to say where there has been a conviction --

COLONEL PARMELEE: No, I say I am wrong in that. That has not been brought in here. I withdraw that. Reference was made to the fact that the witness did testify in his own

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trial, and that is as far as it went.

Now, the objection of the defense on reading from a paper as the prosecution started to do on Saturday morning, was it --

MAJOR FOJAS: Tuesday morning, sir.

COLONEL PARMELEE: -- as from a document that had not been put in evidence. Of course, it is true that this has not been put in evidence, but the affidavit pertained to the accused. At any rate, we will follow this discussion or objection later.

The Commission will now recess until 1300 hours this date.

(The Commission recessed at 1140 hours, to reconvene at 1300 hours.)

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A F T E R N O O N S E S S I O N

(The Commission reconvened, pursuant to recess, at 1300 hours.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present; the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

COLONEL PARMELEE: I believe at the termination of the morning session there was a matter in dispute, is that correct?

MAJOR FOJAS: That is what I believe is true.

COLONEL PARMELEE: In substance, the prosecution intimated he was going to read from the testimony of the witness now on the stand in the case involving his own trial, and the defense objected to that.

MR. BONDA: The defense's objection was based on the fact that the only purpose of reading it would be to impeach their own witness, and I requested that I be permitted to scrutinize the sections they were going to read first.

COLONEL PARMELEE: And the prosecution was informed to advise the defense counsel just what was going to be read?

MR. BONDA: And the prosecution has done it.

COLONEL PARMELEE: And now what is the status?

MAJOR FOJAS: I have put a question to the witness if he remembers testifying in his own case, and I have not yet obtained an answer to that question. The defense counsel anticipated in my asking that question, I would be reading from the record and I informed him of the page I am going to read.

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Now, he maintains that would be impeaching the witness, but I said it would not, but just refreshing his memory as to whether or not he knew who issued the orders which he testified to this morning. He said that there was an order issued sometime in October, 1943, and when I asked him who issued the order, he said he could not remember and I have in my possession previous testimony of this witness where he testified he knew. That is the only purpose of reading the testimony -- to refresh his memory.

MR. BONDA: The prosecution is in error when he said he knew who issued the order. Suppose he did? That is only for the purpose of impeaching. The witness has not intimated his memory needs refreshing, and there is no validity to their claim they are doing it to refresh his memory.

COLONEL PARMELEE: If the answer was, "I do not remember who issued the order," that would indicate a lapse of memory and that would be the basis for further questioning, is that correct?

MAJOR FOJAS: Yes, that is exactly it.

MR. BONDA: If the Court will read the section he is going to read, the same thing appears -- he does not know who issued the order.

COLONEL PARMELEE: The Commission does not know that.

MR. BONDA: Well, the prosecutor does. As an Army man, you know orders come through a regular channel, and that is not in evidence.

MAJOR FOJAS: That is why I want to read it.

MR. BONDA: Can there be any doubt as to who issued the order? I assume there cannot be any doubt as to who issued

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the order. The pages you gave me to read do not say who issued the orders.

MAJOR FOJAS: That remains to be seen, sir. I have not come to the question yet, and defense counsel has already anticipated everything that is going to happen.

COLONEL PARMELEE: To get down to the point in issue right now, it is a matter whether the question is proper. It seems to follow an answer that I do not remember. Is there any doubt about that? I don't know what is coming --

MR. BONDA: What happens then if the Commission finds out what he is going to read does not refresh his memory?

COLONEL PARMELEE: I believe each question propounded should stand on its own merits.

MR. BONDA: Will the Commission censure him for stating something to the Commission to the effect they are reading this to refresh his memory, and then later after it is read, they find out the thing he read cannot do that? What happens?

COLONEL PARMELEE: I don't know. The Commission isn't making any such conclusion, and is not anticipating anything. The Commission right now is faced with a ruling on the objection of the defense as to whether the question propounded by the prosecution is proper. What comes after, we don't know.

MAJOR FOJAS: That is it.

COLONEL PARMELEE: The Commission, I believe, understands correctly that impeachment is not to be undertaken, but where a witness indicates he does not remember, there may

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be a reading from testimony in his own trial to refresh his memory, is that correct?

MAJOR FOJAS: That is correct. I am not impeaching this witness, but refreshing his memory. In his previous testimony, he stated he knew who issued the orders.

MR. BONDA: That is not in the record you are going to read.

MAJOR FOJAS: Do you accept my challenge it is in the record?

MR. BONDA: Yes.

MAJOR FOJAS: All right, - - -

(Off-the-record discussion.)

COLONEL FARMELEE: The proceedings are now on the record.

MR. BONDA: My objection is in. I have no further comment.

COLONEL FARMELEE: Objection overruled. The Commission understands that any questions that are asked are going to be in the nature of refreshing the memory and not as a matter of impeachment.

MAJOR FOJAS: That is correct.

COLONEL FARMELEE: In fairness to the defense, we want to make a limit as to how far we will go. The Commission stated this morning and all through the trial, the Commission has the duty of getting the facts and the prosecution has the duty of getting to the Commission the facts as well as the defense has the duty to protect the interests of the accused, but in so doing, we cannot go far afield.

MAJOR FOJAS: Right now we are trying to establish that fact.

COLONEL FARMELEE: Very well.

MASAO NANJO

a witness for the prosecution, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Vallejo:

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DIRECT EXAMINATION (Cont'd)

BY MAJOR FOJAS:

Q Did you testify as a witness in your own behalf in the case of the United States of America vs Masao Nanjo?

A Yes.

Q If I read to you a certain question and answer which you have given as a witness in that case, as to who issued the order which you said was issued in October, 1943, would that refresh your memory? May I re-phrase the question? If I read to you the following question and answer you have given as a witness in the case of the United States of America against Masao Nanjo regarding as to who issued the order in October, 1943, would that refresh your memory?

MR. BONDA: Objection, unless the question is read, how does he know?

MAJOR FOJAS: Wait a minute, I'll put the question.

COLONEL PARMELEE: Did you say the following question, and so forth?

MAJOR FOJAS: Yes, sir, the following question.

"Q Who issued the last order?

"A That order was issued by the battalion headquarters and had come down through the company headquarters to the Boroboro Garrison. We just had records of such orders at Boroboro."

MR. BONDA: Object to the question on the ground that the question just read does not refer to any particular order in the reading of the question, that is if this question is going to be put to him, it will have to be started three or four questions ahead.

MAJOR FOJAS: There is testimony that there was such

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an order because it was issued in October, 1943. I don't think there is anything obscure as to the fact this last answer refers to the order.

MR. BONDA: It doesn't say so in the question you read.

MAJOR FOJAS: I put it in the question.

MR. BONDA: How does he know when you are reading a certain question unless you read the preceding question?

MAJOR FOJAS: I had it in the question.

MR. BONDA: It is beyond me. He reads a question and says "Who issued the last order", what order are we talking about?

MAJOR FOJAS: Did you listen to my question?

MR. BONDA: What order does this talk about that is in the statement you read? You can get it by reading the two questions before that.

COLONEL PARMELEE: If the prosecution desires to follow this; ask him again about this order, who issued this order which pertained to a certain thing and ask him if he gave the answer this morning. I do not remember what answer he did give; that will lay a foundation.

MR. BONDA: But it will not refresh his memory to read something out of another case which said, "Who issued that order." I submit if the prior question will be read, it will be found that is not the order referred to in the examination.

MAJOR FOJAS: Are you serious in stating that?

MR. BONDA: Yes, read it. It said, "The last order" and the one you are talking about precedes this.

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MAJOR FOJAS: Just for the information of the defense counsel, this refers to the order of October 23rd.

MR. BONDA: The last one, the last one is the one that they were to treat him kindly.

MAJOR FOJAS: If you will read it, you will find the first was instructions, the second an order. Then he referred to this order as that issued in October, 1943. It was further clarified.

COLONEL PARMELEE: The Commission will take a short recess.

(Short Recess.)

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COLONEL PARRILL: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Yamamoto.)

Q You testified this morning that there was a standing order to the effect that guerrillas were to be disposed of as garrison commanders saw fit, is that correct?

A Yes.

Q And you also testified that that order was promulgated in October, 1943, is that correct?

A Yes, about October.

Q And you also testified that you cannot recall who issued this order?

A Yes.

Q Now, if I read to you the following question and answer given by you when you testified as a witness in your own behalf in the case of the United States of America vs Masao Nanjo, will it refresh your memory as to who issued that order?

MR. BONDA: Objection. May I submit the proper way of refreshing this man's memory is to say, "Now, isn't it a fact that the order was issued by battalion headquarters." It is not necessary to read it, and then if he denies it, then let him declare him antagonistic

MAJOR FOJAS: That is perfectly agreeable with me, sir, to put that question. The only reason why I didn't put the question that way is: because he will object and say it is leading.

MR. BONDA: Well, you can put it in a non-leading

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form. Otherwise you are impeaching your witness, and you know it.

MAJOR FOJAS: I am not impeaching my witness. I am refreshing his memory. Withdraw that question, please.

Q Is it not correct to say that that order was issued by the battalion headquarters, and had come down from the company headquarters to the Boroboro garrison?

A I saw the order in February, 1944, five months after the time the order was issued.

Q And do you remember if that order was issued by the battalion headquarters, and then transmitted to company headquarters?

A I don't know, since I was -- I saw that order at the garrison, and it could have been by way of company headquarters.

Q Now, will it refresh your memory if I tell you that in the case of the United States of America vs Masao Nanjo, you testified that that order was issued by the battalion headquarters, and had come down through the company headquarters to the Boroboro Garrison?

A Yes.

Q Can you recall now if that order was issued by battalion headquarters through company headquarters, and then to the Boroboro Garrison?

A I am sure that the order was through the company headquarters.

Q Can you recall if it came from the battalion headquarters?

A I think that the order was issued by the battalion headquarters.

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Q Now, from what date to what date were you garrison commander at Boroboro Garrison?

A From February 4, 1944, to May 8, 1944.

Q Can you recall if during the month of December, 1944, you were in Bacolod?

A I was at the hospital in Bacolod.

Q What date were you in the hospital?

A From December 6, 1944, to March, 1945.

Q So you were not in Bago during the month of December, 1944?

A On December 5, I went to Bago.

Q And you left Bago after December 5, 1944, is that correct?

MR. BONDA: He just stated he was wounded on December 6th.

MAJOR FOJAS: He didn't say he was wounded, he said he was in the hospital.

MR. BONDA: Oh, pardon me.

Q And you left Bago after December 5, 1944?

A I left on the 6th.

Q You went to Bacolod on the 6th?

A Yes.

MAJOR FOJAS: The prosecution has no further questions, sir.

COLONEL PARMELEF: Cross-examination?

CROSS-EXAMINATION

BY MR. BONDA:

Q Why were you in the hospital on December 6?

A When I was giving an anti-tank education or training to the men, one of the soldiers accidentally made a mistake and shot

EGM(6)mm

me.

Q Where did he shoot you?

A Just below the right knee.

Q And were you taken to a hospital in Bacolod?

A Yes.

Q You are sure of the date, the 6th of December?

A Yes.

Q And how long did you remain in Bacolod?

A From the time I entered the hospital until about March 20, 1945.

Q And during that time, did you go out -- withdraw that. During that time were you on a duty status?

A No, I was in bed in the hospital.

Q Did you return to your unit or go on any sort of active status during the period 6 December 1944, until about 20 March 1945?

A No, I was in the hospital at that time.

Q Were you on a duty status at or near the City of Bacolod, Province Occidental Negros, Philippines, on or about the 8th of December, 1944?

INTERPRETER YAMAMOTO: What was that question?

(Question read.)

A No, I was in the hospital.

Q Where was your unit located at that time?

A You mean the company?

Q Your company, yes sir.

A It was in Bago.

Q You stated that an order was issued that guerrillas were to be disposed of as the garrison commander saw fit, is

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that correct?

A Yes.

Q Did you see the order itself?

A I seen the order at the garrison in Boroboro five months after the order was issued.

Q Now, was the order that you saw a printed order or was it a typewritten or mimeographed order?

A It was printed.

Q Do you know whether that order was originated at battalion headquarters or was distributed to the companies by battalion headquarters?

A I don't know how the battalion headquarters distributed the order, but I seen the order at the garrison of Boroboro.

Q Did that order purport to come from a higher headquarters?

A I personally believe that the order came from the Kono Heidan to battalion headquarters where it was distributed.

Q What does "Heidan" mean?

INTERPRETER YAMAMOTO: In Japanese it is translated as group.

Q Then, in your opinion that order came from General Kono's group, and came to the companies through battalion headquarters as a channel only, is that correct?

INTERPRETER YAMAMOTO: What is that question?

(Question read.)

A Yes, I believe so.

Q Now, you stated that you remained at the high school at Bacolod until October 10, 1943, and then you went to the Takahashi Unit and remained with his unit until the 30th of August, '45. Do you recall that Takahashi was separated from the Yamaguchi Battalion sometime in December of 1944?

MAJOR FOJAS: I will object to that question, sir, as it is not covered by the direct examination.

MR. BONDA: There we go again.

MAJOR FOJAS: We confined our questions to referring to his personal assignment only to indicate where he was assigned, and we never covered the activity to which he wasn't assigned, and the question which is propounded now to the witness is calling for an answer which

is a proper matter for defense, which should be taken up at that time. My objection to this line of questioning is because this is my witness, and if he utilizes this witness as a defense witness I will not have an opportunity to cross-examine him; whereas, if he is called as a defense witness, at least I will have an opportunity to cross-examine him.

MR. BONDA: That is the strangest reasoning I have ever heard of in my life. This man was asked by the prosecution where he was, and on what dates he was there, and his witness, in response to his question, said that he was on October 10 -- withdraw that -- said that until August 30, 1945, he was in Negros with the Takahashi Unit. We have a right on cross-examination to go into any portion of that time that was brought out by the prosecutor himself. We aren't restricted. They haven't been restricted in the questions they can ask, so how can we have all these restrictions placed on us all of a sudden? They brought out the dates, I didn't.

MAJOR FOJAS: I have stated, sir, my position, and we request a ruling.

COLONEL PARMELEE: Will the reporter read the question?

(Question read.)

COLONEL PARMELEE: The cross-examination would seem to be properly confined to the truth--or falsity, rather, attacking that statement that those were the dates he was there. Now, anything having to do with the movements within

that period, of the witness, would seem to be proper, but bringing in about another one, another officer, would not seem to be proper; is that the point?

MAJOR FOJAS: Yes, sir, that is the point, about the separation from the Takahashi Unit and joining the Kono Brigade, which is proper matter for defense, and I will insist I be given an opportunity to cross-examine the witness, and I will have that opportunity only if this witness is called as a defense witness, because the moment I begin questioning him they will say I am impeaching my own witness.

MR. BONDA: If the Court please, this is the most novel theory that has been experienced in any court, that we have a straight-jacket put on us, and we must only question about the things that actually came out as words from his mouth. He gave certain dates, and we therefore can go into any feature of those dates in order to break him down. I don't care what the reason is, but we have the latitude of going into the dates to show maybe he was mistaken about the dates. They brought up the question he was with the Takahashi Unit until August, '45, and this man was being tried for certain things which happened in the Yamaguchi Battalion. Now, they put in things in which their witness says he was not in the Yamaguchi Battalion. We can't be put in a straight-jacket, and not be allowed to ask those questions about when he was detached from the Yamaguchi Battalion in order to establish he was detached. I have never heard of anything as novel as that, sir. We have a wide latitude in cross-examination, and they are restricting us to just actual words

that came out of his mouth, and it is their witness. Are they anticipating cross-examining their own witness? They have already done it, which they shouldn't have done, but are they anticipating further cross-examination of their witness? And I repeat, as I did this morning, cross-examination is always for the purpose of defense; it serves no other purpose.

MAJOR FOJAS: I have no further comment, sir.

COLONEL PARMELEE: The contention of the prosecution is that the questioning that was made, or propounded, the question that was propounded was not one that bordered directly on direct examination, and that it is a question that would be a defense, and not on cross-examination, thereby limiting the prosecution from cross-examining.

MR. BONDA: Sir, if the witness were to say, "I saw ten people killed," and I would ask him, "How, isn't it a fact you didn't see anybody killed." Isn't that a matter of defense; what is the difference between that and this?

COLONEL PARMELEE: That is very true, of course, but it is a matter of defense in that it is designed to lessen the degree of credibility that one would give to the witness.

I believe, when he says as a matter of defense it is a matter that pertains properly to the defense case in chief.

MR. BONDA: The Court is in error. The Court was in error this morning when they refused to let me cross-examine this man about a specification they brought up, and the Court is in error when they will not permit me to examine about a date that was brought up by them, and a unit the witness brought up. We are not, I repeat, in a straight jacket, and we must not refuse to wiggle a little bit out of that straight jacket.

COLONEL FARELLI: Well, that is a pretty strong statement about the integrity of the Commission.

MR. BONDA: I said nothing about the integrity of the Commission. I have all the respect - - -

COLONEL FARELLI: It intimated you had been placed in a straight jacket, and circumscribed in cross-examination. Of course the Commission law member must stand on his rulings, and there is no injustice if I should rule now, sustain the prosecution, there is no injustice to it, inasmuch as this witness can be called as a defense witness.

MR. BONDA: We must not be compelled to be put in a position where we have to question a man as our own witness on matters that were brought out by the prosecution. There is no such thing in the law. That is prejudice, sir.

COLONEL FARELLI: That is the point at issue, as to just what is proper on cross-examination.

MR. BONDA: If the Court will follow that logically, then I could have been compelled to call every Filipino witness that these people have brought in; I could have been compelled

to do it, if I wanted to meet what they said on the stand, and I would not have been permitted to cross-examine. I would have said, "If you want to find out questions about them, bring in your own witnesses." The fact these are Japanese and not Filipinos does not change that. I am not bound to bring them in as my own witnesses. The law never contemplated that and neither does Letter 5 December contemplate that.

COLONEL PARNELES: Well, you see in this case the Law Member is put in the position if he rules against the prosecution, he is prejudicing the prosecution's case, from their standpoint, and if he rules against the defense, the defense is apparently, according to the words of the defense counsel, being placed in a strait-jacket.

MR. BONDA: It is not prejudicing the prosecution if I am permitted to cross-examine on the matters that were brought out by the prosecution.

MAJOR FOJAS: That is just the point sir; he is cross-examining this witness on points which were not brought out on direct examination, and besides the objection is based on that.

MR. BONDA: That is a point that was brought out, and there is no use rehashing that. You opened up that whole line of inquiry when you brought your man up to August 30, 1945; you opened up the whole line of inquiry.

COLONEL PARNELES: Well, I will tell you, the Commission is in this situation, trying to get the facts. Suppose I rule, overrule the objection now, will the defense let the prosecution, on redirect, ask any questions of a similar scope, and not consider it cross-examining their own witness?

MR. BONDA: No sir, I will not, in justice to my client, permit them to recross just because the Commission is making a concession to me. I want no concession. I want to be allowed to proceed because it is a proper way of proceeding, or I want the ruling against me. I want to make no bargain as to whether they be permitted to cross-examine their own witness.

COLONEL FARRELLE: Well, we will not disappoint the defense. I will overrule the objection.

MR. BONDA: Do you have that question handy?

(Question read.)

A Yes, I know that they were separated.

Q Do you remember the date that he was separated from the Yamaguchi battalion?

A I believe it was December 24th or 25th.

Q And did you ever after that rejoin the Yamaguchi battalion?

A Do you mean me, or the Takahashi unit?

Q Well, you?

A Yes, I rejoined the Yamaguchi unit.

Q When did you rejoin the Yamaguchi unit?

A I don't remember exactly, since I was in the hospital, but I think it was around March of 1945.

Q Do you remember the date in March?

A No, I don't.

Q Do you remember where you rejoined the Yamaguchi unit?

A Who are you talking about?

Q You, personally?

A I was discharged from the hospital on March 20, and received medical care from the medical section of the Yamaguchi unit

Q And did you rejoin the Yamaguchi unit at that time when you were discharged from the hospital?

A. Yes.

Q Where did you rejoin them - - - withdraw that.

Where was the Yamaguchi headquarters when you rejoined the Yamaguchi battalion?

A One kilometer east of Bacolod, at a place called Lourdes.

Q And were all of the Yamaguchi units at that place at that time?

A. They were the Nakajima unit and the heavy weapons unit.

Q Do you know whether at that time you rejoined the unit, a unit of the Yamaguchi battalion, it had in its duties as security patrol or as policing occupying areas?

A. Yes.

Q What was the answer "yes," to the fact that you know?

A. Yes.

Q All right, now, what was the fact?

A The Okamoto unit was in La Carlota and the Takahashi unit in Murcia.

Q Now, at that time was the Takahashi unit under the command of Colonel Yamaguchi, or was it under the command of General Kono?

A Are you talking about the time during the 20th of March?

Q Yes.

A I do not remember.

Q You were not a member of Takahashi's unit at that time, were you?

A. I was a member of the Takahashi unit, but I was receiving medical treatment and since there was no liaison I do not know.

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Q Now, as far as you know, other than possibly the Takahashi unit, were there any troops under Colonel Yamaguchi around the 20th of March, 1945, who were actively engaged in security patrol or occupation policing of any part of Negros Island other than the unit that was in La Carlota?

INTERPRETER YAMAMOTO: May I have that question?

(Question read.)

A. No, I don't.

Q Now, while you were on an active duty status did you wear a Japanese army uniform?

A. At where?

Q Any place except when you were in the hospital?

A. I was wearing the clothes that Japanese soldiers wear.

Q Did you ever wear a white civilian uniform?

A. Yes, I was wearing one when I was in the hospital.

Q Other than when you were in the hospital, did you ever wear white civilian clothes?

A. No.

COLONEL FARRELLEE: What relevancy does that line of questioning have in cross-examination?

MR. BONDS: The prosecution's witness testified that he saw a third person whom he called Nonjo on the 8th of September two days after this man went to the hospital, wearing civilian clothes. Now, I have a right, possibly to impeach him, showing he was wrong, that somebody else says he wore civilian clothes.

MR. ADLER: That is the 23rd Specification.

COLONEL FARRELLEE: I am just asking if that is a proper matter of defense's case in chief.

MR. BONDS: I can impeach the witness. Whom are you going to believe, this man or the other man? Somebody else said he wore white clothes, and he says he doesn't, and it is proper for impeachment.

MAJOR FOJAS: Who are you impeaching now, this witness or the other one?

MR. BONDS: I can impeach both of them if I want to.

MAJOR FOJAS: Are you impeaching this witness by asking that question?

MR. BONDS: That is a proper question for impeachment.

COLONEL FARELLE: The Commission will take a short recess.

(Short recess.)

COLONEL FARELLE: The Commission is in session.

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Translated to witness through Interpreter Vallejo.)

MR. BONDS: As I understand, there is a question the Commission objected to.

COLONEL FARELLE: No, no, the interlocutory remarks were as to the relevancy of the question.

Q Do you know the name of the doctor that treated you while you were in the hospital at Bacolod after you were injured?

A Yes.

Q What was his name?

A The chief of the hospital was Lieutenant Yamasaki, and the doctor who attended was probationary officer Tsumori.

Q Was there a Lieutenant Kanda, a medical officer, in the hospital at that time?

A. Yes, he was the medical officer of the Yamaguchi battalion headquarters, and he came to visit me only. He just came to see how I was in the hospital.

Q. Do you remember how soon after you were brought into the hospital he came to visit you?

A. The first time he came to visit me was on the 7th, the day after I entered the hospital. That was the 7th, the day after I entered the hospital.

Q. Do you have a wound on your leg as a result of the injury on December 6th, 1944?

INTERPRETER V. LLEJO: What was the question?

(Question read.)

A. Yes.

Q. Is there a scar present at the present time?

A. Yes.

Q. May I see it, please?

(Witness demonstrating.)

MR. BOND: Indicating a scar about an inch long and about a half inch wide on the left side of his right shin bone, about three-quarters of the way from the ankle to the knee.

Q. Is the scar that you just showed the scar that is the result of your injury on the 6th of December, 1944?

MAJOR FOJAS: May I know, sir, if defense counsel has ceased cross-examining the witness, and he is utilizing this witness now as his own witness?

MR. BOND: Mr. Prosecutor, didn't you bring up the matter of him being in the hospital, and him being wounded?

MAJOR FOJAS: I am just asking you a question.

MR. BONDA: I am cross-examining this witness.

MAJOR POJAS: That is all I wanted to know.

A Yes.

Q Was your battalion CP ever at the Sugar Central in Bacolod?

A Yes.

Q Did you have all of your men there at the Hawaiian Sugar Central - - - withdrew that.

At the Sugar Central in Bacolod?

A Do you mean the company or the battalion?

Q Your platoon.

A Before going to the hospital I did not have my own platoon.

Q Who relieved you as platoon leader when you went to the hospital, do you know?

A I was not in command of any platoon, and so there was nobody who took my place when I entered the hospital.

Q What was your command when you entered the hospital?

A I was in charge of educating the soldiers, instructions.

Q Did anybody replace you on that job when you went to the hospital?

A I don't know.

Q Now, can you place the date of your return from the hospital relative to the landing of the Americans on Negros Island?

INTERPRETER VALLEJO: May I have that question?

(Question read.)

A I was discharged from the hospital on the 20th of March, 1945, and the Americans landed on March 29, 1945.

Q And during the time from when you were discharged from the hospital to when the Americans landed, did you have any command at all?

A No.

Q And is it correct to say that from the 5th -- the 6th of December until the Americans landed you had no command?

A That is for certain.

Q Did you on or about the 8th of December, 1944, permit soldiers under your command to kill any persons?

MAJOR FOJAS: I will object to that question, sir.

COLONEL PARMELEE: Objection sustained.

MR. RONDA: May I inquire of the Commission why the

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objection is sustained?

COLONEL PARMELEE: Because it is a matter that properly belongs to the defense. It is far afield of the latitude given the defense on cross-examination.

MR. BONDA: Didn't the prosecution bring in the date of December 6th, 1944?

COLONEL PARMELEE: Objection sustained. Proceed.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Redirect?

REDIRECT EXAMINATION

BY MAJOR FOJAS:

Q Do you know if for organizational purposes the Takahashi company remained under the Yamaguchi unit from December 24, 1945, to August 30, 1945 -- December 24, 1944?

MR. BONDA: Will you read that question as it now stands corrected?

(Question read.)

MR. BONDA: His witness has already answered that question.

MAJOR FOJAS: I submit, sir, that it was brought out on cross-examination that the Takahashi company joined the Kono Brigade, and I want to find out if that joining is on temporary duty or for other purposes, or whether the unit remained with the Yamaguchi Battalion.

COLONEL PARMELEE: Is this for clarification?

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: Objection overruled.

MR. BONDA: Clarification doesn't give them the

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right to ask questions that are otherwise objectionable, sir.

MAJOR FOJAS: It is not objectionable; it is proper, sir.

MR. BONDA: Now, may I inquire what the prosecutor means by "for organizational purposes?" How would this man know, and I am frank in saying I don't know what it means.

COLONEL PARMELEE: Of course, I presume he is asking--and if there is any part of the question the witness does not understand, he will so say. The witness will be instructed that if he does not understand the question that he should raise the issue and ask for clarification.

MR. BONDA: Well, I would like to have it clarified before it is asked. I want to know whether he means for rations or does he mean for tactical purposes or morning reports. I would like to know what it means. I haven't the slightest idea what an organizational connection means.

COLONEL PARMELEE: Well, possibly it would presume to mean any organizational set-up which you want to make: a functional chart, let us say, and we have this and that and we have such a strength there and such a strength here.

MAJOR FOJAS: That is what is intended, sir.

MR. BONDA: I object to the question because it is indefinite.

COLONEL PARMELEE: Well, we know what organizational purposes would be. Now, we are to make the decision on that. Put the question. Objection overruled.

(Translated to witness through Interpreter Vallejo.)

A From the 24th or 25th of December, 1944, until about March of 1945, the Takahashi unit was under the direct command

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of Kone, and from about April of 1945 to the end of June, it was under the command of Komuro.

Q Did that unit ever return under the Yamaguchi unit?

MR. BONDA: Objection, sir. The question has been asked and answered of the prosecution's witness before.

MAJOR FOJAS: If he will enlighten me as to the answer of the witness, I will be very willing to withdraw the question.

MR. BONDA: You accused me of not listening.

COLONEL PARMELEE: What is the difficulty here?

MAJOR FOJAS: Did the Takahashi unit ever return under the Yamaguchi unit after what he stated, and he objects that it has been answered once before.

COLONEL PARMELEE: Well, let's ask it again. Objection overruled.

A Yes.

Q When?

A The end of June.

Q What year?

A 1945.

MAJOR FOJAS: The prosecution has no further questions, sir.

COLONEL PARMELEE: Is there any recross?

RECROSS-EXAMINATION

BY MR. BONDA:

Q Then it is true that from October, 1944, until June of 1945, the Takahashi unit and you were not under the command of Colonel Yamaguchi?

MAJOR FOJAS: I object to that question, sir, as that is assuming facts which are not in evidence.

Q Didn't you testify that during the months from October, 1944, to June, 1945, you were under the direct command of General Kono and Komuro, is that correct?

MAJOR FOJAS: I will object to that question, sir, because I remember the testimony of this witness was that on December 24, 1944, that was the date when the Takahashi unit joined the Kono Brigade.

MR. BONDA: I beg your pardon, sir.

MAJOR FOJAS: He is trying to insert upon the mind of the witness the date of October, 1944.

MR. BONDA: You read the prosecutor's questions and you read the answer.

I will withdraw my question. No more questions.

COLONEL PARMELEE: There are no questions by the Commission.

INTERPRETER YAMAMOTO: The witness says there are two things he would like to tell the Commission.

COLONEL PARMELEE: He is a prosecution witness, and I don't know --

MAJOR FOJAS: I don't know what he is going to say, but I suggest if there is anything he wants to say to the Commission, we should find out if it is a matter for defense or for prosecution.

COLONEL PARMELEE: Well, we will get it in the morning, then.

The Commission will now adjourn and will reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1510 hours, 26 December 1946, to reconvene at 0830 hours, 27 December 1946.

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Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME XL

PAGES 2805 TO 2851 INCL.

DATE 27 December 1946

MANILA, P.I.

COPY NO. 10

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee
A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
27 December 1946

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARKLEE, CAC, President and Law Member

MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO F. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	Japanese
PERTONILO VALLEJO	)	
CAESAR YO ALZONA	)	
MACARIO E. BELARONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

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ELIZABETH G. MCNAIR
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BERTHA S. HOLTMAN

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WITNESSES

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EXHIBITS

	OFFERED	RECEIVED
Prosecution's Exhibit No. 10	2849	2850
Prosecution's Exhibit No. 11	2850	2850

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0845 hours, at Court No. 2, High Commissioner's Residence, Manila, P. I., 27 December 1946.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all the members of the Commission are present, the accused and his defense counsel and personal interpreter, and the prosecution staff are also present.

MASAO NANJO

a witness for the prosecution, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Vallejo.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Vallejo.)

COLONEL PARMELEE: Questions by the Commission. Colonel Parmelee.

EXAMINATION BY THE COMMISSION

BY COLONEL PARMELEE:

Q In your testimony yesterday I understood you to say that you remember seeing this order of October 9, 1943, which left to garrison commanders the decision as to the disposition of guerrilla suspects, or words to that effect; is that correct?

A I stated that it was an order of October, 1943, and did not mention guerrilla suspects, but mentioned only guerrillas.

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Q Very well. Do you remember what heading there was on that order, that is, anything to indicate where it originated?

A I think it came from the intelligence section of the battalion headquarters.

Q Now, you stated that you believed this order came from the Kono Heidan, is that correct?

A Yes, I believe so, because Colonel Yamaguchi has always instructed us to be kind to the civilians, and as regards guerrillas he has always sent those guerrillas who had been captured to the Spiritual Training School, and after they were finished with their training they were given some sort of work, and I believe this order was actually against the wishes of Colonel Yamaguchi, but must have come from higher headquarters.

Q Did Colonel Yamaguchi express any views along that line to you, personally?

A No, he didn't say anything like that, but I can just imagine it.

Q Then, is it correct to conclude that that is your own opinion only, or have you some other basis for believing that?

A Well, that is my own opinion, and the basis I have for making such an opinion was the facts that I have stated previous to this.

Q Now, can you recall, in general, the wording of this order, that is, the one of October, 1943, as to whether there was any reference made to orders or policies or

directives from higher authority on which it would be based?

INTERPRETER VALLEJO: Will you give me that question?

(Question read.)

A I don't remember very clearly.

Q During the period that you state you were in the hospital,-6 December, 1944, to March 20, 1945, I believe are the dates you gave,-were you ever permitted to leave the hospital for recreation or any other purpose?

A Even if I were given permission, inasmuch as my leg was wounded, I couldn't walk.

Q You couldn't walk?

A I could not walk.

COLONEL PARKELEE: No further questions by the Commission. The questions by the Commission were designed to clarify some things; however, if there is anything new brought up, has the prosecution any questions?

FURTHER REDIRECT EXAMINATION

BY MAJOR FOJAS:

Q You stated that guerrillas who were caught were placed in a training school, and that after that they are given some work by Colonel Yamaguchi. Do you recall whether the usual work given to these men was to become members of the Standing Army or of the Constabulary?

A Since I have had no direct relation with this training school, I am not very sure as to what sort of work was given them, but I believe that the nature of the work depended upon the wishes of the individual himself. There were cases when

the work of civilians were granted to these people from the Spiritual Training School.

Q Were there also cases where graduates of this training school were made members of the Standing Army, or of the Constabulary?

A There might be such cases. That depends upon the wishes of the individual himself.

MAJOR FOJAS: I have no further questions, sir.

COLONEL PARMELEE: Has the defense any questions, based upon new matter?

MR. BONDA: No further questions, sir.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

COLONEL PARMELEE: Off the record.

(Off-record discussion.)

COLONEL PARMELEE: On the record.

MAJOR FOJAS: Our next witness, sir, is Akira Takeshita.

AKIRA TAKESHITA

a witness for the prosecution, having been first duly sworn, testified as follows through Interpreters Yamamoto and Vallejo:

DIRECT EXAMINATION

BY MAJOR FOJAS:

Q Will you state your name, please?

A Akira Takeshita.

COLONEL PARMELEE: How does he spell the first name, "A-K-I-R-A," or "O-K-I-R-A?"

A A-K-I-R-A.

COLONEL PARKER: All right, that is the official spelling for the record. The last name is spelled correctly, "T-A-K-E-S-H-I-T-A ?"

INTERPRETER VALLEJO: That is right, sir.

Q How old are you?

A 37 years old.

Q Were you formerly a member of the Imperial Japanese Army?

A Yes.

Q Were you ever assigned to the Philippines?

A Yes.

Q What was your branch of service in the Imperial Japanese Army?

A Infantry.

Q When were you first assigned to the Philippines?

A January of 1943.

Q Do you remember the date in January?

A 6th of January.

Q Where in the Philippines were you first assigned?

A Bacolod, Negros.

Q Before being assigned to the Philippines on January 6, 1943, were you assigned to the Yamaguchi Battalion?

A Yes.

Q What was your rank when you were assigned to the Yamaguchi Battalion on January 6, 1943?

A Corporal.

Q Did you ever receive any promotion?

A Yes.

Q To what were you promoted, and when?

A I was promoted to sergeant in March of 1943.

Q Who was the commander of the Yamaguchi Battalion when you were assigned to that unit?

A Colonel Yamaguchi.

Q Will you indicate him to the Commission, if he is present in the courtroom?

A Yes, he is here. The man at the extreme right on that side of the courtroom.

MR. BONDA: Pointing to the trial table, the defense trial table.

MAJOR FOJAS: May the record show that the witness evidently referred to the accused in this case, Colonel Masakazu Yamaguchi.

COLONEL PARMELEE: Defense will, agree that --

MR. BONDA: The defense will agree that he indicated the accused.

Q What were your duties -- withdraw that.

What were the duties assigned to you when you were first attached to the Yamaguchi Battalion?

A I was one of the soldiers in the company.

Q From what date to what date did you remain a soldier in one of the companies?

A From the time we landed to the end of the year.

Q You mean from January 6, 1943, to 31 December, 1943?

A That was until about the latter part of December, but I don't remember the exact date.

Q And you mean --

COLONEL PARIELEE: May I ask one question right there? If he says "the latter part," is that any time between the 20th and 30th?

A Yes sir.

COLONEL PARIELEE: Off the record.

(Off-record discussion.)

COLONEL PARIELEE: Will you read the last question and answer?

(Record read.)

Q And you mean in the year 1943?

A Yes.

Q To what company did you belong during that period?

A 3rd Company.

Q Who was the commander of that company during that time?

A First Lieutenant Okamoto.

Q After December, 1943, to what were you assigned in the Yamaguchi battalion?

A I was assigned to the headquarters of the Yamaguchi unit.

Q What were your duties then?

A I was charged with the gathering and collection of intelligence information.

Q From what date to what date were you in the intelligence section of the headquarters of Colonel Yamaguchi?

A I was there from July of 1944.

Q To what unit were you attached in January, 1944?

A I was in the headquarters of the Yamaguchi unit.

Q What were your duties there in the headquarters of the Yamaguchi unit?

A Gathering of intelligence.

Q So you were in the intelligence section in the headquarters of Colonel Yamaguchi from January, 1944, is that correct?

A No, I was not in the intelligence section.

Q But you were gathering intelligence information for the Yamaguchi battalion in January, 1944, is that correct?

A Yes.

Q And from what date to what date did you stay in the headquarters of Colonel Yamaguchi with the duties of gathering intelligence information?

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A I was doing that work from January of 1944.

Q To what date?

A Until the time we went to the mountains.

Q Do you remember when you went to the mountains?

A I don't remember the date very well, but I think it was the 30th of March.

Q What year?

A 1945.

Q In other words, from January, 1944, to about the 30th of March, 1945, you were in the headquarters of Colonel Yamaguchi, and your duty was to gather intelligence information. is that correct?

A Yes.

Q In other words, you were an intelligence operative of Colonel Yamaguchi during that period?

MR. BONDA: Objection. He has already answered that question.

MAJOR FOJAS: I am just clarifying it.

MR. BONDA: You put it in other words before. You are putting it in other words again. It is exactly the same thing.

COLONEL PARMELEE: The objection is to the repetition?

MR. BONDA: That is right.

COLONEL PARMELEE: Well, it has been answered to that effect, but I don't know why it can't be answered again.

MAJOR FOJAS: I will withdraw the question.

Q Did you wear a Japanese army uniform during that period?

A No.

Q What were you wearing during that time?

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A Civilian clothes.

Q Did you wear glasses also during that time?

A Yes.

Q What was the color of the civilian clothes you usually wore?

A Different colors.

Q What color did you most often use?

A I ordinarily wore white.

Q In the performance of your duties as an intelligence operative in the headquarters of Colonel Yamaguchi, did you have occasion to investigate civilians, guerrillas or suspected guerrillas?

A Yes.

Q In the course of investigating civilians, guerrillas and suspected guerrillas, did you have to resort to beatings and other forms of torture?

MR. BONDA: At this time, I request the Commission to apprise the witness that he need not answer any question that would tend to incriminate or degrade him.

MAJOR FOJAS: I join defense counsel in making that request, sir.

COLONEL PARMELEE: The witness is advised that, even though he may have been tried for war crimes, he is still a prisoner of war, and final action on his case I believe has not been taken. Is that correct?

MR. BONDA: That is correct, sir.

COLONEL PARMELEE: And that a prisoner of war cannot be required to admit his guilt. From that guarantee comes the protection that he need not incriminate himself.

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The issue of self-incrimination must be raised by him. If it appears to the Commission that the question asked of him requires an answer that would be self-incriminating, and he raises the issue of self-incrimination, the Commission will uphold him. If it appears to the Commission that the question does not call for an answer that is self-incriminating, he may be required to answer.

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MR. BONDA: Now, if the Commission please, I object to the last question on the ground that -- excuse me, it has not been translated.

(Translated to the witness by Interpreter Vallejo.)

COLONEL PARMELEE: There was a question propounded, and before it was put to the witness the defense counsel requested that the witness be advised of his right against self-incrimination, and then interposed an objection to the question.

MR. BONDA: Yes, sir. I object to the question that was asked on the ground that it is leading and suggestive. It suggests the answer to be given. The proper way is to ask him the method of procedure, and not suggest the answer in his question.

MAJOR FOJAS: I don't think it is leading.

Q Did you have to resort to beatings and torture in the course of investigation?

MAJOR FOJAS: He can answer "Yes" or "No."

MR. BONDA: The mere fact that it permits of a "Yes" or "No" answer is not the test of whether a question is a leading question or not.

COLONEL PARMELEE: Well, for the sake of harmony, do you want to ask him what methods were used?

MAJOR FOJAS: Yes, sir, I will rephrase the question.

Q What was the general policy adopted by you in the investigation of civilians, guerrillas and suspected guerrillas?

A Do you mean the policy when we investigated them?

Q Yes.

MR. BONDA: Off the record. Don't you mean "methods",

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not "policy"?

MAJOR FOJAS: Methods or practice.

MR. BONDA: Methods, not policy: I believe there will be some confusion on it.

(Translated to the witness by Interpreter Vallejo.)

A We were not to kill them if possible, and we should investigate them in such a way that they don't die.

Q What do you mean when you say, "we should investigate them in such a way that they don't die"?

A It is only because if they die we won't be able to get any information from them.

Q What did you do with these persons short of having them killed during the course of the investigation?

A We avoided killing them, and we investigated them.

Q Now, in investigating them, what did you do with these men so that they would not die?

A I don't get your question very well.

Q What were your methods of investigating a man to get information?

A There were a lot of methods, and it would not be so simple to describe them at one time.

Q Will you please describe some of them?

A If you look up the records of the case against me, you will find them in the records.

MAJOR FOJAS: We don't have any time to look at the records. We want to ask you now. Will you please answer the question?

(Translated to the witness by Interpreter Vallejo.)

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MAJOR FOJAS: In view of the attitude of the witness, may I be permitted to ask leading questions, at least on this point?

It is very clear that the witness has become evasive. He is even appointing me to read his records, and I know that in those records he has testified as to those methods. To save time, may I be permitted to ask leading questions?

COLONEL PARMELEE: Do you consider the witness as reluctant or hostile?

MAJOR FOJAS: He is reluctant to give information on that point, and he is trying to evade the question.

MR. BONDA: I don't think he has shown reluctance. He probably does not know where to begin.

MAJOR FOJAS: I don't know if you can deny it.

MR. BONDA: I certainly can deny it.

MAJOR FOJAS: Do you deny he has been evasive?

MR. BONDA: No. He thought it was proper procedure under our system of jurisprudence to just refer it to the record. He is not an American. He is not familiar with American jurisprudence. That does not make him evasive.

You instruct him that that is not the way we proceed. Now you instruct him he has to answer your question.

I remember a few of your witnesses that hesitated a long time. I remember one particular witness that had to stop to think who the accused was in this case.

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MAJOR FOJAS: This witness is not only opposed to answering the question. The first time I asked him that question, he said he tried his best not to kill the suspects, or the men under investigation.

MR. BONDA: Is that evasive?

MAJOR FOJAS: That is evasive.

COLONEL PARMELEE: The Commission will consider that the witness is reluctant to testify, and prosecution may proceed.

Q In the course of investigating guerrillas, --

MR. BONDA: Wait just a minute.

MAJOR FOJAS: Wait a minute.

MR. BONDA: I have a right to comment or make a request of the Commission.

MAJOR FOJAS: I don't know. I was asked to proceed.

COLONEL PARMELEE: One at a time.

MR. BONDA: May I comment, sir?

COLONEL PARMELEE: All right.

MR. BONDA: Inasmuch as the Court has given the prosecution a right to cross-examine him over my objection, I want the Court to go on record as showing why the Court considers this man a hostile witness.

MAJOR FOJAS: May I correct the defense counsel, sir? I am not asking the right to cross-examine the witness. I am only asking the privilege of asking leading questions on this particular point, where I found him being reluctant to give us the necessary information.

MR. BONDA: That is concomitant with cross-examination.

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MAJOR FOJAS: No, sir. Even in direct examination you can ask leading questions.

MR. BONDA: Only for preliminary matters.

COLONEL PARMELEE: The Commission's ruling, based upon its own observation of the attitude of the witness, was that there was a reluctance, a hesitancy, in replying to the questions asked. Permission, as I recall, was given to ask leading questions, not to cross-examine him. I may be wrong, but that is my recollection.

MR. BONDA: Yes, sir, that was the request made, to ask him leading questions; but those leading questions should be based on the fact that the man has become hostile, or does not understand the question when it is repeated to him a number of times, or has become evasive.

There is nothing in the record that shows that this man has become evasive. There is nothing that shows he is hostile. There is nothing that shows he does not understand the question. He has merely hesitated before he has formulated his answer. That is all that appears to my observation.

MAJOR FOJAS: I think, sir, defense counsel is just confusing the matters. The mere fact that I am allowed to ask leading questions does not mean I am cross-examining.

COLONEL PARMELEE: The point is that the witness did answer a question to the effect that you should read the record of his own trial, which in a sense is an impertinence. The ruling has been made for leading questions.

MR. BONDA: May I make one further comment?

COLONEL PARMELEE: One.

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MR. BONDA: When the Commission says his statement to look at the record of his case is an impertinence, I violently disagree.

In other courts they are permitted to ask them to refer to the record in another case. It is not an impertinence. It is rather an unfamiliarity with our customs.

COLONEL PARMELEE: Very well. The Commission will modify its views to conform to that possibility.

MAJOR POJAS: May I proceed, sir?

COLONEL PARMELEE: Yes.

Q In the course of your investigation of civilians, guerrillas and suspected guerrillas, did you have occasion to resort to beatings and other forms of torture in order to get information?

MR. BONDA: I would like the record to show objection to each one of the leading questions, sir.

COLONEL PARMELEE: Objection overruled.

MR. BONDA: I want the record to show my objection to each of the questions.

COLONEL PARMELEE: You had better interpose it after each question.

(Question is translated to witness by Interpreter Vallejo.)

A Yes.

Q The extent of the beatings and torture which you administered to persons you investigated were such that the only thing left for him was that he should not die, is that correct?

MR. BONDA: Objection. That is not a leading

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question. That is cross-examination, sir.

MAJOR FOJAS: How did you know it is cross-examination? I am just clarifying --

COLONEL PARMELEE: Just a minute.

MAJOR FOJAS: May I say something, sir?

COLONEL PARMELEE: Let us let Mr. Bonda finish first.

MR. BONDA: I finished my statement. He asked me a question, and I started to answer, and he interrupted.

BH(2)mm

MAJOR FOJAS: I believe you objected on the ground that it was cross-examination.

MR. BONDA: That is not merely a leading question. That is cross-examination.

COLONEL PARMELEE: Is that the end now of the comment?

MR. BONDA: Yes.

MAJOR FOJAS: I wouldn't say it was merely a question of clarification, because you will remember that this witness first stated that they investigated persons and did everything so that the person would not be killed.

Then he testified that they resorted to beatings and torture.

To enlighten the Commission as to the extent of the tortures administered upon these persons, I am asking that question, and I don't see how it can become cross-examination. I am not trying to discredit the witness. I am eliciting information which will clarify his two answers.

MR. BONDA: The purpose of cross-examination is also to elicit information. You were asking a type of question which is permitted only on cross-examination.

Regardless of what your purpose is, it is asking for a clarification of a statement of your own witness with a type of question that would tend to impeach or discredit him.

Whether you intend to or not, that is a type of question that does just that.

I think you have had sufficient practice to realize what is and what is not a question that is proper only on cross-examination. That is not a leading question merely.

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That is a cross-examination question.

MAJOR FOJAS: I think, sir, the main purpose of cross-examination is to discredit testimony of the witness, to point out discrepancies and to destroy the credibility of the witness; but is there anything which would destroy the credibility of this witness?

MR. BONDA: And to attack a man's character, too, sir. Don't forget that,

MAJOR FOJAS: All right. Is there anything in that question which would attack the character of this witness?

MR. BONDA: I will leave that to the witness.

COLONEL PARMELEE: Will the reporter read the question?

(The last question was read by the reporter.)

COLONEL PARMELEE: The question seems to be based on his prior testimony of the degree at which he stopped. It seems to be reasonable. Objection overruled.

(The question was translated to the witness by Interpreter Vallejo.)

A We did not do it up to that extent.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

BSH(2)rs

COLONEL PARKER: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Yamamoto.)

Q In beating these civilians, guerrillas and suspected guerrillas under investigation, you usually used pieces of wood, is that correct?

MR. BONDA: Objection.

COLONEL PARKER: Objection overruled.

A That is right.

Q And you used the water cure and the Japanese dance upon persons under investigation, is that correct?

MR. BONDA: Objection.

COLONEL PARKER: Objection overruled.

MAJOR FOJAS: I will withdraw the last question about the "Japanese dance." Just "water cure."

A That is correct.

Q Did you also use jujutsu upon persons being investigated?

MR. BONDA: Objection.

COLONEL PARKER: Objection overruled.

A I do not know the ju-jutsu.

Q Who was your immediate commanding officer when you were assigned to the headquarters of the Yamaguchi Battalion?

A Mizoguchi.

Q Did you also receive direct orders from Colonel Yamaguchi himself?

A There were times I received them.

Q From who else did you receive orders in investigating prisoners?

MR. BONDA: Objection, unless the time is specified.

Q During the time that you were attached to the headquarters of Colonel Yamaguchi?

A Second Lieutenant Takahashi of the intelligence section, and First Lieutenant Toda.

COLONEL PARMELLE: Will you read that question again, please?

(Record read.)

Q Where in Bacolod was the headquarters of Colonel Yamaguchi located during the time that you were attached to that headquarters?

A At the Bacolod High School.

Q On 20 July 1944, do you remember having seen the execution of certain persons at the rear of the Bacolod High School?

MR. BONDA: What specification is that?

A Yes, I have seen it.

COLONEL PARMELEE: Just a minute, now.

MR. BONDA: What specification is that?

MAJOR FOJAS: It is Specification No. 19.

MR. BONDA: Will you please read that question and answer to me again?

(Record read.)

Q At about what time on July 20, 1944, did that execution take place?

A A little after five in the evening.

MR. BONDA: What was the date?

(Question read.)

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Q Do you remember having investigated certain persons on that date, July 20, 1944?

A Yes.

Q Do you know what happened to those persons you investigated on that date?

MR. BONDA: What was that last question?

(Question read.)

A They were killed after the investigation.

Q Were they killed on the same day?

A Yes.

Q Were they also killed at the rear of the high school building?

MR. BONDA: Objection. You say, "were they also killed in the rear of the high school;" what do you mean by "also"?

MAJOR FOJAS: He previously testified that he saw the execution of certain persons, and I asked him if he investigated certain persons, and he said "yes", and I asked what happened to those persons, and he said, "they were killed."

COLONEL PARMELEE: Will you ask him where they were executed.

MR. BONDA: You are referring to the same persons he saw originally killed in the high school? You are referring to those he saw originally killed, or does that mean additional persons?

MAJOR FOJAS: Yes.

MR. BONDA: Additional to what?

MAJOR FOJAS: These other persons he investigated

EGM(3)mm

besides those he saw executed.

MR. BONDA: The first question he answered that he saw some killed behind the high school on July 20th, and now you are asking about some other people killed behind the high school? You said "also;" did you mean additional to those he first testified were killed on July 20th?

MAJOR FOJAS: Yes.

MR. BONDA: I wish you would make that clear to your witness.

MAJOR FOJAS: I think that is clear. It is clear to me.

MR. BONDA: I don't know whether it is or not. It isn't clear to me.

COLONEL PARMELEE: Do you want to read the questions and answers pertaining to the 20th of July? Will that help any?

MR. BONDA: Anything would help to clarify it. I can't understand the question.

COLONEL PARMELEE: Well, I mean as a basis for clarification. The question seems to be whether these are the same people -- you are asking for the particular place they were killed, is that it?

MR. BONDA: No, sir, he has designated certain people he places in the same place as he did in the first question.

MAJOR FOJAS: There is no confusion, sir. He saw certain persons executed on that date, on the same date he investigated certain persons who were also killed, and I want to find out if those persons he investigated, and were

EGM(3)mm

killed, were also killed at the rear of the high school.

MR. BONDA: You are referring to two groups of people who were killed?

MAJOR FOJAS: Yes.

COLONEL PARMELEE: Can you ask if in addition to those he just testified to, were there other people killed?

MAJOR FOJAS: I will withdraw the question, so we will avoid any more discussion.

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Q Were these people that you investigated and you said were killed later -- were they killed at the rear of the high school building in Bacolod?

A Yes.

Q Do you know who killed those persons you investigated?

A Yes.

Q Do you remember how many persons you investigated, and were later killed on that date?

A Yes.

Q How many?

A Six were investigated and seven were killed.

Q And who killed those seven persons you investigated?

A I have testified previously in my own case.

MAJOR FOJAS: We would like to find out now from you who killed those persons.

MR. BONDA: Will the Court again advise the witness that he might raise the question of self-incrimination?

COLONEL PARMELEE: The witness has so been instructed.

MR. BONDA: There would be no harm in re-advising him.

MAJOR FOJAS: I join the defense in having the witness advised.

COLONEL PARMELEE: Well, it doesn't seem necessary to the Commission to cue him because it was explained to him. I will ask the interpreter did the witness give any indication that he understood the explanation of his rights against self-incrimination?

INTERPRETER VALLEJO: Yes, sir, he said, "I understand."

EGM(3)ss

(Question translated to witness through Interpreter Yamamoto.)

A Sergeant Takamasa, Lance Corporal Shibato, Lance Corporal Haruta and Lance Corporal Kubota.

Q In the earlier part of your testimony, you said that you saw certain persons executed at the rear of the high school building a little past 5:00 in the evening on July 20, 1944. Can you recall how many those persons were?

A Seven were killed.

Q How many persons in all did you see killed on the 20th day of July, 1944, at the rear of the high school building?

INTERPRETER YAMAMOTO: What is the question, please?

(Question read.)

A Do you mean on the 20th?

Q Yes.

A Yes, there were seven persons killed in all.

Q Do you remember a house located at the corner of San Juan and Rosario Streets in Bacolod?

A Yes.

Q Did you ever use that house as your living quarters and and office during the period that you were attached to the battalion headquarters of Colonel Yamaguchi in Bacolod?

A Yes.

Q During the period from March, 1944, to July, 1944, did you have occasion to take prisoners to that house for purposes of investigation?

A Yes.

Q Do you remember where you took those prisoners before they were taken to your house on San Juan and Rosario Streets?

EGM(3)ss

A What do you mean?

Q From what place, whether in the garrison or some other place.

MR. BONDA: At what time? Objection. It is too indefinite as to time.

MAJOR FOJAS: I have stated the period March to July, 1944.

MR. BONDA: Are you assuming he always took them to the same place? That is an improper assumption. I ask, sir, that the time be fixed as to the last question that was asked.

MAJOR FOJAS: The witness can specify if he took them from more than one place. The time has been stated during the period March to July, 1944, and he said he took prisoners to his house on San Juan and Rosario Streets, and I am now asking him from what place he took the prisoners, and if the witness took them from different places, he can specify.

MR. BONDA: Unless it is established they were always taken from the same place, I object to the question. It has not been established by this witness that he always took them from the same place before he took them over there.

MAJOR FOJAS: That is what we want to find out.

COLONEL PARMELEE: Will the reporter read the question, please?

(Question read.)

COLONEL PARMELEE: The question seems to be clear enough. If the witness has any doubt, he can raise the issue. Objection overruled.

EGM(3)ss

A From the high school.

Q Where in the high school?

A The detention center.

Q During the period March, 1944, to July, 1944, on how many occasions did you take prisoners from the prison cell and take them to your house on San Juan and Rosario Streets for purposes of investigation?

A I do not remember exactly how many times.

Q Can you recall if you took such prisoners on more than two occasions?

A I believe it was more than two times.

Q Did you have general authority from battalion headquarters to take prisoners from the prison cell to your house on San Juan and Rosario Streets for purposes of investigation?

A I received permission.

Q From whom?

A Second Lieutenant Takahashi.

MAJOR FOJAS: The prosecution has no further questions.

COLONEL PARMELEE: Cross-examination?

MR. BONDA: Yes, sir.

CROSS-EXAMINATION

BY MR. BONDA:

Q Did you receive any training prior to the time that you became the investigating officer for the Yamaguchi Battalion?

A Yes, I received a little.

Q Did you receive any police training in Japan before you came into the Army?

EGM(3)s3

A Oh, is that what you mean? The answer I made previously is then wrong.

Q Will you please answer the question I have just put to you.

A Before I had the job of gathering information or intelligence in the Yamaguchi unit, I received a sort of training.

Q Where?

A In the intelligence section.

Q In Negros?

A Yes.

Q Had you ever been a police officer in Japan?

A No.

Q Have you ever been a police officer anywhere other than Japan prior to the assumption of your duties as the intelligence officer in the Yamaguchi Battalion?

A No.

Q Are you acquainted with police methods of investigation in Japan?

MAJOR FOJAS: I will object to the question, sir, unless the foundation is laid as to how he could be acquainted with police methods of investigation in Japan. We have the statement of this witness he has never been a police officer in Japan.

MR. BONDA: The best foundation I know is to ask the direct question. He still is your witness, and this is cross-examination.

EGM(3)ss

MAJOR FOJAS: But you are using him now as a defense witness.

MR. BONDA: There we go again. I say we have a right to cross-examine on any relevant matter, and the matter of investigation was brought up by the prosecution.

MAJOR FOJAS: I have my objection, sir.

MR. BONDA: We are not restricted to the extent the prosecution thinks we are restricted.

MAJOR FOJAS: I have no further comment, and I request a ruling.

MR. BONDA: And for a guide on that I submit to the Court the memorandum that I drew up last night on proper cross-examination.

MAJOR FOJAS: We have never been acquainted with that memorandum, and we don't know --

MR. BONDA: You are, if you have practiced law; if you have practiced law you are acquainted with it.

COLONEL PARMELEE: Objection overruled. The question may be answered.

INTERPRETER YAMAMOTO: May I have the question?

(Question read.)

A No.

Q Are you acquainted with police methods in other oriental countries?

MAJOR FOJAS: I will object to that, sir, as it has no bearing on this case.

COLONEL PARMELEE: Objection sustained.

MR. BONDA: May I comment, sir?

COLONEL PARMELEE: Yes.

MR. BONDA: Negros is one of the other oriental countries, sir. The Philippines are one of the other oriental countries, and these alleged acts were supposed to have taken place in the Philippines.

COLONEL PARMELEE: Wasn't that a part of Japan during the time the offenses were alleged?

MR. BONDA: No sir, it was a commonwealth.

MAJOR FOJAS: If we wanted to investigate during that time, it was not under Japan, and I say outright we had the American method of investigating.

MR. BONDA: In view of that statement, I submit all the newspaper items that have been appearing in the Philippine papers for the past year and a half, since I have been here, describing the third degree method used by the Philippine police, and I refer the Commission to the Philippine papers as to the methods the police used in the Philippines.

MAJOR FOJAS: That is not the legally recognized method, sir.

COLONEL PARMELEE: The ruling was made on the assumption that the Philippines at the time of the investigation was, in effect, a part of Japan.

MR. BONDA: No sir.

COLONEL PARMELEE: That is as far as -- what did you have in mind when you said "foreign countries?"

MR. BONDA: I said other oriental countries. I did not say foreign.

COLONEL PARMELEE: Well, we will reverse the ruling. Objection overruled. The question may be answered.

A What do you mean?

MR. BONDA: I will withdraw the question.

Q Now, these persons that you described as having seen killed on the 20th of July, 1944, will you tell us, please, as to whether you had investigated each one of those persons prior to the time they had been killed?

A Do you mean by myself?

Q Yes.

A Yes, but not all of them.

EGI:63)LM

Q That was the fact as to those whom you investigated as to whether your investigation revealed that they were guerrillas?

A The guerrilla himself confessed that he was a guerrilla, and we had also a witness to that effect, and there were other evidences.

Q Was that true of each one of the persons who were executed the evening of the 20th of July, 1944?

A Yes, they were all guerrillas.

Q Is it true, then, that your investigation that resulted in the determination that they were guerrillas consisted of statements made by the persons themselves, and statements made by other persons who were witnesses?

A Yes, because they were witnesses, and also evidence.

Q To your knowledge, were any persons executed by the Japanese during the period from the time you arrived at Negros until you left Negros? Were any persons executed by the Japanese who were not guerrillas?

MAJOR FOJAS: I object to that question, sir, as it is not covered by direct examination.

If he would be allowed to pursue that line of questioning, I believe he would be using this witness as a defense witness; and if so, he should call this witness at the proper time, so we will have opportunity to cross-examine this witness.

MR. BONDA: I'll withdraw that question.

Q During the time that you were an investigating officer, from January, 1944, until March, 1945, were any persons executed by the Japanese that you were familiar with that you had investigated who were not found to have been guerrillas?

BSH(4)ss

A No, absolutely not.

Q Did you carry a sword when you were at the high school on the 20th of July, 1944?

A No.

MR. BONDA: Defense has no further questions.

COLONEL PARMELEE: Redirect?

REDIRECT EXAMINATION

BY MAJOR FOJAS:

Q What methods did you use in investigating those persons you said were killed while you were at the high school on the 20th of July, 1944?

MR. BONDA: Objection....That is the identical question that was asked of this witness by the prosecutor on his direct examination of his own witness.

MAJOR FOJAS: I have no comment to offer, sir.

COLONEL PARMELEE: Will the reporter read the question?

(Last question read by the reporter.)

COLONEL PARMELEE: The question seems to have been answered.

MAJOR FOJAS: The question answered before said "as to the general policy of investigation," but I am asking him on this specific persons.

COLONEL PARMELEE: Specific persons? Very well. Objection overruled.

MR. BONDA: Very well. I object, then, as it should have been asked in chief.

BSH(4)ss

COLONEL FARMELEE: The question was asked on cross-examination as to whether anyone that he had investigated and who was executed was not a guerrilla; and he said, "No." This, I presume, is based on that question.

MAJOR FOJAS: Furthermore, sir, this witness said that he got confessions from those persons. I wanted to find out how he got those confessions.

MR. BOND: Why not ask him that?

COLONEL FARMELEE: Objection overruled. The question may be answered.

A. You asked me where I investigated them?

Q The methods you used.

A. To when are you referring when I made the investigation?

BSH(4)ss

Q On July 20, 1944, just before those persons were executed at the rear of the High School building.

A I just used my hands.

Q Did you beat them?

A I might have beat some of them.

Q In the course of your investigation, were those persons formally informed of the nature of the charges that you had against them?

MR. BONDA: I object to the question, to the use of the word "formally" in that. What is formal has almost as many different meanings as there are countries in this world.

Unless we have an exact definition of what is meant by "formal", I object to the question on the basis that it is vague and indefinite.

MAJOR TOJAS: I withdraw the question. I will rephrase the question.

Q During the course of the investigation, were those people furnished with written charges you have against them?

MR. BONDA: Objection. I don't know the materiality of them.

COLONEL FARMELEE: Objection overruled.

A No, they were not given anything.

Q Were they already informed with what you were charging them

A The investigation that was conducted was not for that purpose.

Q For what purpose?

A I was ordered by Takahashi.

INTERPRETER YAMAMOTO: Then he goes on to give the details.

bh(4)wo

A Off the coast of Sibala a Japanese vessel sank, and there were eleven or fourteen survivors. The survivors reached the shore, but they were killed by the guerrillas in that vicinity.

The investigation was to ask these guerrillas these survivors' names; and we found out that one of the Japanese was by the name of Okada. We also asked of the burial place of the Japanese.

Q So you did not investigate them to find out whether they were guerrillas, but to find out the names of the Japanese survivors, is that correct?

A Yes. At that time that was the only thing; and from other people I heard other matters.

Q Now, at the time of that investigation, did you inform those persons that they can defend either personally or by counsel?

A Concerning the details, would you mind looking up in my records?

Q We would like to find out from you now. We don't have time to look up the records.

MR. BONDA: Object to the question, sir, on the ground that it is leading. The prosecutor continually loses sight of the fact that this is his witness.

He can ask him what happened but he can't suggest the answer, either negatively or positively.

MAJOR FOSS: I want to find out if the investigation would consist of a trial. That is the only way of asking those questions.

BH(4)WO

MR. BONDA: Has anybody brought up the question of a trial? You are on redirect.

MAJOR FOJAS: I want to find out what kind of investigation.

MR. BONDA: Are you assuming by that he meant a trial? If you are, it is all right with me.

MAJOR FOJAS: Have you any objection?

MR. BONDA: Objection on the ground that the question is leading, sir.

COLONEL PARMELEE: Will the reporter read the question?

(Question read by the reporter.)

COLONEL PARHELEE: The prosecution was given permission by the Court to ask leading questions, due to the reluctance of the witness to testify, and this question is leading. That is true.

It would seem to expedite the trial and to bring out the information that is desired, if information is obtainable from this witness.

MR. BONDA: I object, sir, to expediting the trial at the expense of any of the rights the accused has. One of the rights given to him is to compel the prosecutor not to ask leading questions that would suggest the answer.

This question could be asked, and we could get the information, in a way that would not lead the witness.

To suggest a certain thing, and say, "That is what I am driving at," is wrong in theory, and it is wrong in principle, sir.

MAJOR FOJAS: I disagree with defense counsel that the question suggested the answer. The question is: Were they informed that they were entitled to defend either personally or by counsel? What answer is suggested by that question?

MR. BONDA: Any question that is other than, "What happened?" "What was said?" is leading. There is no use kidding ourselves. You know exactly what you have in mind there.

MAJOR FOJAS: I am asking the Commission, sir, if they can see anything in that question which suggests the answer.

MR. BONDA: You have co-counsel there; ask them.

BH(4)LM

MAJOR FOJAS: I am asking the Commission.

COLONEL PARKELEE. The question is leading to the point of getting right down to the point that the prosecution is interested in; but it does not suggest an answer that can be seen. Objection overruled. Question may be answered.

A I only investigated what Lieutenant Takahashi told me. As to other matters, Sergeant Takahashi and Lieutenant Takahashi carried out the matters.

COLONEL PARKELEE: The Commission will take a short recess.

(Short recess.)

BH(4)LH

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Yamamoto.)

Q What I want to find out is whether you, during the course of that investigation, informed those persons that they were entitled to defend themselves either personally or by counsel. Please instruct the witness to answer "Yes" or "No."

COLONEL PARMELEE: The witness is instructed to answer "Yes" or "No."

MR. BONDA: If the Court please, I don't think this question can be answered "Yes" or "No." That gives a disjunctive "or" in it.

MAJOR FOJAS: The question is just whether he informed them or not.

MR. BONDA: You asked him whether he informed them they could defend themselves or have somebody else represent them.

COLONEL PARMELEE: Can you make two questions out of it?

MAJOR FOJAS: All right. Withdraw the "Yes" or "No" instruction.

COLONEL PARMELEE: All right.

A No.

Q How long after you had investigated those persons on July 20, 1944, before they were killed?

A I don't know. It was because I was not alone in investigating them.

EGM(5)ss

Q Did you see those persons when they were killed?

A Yes.

Q What time on July 20th were they killed?

A It was past 5:00, I believe.

Q And what time were you through with the investigations of these persons?

A I don't know the exact time, but it was about three or five minutes. It took me about three or five minutes in investigating one person.

Q How long before or after 5:00 were you through investigating those persons?

A I don't know.

Q Were you through investigating those persons at about 5:00 o'clock in the afternoon?

A It was past 5:00.

MAJOR FOJAS: The prosecution has no further questions, sir.

COLONEL PARMELEE: Recross-examination?

MR. BONDA: Yes, sir.

RECROSS-EXAMINATION

BY MR. BONDA:

Q Did your investigation disclose whether the persons who were subsequently killed were the same persons who were responsible for the death of the approximately eleven survivors of the Japanese ship that was sunk at about that time?

A Do you mean all of them?

Q Well, either all or any part of them. If it is any part of them, tell us how many.

EGM(5)ss

A All of them.

Q How many of those persons who were subsequently executed did you find to have been responsible for the death of the eleven survivors, or any part of them?

A Only one man.

Q And as to the others, is it true that you found that they were guerrillas?

A Yes, they were guerrillas.

MR. BONDA: The defense has no further recross, sir.

COLONEL PARMELEE: Questions by the Commission?

EXAMINATION BY THE COMMISSION

BY COLONEL PARMELEE:

Q How did you consider a person to be a guerrilla as distinguished from a civilian?

A After the investigations, I concluded that they were guerrillas.

COLONEL PARMELEE: No further questions by the Commission. Has the prosecution any further questioning?

MAJOR FOJAS: No, sir.

COLONEL PARMELEE: The defense?

MR. BONDA: One further question which may not be exactly based -- which is only partially based on the question that was asked by the President of the Commission, if I may.

COLONEL PARMELEE: All right.

EGM(5)ss

FURTHER RECROSS-EXAMINATION

BY MR. BONDA:

Q Did these persons at the time that they were apprehended, or at the time they were brought to you, wear a distinctive emblem? Did they wear any arms openly displayed?

A There were a few of them wearing pistols with them, and a few of them enemy identification papers.

Q Were those enemy identification papers -- they were not worn in such a way that you could tell at a reasonable distance that they were members of an armed force, were they?

A I don't know.

Q Well, could you have told by looking at them at a reasonable distance that they were members of an armed force at the time that they were apprehended?

A Well, I have never been in such a position as looking at them, and so I don't know.

MR. BONDA: Defense has no further questions.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

MAJOR FOJAS: At this time, sir, we would like to offer in evidence a certain communication of Secretary of State Hull, dated December 18, 1941, to the American Legation, requesting the Swiss government, through its representative at Tokyo, to make a communication to the Japanese Government regarding the application of the Geneva Prisoner of War Convention and the Geneva Red Cross Convention of July 27, 1929, as Prosecution's Exhibit No. 10.

EGM(5)ss
acm-Retyped

MR. BONDA: No objection, sir.

COLONEL PARMELEE: Has the defense seen the paper?

MR. BONDA: Yes, sir.

COLONEL PARMELEE: The document offered by the prosecution appears to be an official government document, and is accepted into evidence as prosecution's Exhibit No. 10.

(Prosecution's Exhibit No. 10 received in evidence.)

MAJOR ROJAS: We would like also to offer in evidence the reply to prosecution's Exhibit No. 10, dated 4 February 1947 as prosecution's Exhibit No. 11.

COLONEL PARMELEE: Comment by the defense?

MR. BONDA: No objection, sir.

COLONEL PARMELEE: The document offered appears to be an official document of the United States government, and is accepted in evidence as prosecution's Exhibit No. 11.

(Prosecution's Exhibit No. 11 received in evidence.)

MAJOR ROJAS: The prosecution now, sir, closes its evidence in chief.

COLONEL PARMELEE: Is the defense prepared to proceed at this time?

MR. BONDA: The defense requests at this time, sir, a recess, suggested date being Tuesday, 7 January 1947. The prosecution's case has taken something like three days less than two months, and I think we are on about Volume 38 or 39, and with the two holidays intervening during the next week, and one-half holiday intervening, it would leave me a total of about three and a half days to scrutinize all the records and to put my defense in such shape that I can proceed expeditiously after

we commence our case in chief. I would request that we have a recess until 7 January 1947.

COLONEL PARMELEE: That is considered the minimum date that the defense feels that it can be prepared to proceed?

MR. BONDA: Yes, sir.

COLONEL PARMELEE: If granted, can the defense also have in mind the preparation of the summation and closing arguments so that any time that may be required at the close of the entire case of prosecution and defense any delay can be minimized?

MR. BONDA: Well, I can assure the Commission that any delay can be minimized but I would rather not commit myself as to a request for a recess after the defense has closed their case, but I can assure the Commission that it probably won't be more than one day, but I had rather not go on record as committing myself to a definite time.

COLONEL PARMELEE: Comment by the prosecution?

MAJOR FOJAS: The prosecution has no objection, sir, to the request of defense counsel.

COLONEL PARMELEE: To enable the defense to review the case to date, and to prepare for its own case in chief, continuance is granted until 0830 hours 7 January 1947.

The Commission will now adjourn until that time.

(The Commission adourned at 1120 hours, 27 December 1946, to reconvene at 0830 hours, 7 January 1947.)

December 18, 1941

AMERICAN LEGATION

BERN

RUSH 331, eighteenth.

AMERICAN INTERESTS

Please request the Swiss Government through its representative at Tokyo to make a communication in the following sence to the Japanese Government:

QUOTE It is the intention of the Government of the United States as a party to the Geneva Prisoner of War Convention and the Geneva Red Cross Convention, both of July 27, 1929, to apply the provisions of those conventions.

It is, furthermore, the intention of the Government of the United States to apply the provisions of the Geneva Prisoner of War Convention to any civilian enemy aliens that may be interned, in so far as the provisions of that convention may be adaptable thereto.

Although the Japanese Government is a signatory of the above conventions, it is understood not to have ratified the Geneva Prisoner of War Convention. The Government of the United States nevertheless hopes that the Japanese Government will apply the provisions of both conventions reciprocally in the above sense.

The Government of the United States would appreciate receiving an expression of the intentions of the Japanese Government in this respect. UNQUOTE

HULL

CERTIFIED TRUE COPY:

P. I. RAMIREZ
Major, JAGS (PA)

U.S.A. vs Masakazu Yamaguchi
Prosecution
~~Defense~~
Exhibit No. 10
Received: 27 Dec. 46

PLAIN

Bern

Dated February 4, 1942

Recd. 2:24 P.M.

Secretary of State

Washington

398, fourth.

AMERICAN INTERESTS, JAPAN

Reference Department's 331, December 18. Swiss Minister, Tokyo, Telegraphs January 30 as follows "Japanese Government has informed me: 'first. Japan is strictly observing Geneva Red Cross Convention as a signatory state. Second. Although not bound by the Convention relative treatment prisoners of war Japan will apply mutatis mutandis provisions of that Convention to American Prisoners of war in its power.'"

HUDDLE

CERTIFIED TRUE COPY:

P. I. Ramirez

P. I. RAMIREZ
Major, JAGS (PA)

U.S.A. vs Masakazu Yamaguchi
Prosecution
~~Defense~~ Exhibit No. 11
Received: 27 Dec. 46

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME XLI

PAGES 2852 TO 2918 INCL.

DATE 7 January 1947

MANILA, P.I.

COPY NO. 10

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
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UNITED STATES OF AMERICA	)	
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	)	
MASAKAZU YAMAGUCHI	)	

VOLUME XLI

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MANILA, P.I.

COPY NO. 10

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
7 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO F. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT SAMUEL S. KOIDE	)	
2ND LIEUTENANT JAMES NAKAMURA	)	Japanese
2ND LIEUTENANT FRANK YAMAMOTO	)	
PETRONILO VALLEJO	)	
CALSAR YOMALZONA	)	
MACARIO F. BELMONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER
BERTHA S. HOLTMAN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COM.
Masakazu Yamaguchi (Defense Witness)	2854, 2899 (Cont'd)				
Ildefonso Cosculluela (Defense Witness)	2865	2884	2891	2891	

P R O C E E D I N G S

(The Commission reconvened, pursuant to recess, at 0830 hours, 7 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P.I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

Sir, there is a new interpreter to be sworn.

(Lieutenant Samuel S. Koide was duly sworn as a Japanese interpreter in this case.)

MR. BONDA: The defense calls as its first witness the accused, Masakazu Yamaguchi.

COLONEL PARMELEE: The defense has no opening argument or opening statements, rather, I take it?

MR. BONDA: We have not prepared an opening statement. However, --

COLONEL PARMELEE: It is optional. This would be the time for it if you have one.

MR. BONDA: However, I would like to say this: I expect our evidence will show that for the period stated in the first three specifications, Colonel Yamaguchi was not in command of the area or the troops who allegedly participated, and the area in which participation took place. As to Specifications 21, 22, 23 -- we expect the evidence to show that Colonel Yamaguchi was not in command of the area in which those events allegedly took place, nor was he in command of any troops who could have participated in those events.

TS(1)ss

In Specification No. 24, we expect the evidence to show that Colonel Yamaguchi had been wounded and had been relieved of command at the time in which that event took place. As to other specifications, I merely make this general statement: that some of these events the defendant knows about, knows that they took place, and his defense is that the tactical situation demanded the action that was taken or the persons against whom alleged offenses took place, were guerrillas, were spies or had done other things which, upon investigation, had indicated that in time of war there was justification for their alleged mistreatment, and even death, existing. Some of these specifications -- and at this time I cannot name them particularly -- but the accused knows nothing about them, and we expect the evidence to show that they did not take place, and if they did take place, it was done by other troops who were not acting under orders and who were acting outside of the scope of any authority given to them or were isolated instances, acts of which the commanding officer is not chargeable for. The same situation existed in our American Army; some instances happened, and no mention of them came to the attention of the commanding officer. I might say that the defense will show that there was a concerted action on the part of the guerrillas. The situation was bad most of the time during the period Colonel Yamaguchi was in command of the troops in that area and whatever he did, he did as a trained soldier would do. We expect the evidence to show that Colonel Yamaguchi had the best reputation of any Japanese officer anywhere, barring

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none; that he was universally liked, both by his subordinates and superiors, and by Philippine civilians. We expect also the evidence to show that there is a great number of Philippine civilians who were happy in the fact that it was Colonel Yamaguchi and not some other Japanese officer who was in command of Negros Island. I think the evidence will show that he had a very good reputation and was not known as the beast of this or the scourge of that, but was universally liked. Colonel Yamaguchi was a professional trained soldier, trained in the West Point of Japan and his father had been trained there, and we expect to show that he is a family man and revered and honored by his children and associates and is the type of man that could not have done anything wilfully wrong. This is what we expect our evidence will show.

MASAKAZU YAMAGUCHI

a witness for the defense, being first duly sworn, testified as follows through Interpreters Yamamoto and Koide:

DIRECT EXAMINATION

BY MR. BONDA:

Q Your name is Masakazu Yamaguchi?

A Yes, sir.

(Witness gave the answer without first having the question interpreted to him by the interpreter.)

TS(1)ss

COLONEL PARMELEE: The witness understands English I believe up to a limit?

MR. BONDA: He understands absolutely no English at all. He understands some German, but he understands no English. He knows what yes is.

COLONEL PARMELEE: He just answered the first question in English, is the reason I asked.

MR. BONDA: I know he did.

COLONEL PARMELEE: Very well.

Q How old are you?

A 56 years' old.

Q Where were you born?

A Tokyo, Japan.

Q Are you married?

A Yes.

Q Is your wife now living?

A Yes.

Q Where?

A Kyoto, Japan.

Q Do you have any children?

A Yes.

Q How many?

A Seven children.

Q What are their ages and their sex?

A The eldest daughter is 25, the next daughter is 22, following daughter is 19 and the youngest daughter is 12. The oldest boy is 16, the next boy is 14 and the youngest boy is 10 years' old.

Q Will you tell us what your educational background is, Colonel?

A I am a graduate of the Japanese Imperial Academy.

Q When did you graduate from the Japanese Imperial Academy?

A I graduated from the Japanese Imperial Academy in 1912.

Q Is that a military school?

A Yes.

Q What was your father's name?

A Masamichi Yamaguchi.

Q What school did your father attend?

A The Japanese Military Academy.

Q What rank in the army did he attain?

A Major in the Imperial Army and he was killed in action.

Q When?

A He was killed during the Russo-Japanese War.

Q Were you commissioned an officer after you graduated from the Academy?

A Yes.

Q And what commission did you receive?

A I was second lieutenant in the Imperial Army.

Q You were successively a company commander, were you not, and instructor in military training schools?

A I served as a company commander and also served with the army unit. I was also an attached officer of the school.

Q When did you attain the rank of a full colonel?

A October, 1945.

MR. BONDA: Isn't that 1941?

INTERPRETER KOIDE: I beg your pardon, it was 1941.

COLONEL PARMELEE: October, 1941?

MR. BONDA: Yes, sir.

Q From the time of this graduation from the Academy until the Japanese surrender, what was your occupation?

A I was the commander of the Independent Battalion.

Q You misunderstand my question, I don't mean what was your position at the time of the surrender or at the time you became a full colonel, but isn't it a fact; if the Prosecutor will permit a leading question, it is preliminary; isn't it a fact that during the time, from the time you graduated from the Academy, until the end of the war you were a soldier and officer in the Imperial Japanese Army? Isn't that a fact?

A Yes.

Q And have you ever had any other occupation since your graduation from the Academy in 1912, until the Japanese surrender?

A No, sir.

Q When did you arrive on the Island of Negros?

A January 6, 1943.

Q Prior to coming to the Island of Negros where had you been?

A I was stationed in Haira, Manchuria.

COLONEL PARMELEE: The Commission will take a short recess. Please stop that noise out there in the hall.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

Q Where did you receive your orders to report to the Island of Negros?

A I received the order in Saigon, French Indo-China.

Q When did you receive the orders to go to Negros?

A I believe it was in October, 1942.

Q Whom were those orders signed by?

A Commander, South Area in Singapore.

Q Do you remember what those orders said? In substance, it needn't be exact.

A Proceed to the Philippines and guard the area.

Q Was that all that the orders said?

A The main points are that.

Q Now in pursuance of those orders in October, 1942, what did you do?

A I organized my unit and then proceeded to Negros.

Q Where did you organize your unit?

A I organized subordinates at Saigon.

Q And in pursuance of that order, when did you proceed to the Philippine Islands?

A I believe I departed from Saigon the latter part of November.

Q Did you depart from Saigon the latter part of November with your full complement of men?

A Yes, sir.

Q And where did you go from Saigon?

A We circumnavigated Taiwan and went to the Philippine Islands.

Q Where in the Philippine Islands?

A Cebu.

Q When did you arrive at Cebu?

A I believe it was on January 2, 1943.

Q Now you left Saigon the latter part of November and you arrived in Cebu the 2nd of January, 1943. Why did it take you that long to get there?

A The reason was that we circumnavigated on the northern route to avoid the places where the United States submarines were believed to be present.

TS(1)mm
2nos

Q Now, did you arrive at Cebu with your full complement of men?

A Yes.

Q What was the designation of your unit at that time?

A At that time my unit was the Independent 39th Infantry Battalion.

Q Did you report to anyone when you came to Cebu?

A Yes.

Q To whom?

A Major General Inoue.

Q Why did you report to Major General Inoue?

A He was my superior officer concerning my battalion.

Q What was Major General Inoue's position at the time you arrived in Cebu on the 2d of January, 1943?

A He was the commanding officer of the 21st Garrison Headquarters. I beg your pardon, it was the 11th.

Q Did you come under his command when you arrived in the Philippine Islands?

A Yes.

Q Now, were your original orders that you received in October, 1942 -- withdraw that.

Did the original orders that you received in October, 1942, designate that you were to go to Negros Island, or did it merely say to the Philipprines?

A It ordered me to go to the Philippines.

Q Then, who designated that you go to Negros Island?

A Major General Inoue.

Q Did you receive any orders from Major General Inoue

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telling you to go to Negros Island?

A Yes.

Q Will you tell us to the best of your recollection what those orders were?

A The order was to leave one company, and put it under his direct command. "The entire other unit will proceed to Negros, and after taking over the Fukuda and Yoshiyama Unit it will be put into Colonel Yamaguchi's command, and he will guard Negros Island. Concerning the details of security Colonel Yamaguchi will take the necessary measures."

Q In pursuance of that order that you were to leave one company behind in Cebu and proceed with the rest of your outfit to Negros Island, did you then proceed to Negros Island?

A Yes.

Q And when did you then arrive at Negros Island?

A January 6.

Q When you arrived at Negros Island -- withdraw that. Where did you arrive in Negros Island?

A In Bacolod.

Q How long did you remain at Bacolod after your arrival?

A I remained in Bacolod for eight days.

Q What was the total strength of your unit when you arrived at Negros?

A Approximately 900 men.

Q Is that including or exclusive of the company you left behind in Cebu?

A Without including it.

COLONEL PARMELEE: Exclusive of?

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3nos

MR. BONDA: Exclusive of.

Q Who was in command of the troops in Negros Island prior to the time you arrived there?

A Colonel Ohta, of the 21st Division.

Q What units of the Imperial Japanese Army were in Negros at the time of your arrival?

A The Yoshiyama and Fukuda Units.

Q Now, do you know where each of those units was garrisoned at the time you arrived? Just answer "yes" or "no."

A Yes.

Q I am handing you a map of Negros Island, scale: 1 over 200,000, prepared by the Coast and Geodetic Survey in 1935, and ask you to indicate on the map the area occupied by the Fukuda Unit, and the area occupied by the Yoshiyama Unit when you arrived in Negros on January 6, 1943.

A The Yoshiyama Unit was to guard the north part in the area of Fabrica, and the Fukuda Unit was to guard in the area of Binalbagan.

Q Now, what area was divided up between Fukuda and Yoshiyama at the time you arrived? Can you give us the dividing line between the areas that they were to garrison?

A The Bago River was indicated or designated as the boundary, and the northern part was in charge of Yoshiyama, and the southern part was in charge of Fukuda.

MR. BONDA: (To Interpreter) Did he say the northern part, or the area north?

A The Yoshiyama Unit was in charge of the area north of

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Bago River, and the Fukuda Unit was in charge of the area south of the Bago River.

Q Now, when you arrived on January 6th, and remained in Bacolod for a period of eight days, did you, during that time, contact either Yoshiyama or Fukuda?

A I made contact with the Yoshiyama Unit, but I could not make contact with the Fukuda Unit.

Q Now, where did you first see Yoshiyama?

A In Bacolod.

Q Now, as to arriving in Bacolod, when did you acquaint yourself with the military tactical situation of the Island of Negros?

A At the time of the landing I endeavored to learn about the conditions in Negros.

Q Now, as the result of what you learned when you landed did you proceed on any expeditions after you arrived in Negros Island?

COLONEL PARMELEE: If the personal interpreters want to, they can come over here, and stand where they can hear.

A Yes.

MR. BONDA: Will you read the last question, please?

(Question read.)

MR. BONDA: And the answer to that is "yes."

Q When did you proceed on an expedition?

A During the middle part of November -- during the middle part of January, since conditions made it necessary, we made a punitive expedition east of Silay.

COLONEL PARIELEE: Was that "conditions made it necessary?"

MR. BONDA: Yes, sir.

COLONEL PARIELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MR. BONDA: I request at this time, if I may, to withdraw the accused as a witness, temporarily. We have a witness here who is a rather busy man, and he has volunteered to come in here as a witness. I would like to accommodate him to the extent of putting him on upon his arrival. He is now here.

COLONEL PARMELEE: Is it agreeable with the prosecution?

MAJOR RAMIREZ: That is agreeable, sir.

COLONEL PARMELEE: Granted.

(Witness excused)

MR. BONDA: I would like to call as my next witness Ildefonso Cosculluela.

ILDEFONSO COSCULLUELA

a witness for the defense, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BONDA:

Q What is your name, please?

A Ildefonso Cosculluela.

MR. BONDA: That is spelled I-L-D-E-F-O-N-S-O C-O-S-C-U-L-L-U-E-L-A.

Q What is your present address?

A Manila. 422 Dimasalang.

Q Will you spell the name of the street, please?

A D-I-M-A-S-A-L-A-N-G.

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Q What is your present occupation ?

A I am the director general of the Philippine Relief and Rehabilitation Administration.

Q Is that a Philippine government agency?

A Yes, sir.

Q Is that somewhat similar to the UNRRA organization?

A It is the Philippine counterpart of UNRRA. It is the agency of UNRRA in the Philippines.

Q Where did you reside in 1942, 1943 and 1944?

A 1942, 1943 and part of 1944 I was in Bacolod City, Negros Occidental.

Q What was your position or occupation or profession when you were a resident of Bacolod during the period you just mentioned?

A I was just a private citizen, but I was the leader of the planters. I was president of the Federation of Planters' Associations, a private organization among planters.

Q Was that your position in January of 1943?

A Yes, 1943.

Q How long after January, 1943, did you continue in that position?

A I beg your pardon. January, 1943, you mean?

Q Yes.

A I think we organized the federation only in April, 1943.

Q Then that was your position from April, 1943?

A From April, 1943.

Q Until when?

A Until the time I left Negros at the end of June, 1944.

Q Prior to April of 1943, what was your occupation or

profession?

A I was a farmer.

Q Did you have your own hacienda?

A Yes, sir.

Q Are you acquainted with the accused, Masakazu Yamaguchi?

A Yes. I have been acquainted with him during his stay in Negros.

Q Do you see him in the courtroom?

A Yes.

Q Do you know what his official Army designation was, what his rank was?

A We used to call him the High Commander of the Japanese forces.

Q Do you know what his Army rank was?

A He had three stars. I assumed it was a colonel.

Q Did you hear him referred to as Colonel Yamaguchi?

A Everybody called him by the name of Colonel Yamaguchi.

Q When did you first become acquainted with Colonel Yamaguchi?

A One day a Japanese civilian went to my house and told me that the High Commander wanted to see me in his office; and I had no other recourse but to go with him and see what the colonel wanted me for.

Q When was that?

A That was about January or February, 1943. I cannot recollect now.

Q Did you at that time have a conversation with Colonel Yamaguchi?

A Yes, I had a conversation with him in his residence and office.

Q What, as far as you can recollect, was the gist of that conversation?

A Well, he told me on arrival there that he wanted to see and know me because he said that, according to the records, I was one of the prominent citizens of the province, and that he wanted to know all Filipinos.

He said that he meant good for the Philippines. Then he asked me about the guerrillas and the American friends that they had before the war and during, especially the use of the officers, which I answered him in the best way I could. That was the way we came to know each other.

Q And from that time on, did you get to know Colonel Yamaguchi pretty well?

A From that time on, after I had organized the Federation of Planters Association, once in a while I had summons from him to see him in his office or in his residence, and a good many times I was able to see him.

Q During the time that you knew him, what were your relations with Colonel Yamaguchi? Were they pleasant or were they unpleasant?

A From what I know of him personally, he strikes me as a fairly good man. As a matter of fact, my impression of him was he was too good to be a Japanese.

MAJOR FOJAS: Move the answer be stricken. It is not responsive. The question was what was his relation with Colonel Yamaguchi not the impression. If we read the question and answer, we will see it is not responsive.

COLONEL PARMELEE: Will the reporter read the question and answer?

(Question and answer was read as directed.)

MAJOR FOJAS: I say it is not responsive.

MR. BONDA: No objections to striking it.

COLONEL PARMELEE: The answer will be stricken and suggest the question be re-put with a more clearly defined word than relation.

Q How did you get along personally with Colonel Yamaguchi?

A The number of times that I have been talking with him, I had no unpleasant incidents with him.

Q Now what was your opinion formed by your frequent contacts with Colonel Yamaguchi, what was your opinion of him as a

man, as a soldier, if you know, as to his virtues and as to his vices, if any?

A Pardon me, what was the question?

(The question was read as above written.)

A As a matter of fact, as a man I find him to be as I said before, a good man as far as my personal opinion. Now as a soldier, I cannot say much about him. I am not a military man myself. That is all I can say.

Q Can you tell us anything that you know about his virtues and vices?

A What I know is this, - I don't know what you refer to by vices.

MR. BONDA: Well, we all have some small vices --

A I have not enough personal relations with him to know if he had vices or not.

Q Did you have enough contact with him to know if he had any virtues other than what you mentioned?

A I have had this experience, this personal experience with him in case of the mayor and the justice in my province. These men were the town mayor and justice before the war and who continued to be in their same position during the war, that is during the Japanese puppet government, and who later on ran away to the mountains and were brought back by the Japanese. They were imprisoned. And if I understand correctly, they were about to be, they were sentenced for either death or long imprisonment, I am not sure, and Governor Gustilo and I, you see those two men were my partners, we appealed to him to forgive those two men, and he forgave them and set them free.

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Q Was that an isolated incident, or do you know he did that on other occasions?

A I know many persons who were prisoners in jail which after a lapse of time were set free.

Q What was the situation as to the activities of guerrillas, as far as you know, around Negros during the years 1943 and 1944?

A In Negros the guerrillas have always been very active from the very beginning.

Q What do their activities consist of?

A Well, mainly their activities were ambushing Japanese whenever they could, destroy military installations, like telephone wires and motor vehicles wherever they can get hold of them, and they succeeded in killing many Japanese in Negros.

Q Do you know what the situation was as to the activities of guerrillas towards civilians?

A The guerrillas?

Q Yes.

A Well, the guerrillas were hostile really to a certain group of people whom they believed were too close to the Japanese; but as a general rule, the relation was cordial between them.

Q Were there incidents where guerrillas burned haciendas?

MAJOR FOJAS: Object to the question, sir, as being leading.

MR. BONDA: Withdraw the question.

Q Will you tell us what the conditions were as to the

TS(4)mm

activities of the guerrillas towards civilians in destroying property and killing civilians?

A Yes, there were some burning of haciendas, but that was more or less a case of understanding between the guerrillas and civilians, especially the planters themselves. I know that myself, because as head of the planters, I can say that in this sense, we saw the Japanese were operating throughout the province their garrisons,

TS(4)mm

and the best way to stop them was to have no haciendas which could be utilized for quarters for the Japanese Army because in Negros the best residents were in haciendas in the towns.

Q So the guerrillas did burn haciendas?

A As a military necessity.

Q You say "military necessity", can you tell us the dates when the occupation started and the war ended and hostilities were supposed to have ceased on the island of Negros?

A As far as I recollect, the Japanese arrived in May, 1942.

Q And is that when hostilities were supposed to have ended?

A Yes, between the USAFFE, that is the time when the occupation of Negros ended but the guerrilla activities started in August, 1942.

Q When you speak of military necessity, do you have in mind action against the occupying forces?

A Yes.

Q Now these persons who were active in work against the occupying forces, were they dressed in uniform?

A I had my own hacienda you know, which I used to visit and which was under the management of one of my sons, those guerrillas who used to call on our hacienda sometimes had a uniform and other times they had no uniform at all, especially in the latter days when they were lucky to wear anything at all.

Q Then they had, at least a part and a large part of them, had no distinguishing marks so at first glance you could not tell what they were?

A The only way was when they had their firearms.

Q They carried firearms at all times, the guerrillas?

A Yes, they got hold of all the firearms belonging to the civilian population.

Q Where did they wear these firearms, openly or concealed?

A When they came to the hacienda, I could see them.

Q Did they wear their firearms in the streets of the city?

A No, they had them hid, they would hide their firearms when they entered the city.

Q Did they wear their uniform or carry their firearms when Japanese soldiers were around?

A No.

MAJOR FOJAS: Where?

MR. BONDAS: Any place.

A That is something I cannot tell you because I had no time to spend, but one time when I went to the mountains I was accompanied by guerrillas and they were uniforms.

Q Did guerrillas ever wear uniforms in Bacolod?

A No.

Q In Silay?

A No, once in a while they came to see me and they tried to disguise themselves as civilians in the way of clothing.

Q Isn't that true that was the common practice to disguise themselves?

A Yes when entering towns.

Q And barrios?

A Yes, barrios occupied by Japanese. They do that for protection, self-protection.

Q And although hostilities had ceased and the Japanese were an occupying force, there were certain persons who were guerrillas who disguised themselves as civilians and killed,

and in other ways harassed Japanese, is that true?

MAJOR FOJAS: Object, it 's leading and indefinite.

MR. BONDA: It is based on the witness' own statement. The prosecutor had that tendency also throughout his examination and I knew there would come a time when that would slightly pinch the prosecutor. I will admit it is leading, but it is based upon the answer of the witness. It is merely the same thing I have been complaining about and the Commission said they wanted to get the truth. The only difference is that this is my witness and not theirs. I admit the question was leading.

COLONEL PARMELEE: Will the reporter read the question?

(Question was read as last above written.)

COLONEL PARMELEE: The question appears to be leading. The information can be gotten out, that is what the witness knows can be gotten in another way, I think. The objection is sustained.

Q What was the situation in Negros Island prior, as far as peace and order were concerned, and security, prior to the arrival of Colonel Yamaguchi?

A Conditions in Negros during the year 1942 were very bad as to peace and order. That was the time before Colonel Yamaguchi was there, if I remember correctly.

Q And how were conditions after the arrival of Colonel Yamaguchi?

A It improved somewhat.

Q And would you say the improvement was due, on what could you base the improvement on, what caused the improvement?

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4 Well for some reason or other, the civilian population received better treatment from the Japanese. There was less slapping and less arrest and because the civilians could move more freely the contact between civilians and guerrilla agents who come to the town or outskirts of town were more frequent and they moved to be better conditions.

Q Do you ascribe that to the arrival of Colonel Yamaguchi?

A There was more liberality during his time than the previous command.

Q Did you have any personal experience in which the humanity and kindness of Colonel Yamaguchi assisted you in any way?

A To me personally?

Q Yes.

A As I said before, I was the president of the Federation of Planters' Organization. Now, one of the activities of that federation was to collect money to assist the guerrillas. As a matter of fact, I collected more than 700,000 pesos which I sent to the guerrillas in the mountains. Finally, that activity was discovered by the Japanese, and I was arrested and held by the Kempei Tai. Governor Gustilo who went to see Colonel Yamaguchi was able to get me out of the Kempei Tai and that was shortly before I left for Luzon.

Q Did Colonel Yamaguchi know of your activity with the guerrillas?

A Not to that extent, but he knew something about it in this respect, which I will explain. When the Kempei Tai started arresting people, especially planters because of money contributions to the guerrillas, I went to see the colonel and I told him that it is true, the planters are giving money to the guerrillas; they sent money we had borrowed from the banks, but that it was a matter of necessity for the planters to do that because otherwise we wouldn't be able to work in the farms if we didn't give them part of our loan, and inasmuch as the Japanese were not able to drive

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the guerrillas away from our haciendas, what else could we do. So I managed to convince him it was an investment on the part of the planters to give part of that money to the guerrillas, and after that there was less arrests among planters for money contributions to the guerrillas.

Q You said if you hadn't contributed, you wouldn't be able to operate your hacienda. Would the guerrillas have burned your hacienda if you hadn't contributed?

A Yes, they burned the houses, but we could continue planting in our haciendas.

Q If you had not contributed?

A I don't think so, but it was a question of understanding between us.

Q Understanding between you and the guerrillas in the first place?

A We could not plant anything if we did not borrow money from the bank in the first place, and when with that money we were able to plant, we would give them money and the guerrillas then would profit from our funds.

Q And Colonel Yamaguchi in the interests of peace and security, permitted you to do that?

MAJOR FOJAS: Objection.

MR. BONDA: Withdraw the question.

Q Why did Colonel Yamaguchi permit you to do that?

A Because as I said before, I told him otherwise the guerrillas will not permit us to do any work in the hacienda, and I succeeded in convincing him it was an investment on our part.

Q Do you know whether any persons who were innocent

TS(4)ss

civilians were killed by the command of Colonel Yamaguchi?

A Innocent civilians under command or by command of Colonel Yamaguchi?

COLONEL PARKELEE: Will the reporter read the question, please?

(The question was read as above written.)

A By order of him, I cannot tell you that. I do not know of anybody in particular that was killed by order from him.

Q Now, I am talking now of innocent civilians, non-combatant innocent civilians.

A As a matter of fact, I do not know if the guerrillas that were killed were by his command or not. I do not know.

Q Do you know of anyone killed who were not guerrilles by Colonel Yamaguchi's soldiers?

A By my personal knowledge?

Q Yes, other than the Kempei Tai?

A What way you mean "innocent civilians?"

Q Who were not guerrillas or suspected guerrillas.

A Of course, all those killed were suspected guerrillas.

Q Were there any killings just for the sake of killing, who were not guerrillas or suspected guerrillas?

A By the Kempei Tai, I should say so, there had been.

Q But how about by Colonel Yamaguchi's unit?

A By Colonel Yamaguchi himself, I do not know.

Q By his unit, I mean?

A I do not know.

TS(4)s3

Q Before any executions took place by members of the Yamaguchi Battalion was there or was there not a thorough investigation?

MAJOR FOJAS: I would object to the question, sir, as it doesn't have the proper foundation. In the first place, we do not --

MR. BONDA: Withdraw that question.

Q Was there any investigation to your knowledge by any member -- withdraw the question.

Were there any investigations prior to any killings other than combat action by members of the Yamaguchi Battalion?

MAJOR FOJAS: Same objection. The answer given by the witness stated he never knew of any killings personally.

MR. BONDA: I asked him if he knew. He can tell us.

MAJOR FOJAS: Wait a minute, Mr. Bonda, I am addressing my objection to the Commission. It has not been established if this witness knew of any killings. There has been no foundation laid.

TS(4)ss

COLONEL PARMELEE: The witness testified previously that he had no knowledge of Colonel Yamaguchi in his official capacity, which might be his official acts. Also it is recalled that the witness did not know of any killings. It would seem proper to ask the witness, always emphasizing if he knows or if he saw. The objection to the question is sustained. The line of questioning, if reworded, would seem to be proper.

MR. BONDA: Did I understand the President of the Commission to say the witness does not know the activities in his official capacity?

COLONEL PARMELEE: No.

MR. BONDA: There is no such thing in the record.

COLONEL PARMELEE: The witness, I am merely quoting from memory, I could be wrong, stated he did not know anything about military affairs, he not being a military man, so he did not know about Yamaguchi as a soldier. I mean, that is wrong, the deduction shows that he wasn't able to comment on his official acts.

Q You stated that you know, or think you knew, the character of Colonel Yamaguchi. With that as a foundation, in your opinion, was Colonel Yamaguchi capable of ordering or permitting the killing of innocent noncombatant civilians?

A You are asking my opinion?

Q Yes.

A What is the question?

(The question was read as above-written.)

A From what I know of him I really don't think he would

be able to order the killing of an innocent man.

Q Would he be the type of man that would permit the killing of innocent people by men under his command?

A If he knows about it, but he being a high officer probably he would stop it if he could, but I know of no incidents where he had to stop somebody from doing something on that.

Q Do you know of your own personal knowledge, or from hearsay, and if it is from hearsay tell us how you know, whether Filipinos underwent an investigation by Colonel Yamaguchi or members of his command?

A Investigation?

Q Yes.

A In the case of those two people I mentioned before, I know there were investigations conducted.

Q Now, were those investigations thorough?

A I beg your pardon?

Q Were they thorough investigations, or just casual investigations?

A I think so, because it took them several weeks to finally dispose of that case, before they were finally set free.

Q Then, would it be your opinion that any suspects underwent a thorough investigation by Colonel Yamaguchi, or men under his command, before any sentences were passed on them?

MAJOR FOJAS: I will object to the question, sir, as it does not have the proper foundation. This man has not testified he knew of any investigations by Colonel Yamaguchi nor members of his command.

MR. BONDA: He said he did.

MAJOR FOJAS: You remember those men were captured by the Kempei Tai, and Colonel Yamaguchi intercedded in their behalf. Unless you admit the Kempei Tai was under the command of Colonel Yamaguchi --

MR. BONDA: As a matter of fact, you know they were not under the command of Colonel Yamaguchi.

TS(5)mm

MAJOR FOJAS: Your question has no foundation.

COLONEL PARMELEE: Objection sustained.

Q Do you know of your own personal knowledge whether -- I will withdraw that question.

From the character -- based on the character of Colonel Yamaguchi, as you have told it to us, do you think that Colonel Yamaguchi would be capable of permitting sentence to be passed on any person without a thorough investigation?

A From what I know of him personally, he would not permit it if it is in his power to use his discretion in that case.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Cross-examination?

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q Were you in politics before the outbreak of the war in 1941?

A I beg your pardon?

Q Were you in politics in Occidental Negros before the outbreak of the war in 1941?

A Oh, yes.

Q Have you ever been elected to any public office in Occidental Negros?

A I was at the outbreak of the war, I was a member of the Provincial Board.

Q And besides being a very prominent citizen in Occidental Negros, you count with a large number of following in that place, is that correct? In other words, you had followers,

a great number of followers in Occidental Negros?

COLONEL PARMELEE: You might say, "You had a considerable following;" is that what you mean?

MAJOR FOJAS: That is correct, sir.

A You are asking me myself whether I have followers, and I don't know whether it is proper for me to say whether I have followers or not.

Q Having been elected to a public office in Occidental Negros --

A I should say that I had followers.

Q So that people in Occidental Negros considered you as quite influential, is that correct?

A Yes, that is the reason why I said I was called by the Japanese, "High Command."

Q And do you know if at the time Colonel Yamaguchi arrived in Occidental Negros it was part of his policy to attract the influential people in Occidental Negros to the side of the Japanese?

A It was part of the policy, or I think it was; as I observed it, it was the policy to convince the Filipinos that the Japanese was a friend of the Filipinos.

Q And as a part of that policy, they naturally wanted to show the most prominent people of Occidental Negros that they were good and understanding, is that correct?

A Very probably, yes.

Q And that probably was the reason why Colonel Yamaguchi was very good to you, and that his relation with you was quite good, is that correct?

A It might be also true.

EGM(5)mm

Q But you do not actually know what Colonel Yamaguchi or members of his command did to persons that were apprehended in Occidental Negros?

MR. BONDA: May I have that question read? If it reads like I think it does, I have never heard any question like it in my life.

(Question read.)

MR. BONDA: Is that the whole question?

MAJOR FOJAS: Yes.

MR. BONDA: No objection. I misunderstood; there was a word I misunderstood.

MAJOR FOJAS: Will you read the question again.

(Question read.)

A No.

Q In other words, you did not know whether those persons apprehended in Occidental Negros were investigated, and if they were investigated, you did not know what was done with them during the investigation?

A Except in the cases that I mentioned where I happened to know; in other instances, I do not know whether they were apprehended or not, and who were apprehended. That is, I did not personally notice, on my part.

Q And you remember you said in those two instances you mentioned, they were captured by the Kempei Tai and not by members of the unit of Colonel Yamaguchi?

A I did not know whether they were captured by the Kempei Tai or not, but I know they were held later on by the Kempei Tai; when I came to know the incident, they were already in the hands of the Kempei Tai.

EGM(5)mm

Q So, in other words, you did not know whether persons were apprehended by members of the unit of Colonel Yamaguchi in Occidental Negros during the years 1943, 1944 and 1945, you did not know?

A It was very hard, you know, for any civilian to know who was being captured because they never publicized facts. At times, weeks afterwards we only know that certain persons must have been captured because he has not been able to return to his home, but as to who captured him, or killed him, was something we could not know.

Q Do you mean to say now that you actually heard of such instances, people having been captured, and then never returned to their homes?

MR. BONDA: If the Court please, we can stipulate there were persons in Negros during '43 and '44 who were captured, and could not return to their homes.

MAJOR FOJAS: We do not have to stipulate to that. We have that in evidence.

MR. BONDA: What is the purpose of the question?

MAJOR FOJAS: I am testing the personal knowledge of the witness.

COLONEL PARMELEE: The question appears to be proper. The prosecution, I take it, does not desire to join in that stipulation?

MAJOR FOJAS: No, sir.

Q We are quite confused with your answer, Mr. Cosculluela. First you said you did not actually know whether there were persons apprehended by members of the unit of Colonel Yamaguchi, and then you said later on that you heard of persons who were released afterwards, or persons who were captured and never returned.

A But I know that from hearsay.

Q Oh, I see. But of your own personal knowledge you do not know of any persons apprehended in Occidental Negros by members of the unit of Colonel Yamaguchi, is that correct?

A Persons that I came to know personally, no. In the first place, I couldn't know what was his unit.

Q And is it also correct to say now that you have heard

of persons apprehended who never returned to their homes?

A From hearsay only, yes.

Q And even in those cases of which you have heard about persons having been apprehended and not returning to their homes, you do not know of your own personal knowledge whether those persons were investigated, is that correct?

A I do not know whether they were investigated or not.

Q And you do not know also what was done with those persons if they had ever been investigated?

A I have no way of knowing.

Q So is it correct to say that you do not know also whether Colonel Yamaguchi has ever stopped the killing of an innocent man in Occidental Negros?

MR. BONDA: What was that? May I have that question?

(Question read.)

A I do not know because I had no chance to know.

Q In other words, with the exception, with the only exception of the two instances which you have mentioned in your direct testimony, you do not know of any act of Colonel Yamaguchi in relation to the treatment of guerrillas and suspected guerrillas?

A Well, as I said before, during his time the situation had improved considerably.

Q No, that is not what I mean. I will rephrase the question.

In other words, besides the two instances which you have mentioned --

A That of which I had a personal knowledge.

Q Yes, of which you had a personal knowledge, you do not know of any act of Colonel Yamaguchi in connection with guerrillas or suspected guerrillas, or even civilians apprehended by Colonel Yamaguchi and members of his unit?

A I said before already that I know people who were set free from the jail; I think I testified to that. There were many people who were set free by him from the jail.

Q And do you know what was done with those people during their confinement in jail?

A Well, they were imprisoned there in the provincial jail.

Q Do you know if they had been beaten while in prison?

A What?

Q Do you know if they had been beaten while in prison?

A Well, I do not know, because I have not been able to ask any questions of any one of those people. We were always afraid to be very inquisitive.

Q Have you not heard they were beaten?

A Oh, yes, by hearsay, that there were beatings.

Q And tortures?

A In those days a person who has been beaten, when he goes out he was afraid himself to tell he was treated that way.

MAJOR FOJAS: We have no further questions, sir.

COLONEL PARMELEE: Redirect?

MR. BONDA: No further questions by the defense, sir.

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COLONEL PARMELEE: Questions by the Commission? There appear to be no questions by the Commission. The witness is excused.

MR. BONDA: May I have one more question? It just occurred to me.

COLONEL PARMELEE: Yes.

REDIRECT EXAMINATION

BY MR. BONDA:

Q In your dealings with Colonel Yamaguchi, and in your knowledge of the conditions there, and with your relationship to a lot of other civilians, do you know what Colonel Yamaguchi's reputation was in the community of Filipinos, as to his humanity, truthfulness, general kindliness and general character?

A Well, the general impression of him is this: that he was the best among the Japanese officers that ever was detailed to Negros.

Q Was that his general character among the civilians so far as you know?

A That is the general impression.

MR. BONDA: No further questions.

COLONEL PARMELEE: Recross?

RECROSS-EXAMINATION

BY MAJOR FOJAS:

Q When you said "the best," it is in comparison with other Japanese commanders?

A Oh, yes.

Q But even that best, can you tell the Commission

whether the people of Occidental Negros were satisfied with the conditions existing during the Japanese occupation in that province?

A Of course not.

MR. BONDA: Objection to that question. I think that is an unfair question, for the reason there is no question that they were an occupying force, and I know of no country who is satisfied with the conditions when their country is occupied by a foreign power. I think it is an unfair question, sir. The fact is --

MAJOR FOJAS: It is a fair question.

MR. BONDA: -- that the Japanese were an occupying force, and that they were foreigners to the Philippine Islands, and it was a foreign power that was in occupation, and I think that question is absolutely unfair.

MAJOR FOJAS: I think, sir, I am entitled to show what those circumstances were which they called better than under other commanders in other places.

COLONEL PARKLEE: The question appears to be legal. It is a development of what this witness considers as a comparison.

MR. BONDA: Well, if the Commission considers it a legal question, and I frankly don't know what is a legal question or what is an illegal question, but I merely wish to point out for the record, in my opinion it is an unfair question for the prosecutor to ask in this case.

COLONEL PARKLEE: Well, the Commission feels that the question is proper, and can be asked. I might state that

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the Commission never believes in hitting below the belt, and if they think that has been done they will make due allowance. The question may be put.

MAJOR POJAS: He was beginning to answer when he was interrupted, so I think it is best to remind him of the question again by having the question read.

COLONEL PARMELEE: Will the reporter read the question and so much of the answer as he has given.

(Record read.)

Q Will you please tell the Commission what were those conditions which made the people of Occidental Negros dissatisified even under the regime of Colonel Yamaguchi?

A We were not satisified simply because we were living like slaves under the power of foreign domination. Filipinos who have always enjoyed their freedom of life as we enjoyed before the war, we could never be satisfied with conditions as existed at the time. And when I said Filipinos considered Yamaguchi as best among Japanese officers, it was, of course, expressed under those circumstances.

Q And when you speak of freedom, you mean to say that the Filipinos at that time in Negros Occidental were deprived of their freedom of speech?

A They were deprived of everything, of freedom of everything.

MR. BONDA: If the Court please, I must again point out for the record that is an unfair question. The Germans are deprived of their freedom in Occupied Germany right now. The Japanese are deprived of their freedom in Occupied Japan, and the circumstances are no different except it was reversed when the Japanese were in Negros Island. I think it is grossly unfair, sir, to have that question brought

EGH(5)ss

into the record, and I think I might be lax in my duty if I didn't point out the unfairness of that line of questioning.

MAJOR FOJAS: I think it is material to establish here those conditions existing in Occidental Negros which the witness has compared with other places. To my mind it is important because he is speaking in comparative terms, and what may be better than the other may not be good; it may still be the worst under the rules of civilized nations, so I think the question should be pursued.

COLONEL PARMELEE: The question is considered proper. The witness is being used as one who was in a position, a station of life, where he is able to comment on public sentiment. Now, for the benefit of the Commission, of course, it isn't exactly necessary to accentuate this and that; but from the line of questioning, it is perfectly proper, or the Commission considers it perfectly proper, and the prosecution may proceed.

Q And when you say that the people of Occidental Negros were deprived of every freedom, you mean to include in that statement the fact that persons at that time were being arrested without search warrants, their houses were being searched without search warrants, they were being beaten when they were arrested --

MR. BONDA: Objection.

Q -- and people were being killed without trial, is that correct?

MR. BONDA: That part of the question that refers to anything about freedom, freedom from arrest and freedom

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from a lot of other things, I object to on the ground it was not brought out on my direct examination. I haven't wanted to take advantage of it up until now, but now I must insist. I asked for the general reputation in the questions I asked on my redirect examination.

COLONEL PARMELEE: Well, under the latitude allowed on cross-examination, the question would seem to be proper. It is development along the lines of direct examination.

MR. BONDA: Well, I don't want to be argumentative, sir, but we again have the position reversed, when I was practically limited to the words that came out of the witness's own mouth in my cross-examination.

MAJOR FOJAS: I deny that, sir.

MR. BONDA: I can recall just off-hand, I can recall a specification, sir--mind you a specification--upon which this man-- upon which they are attempting to convict this man, that was opened up by the prosecutor, and I was not permitted to interrogate because I didn't use the words of the prosecutor's witness as they came out of his mouth, where a whole line in a specification was opened up, and I was not permitted to cross-examine on that because those weren't the words that came out of the witness's mouth.

MAJOR FOJAS: I think, sir, that is a misstatement of the facts.

MR. BONDA: I will show the Court the record and the prosecutor very strenuously argued I couldn't do it.

COLONEL PARMELEE: Well, it is all in the record, and the rulings by the Law Member may be in error, and uh-

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doubtedly are here and there, with the limited legal knowledge of the Law Member, but his intention has always been to be fair to one side and the other. The objection is not sustained.

MAJOR FOJAS: Will the reporter please read the question to the witness.

(Question read.)

MR. BONDA: That is based, sir, on a statement not in evidence. He is putting words in his mouth that are not in evidence. There was nothing said about arrests without warrants and there was nothing said about killings without investigations. As a matter of fact, it was the direct opposite that was said. Now, if the Court will analyze the question, I think the Court will agree with me that the question is based on facts that are not in evidence on my direct examination. His premise is wrong.

MAJOR FOJAS: Before we continue arguing this matter, I would like to state I desire the witness to give an answer and I would like it to be in the record first because there was an objection, and the objection was overruled.

MR. BONDA: You have repeated the question.

MAJOR FOJAS: I just asked the reporter to read the question.

COLONEL PARMELEE: The question was put again, I believe. Does the witness now have in mind the question?

A Yes, when I say that the people in Negros considered Yamaguchi the best among the Japanese officers, it was under these circumstances. I say that because at that time we were not enjoying the freedom of which we had been accustomed to.

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Among other things, our houses were being searched, and we were being arrested. And we had a constitution which was being constantly ignored, and people could not move and do as they should do, but this is what I say: That this thing could have been much worse with a different High Command in Negros, as it proved to be before he arrived there.

MAJOR POJAS: That is all the questions I have, sir.

COLONEL PARMELEE: There are no questions by the Commission. The witness is excused.

(Witness excused.)

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session. The Commission will now recess until 1300 hours this date.

(The Commission recessed at 1115 hours, to reconvene at 1300 hours.)

EGM(5)ss
BSH(6)ss

AFTERNOON SESSION

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

MR. BONDA: Take the stand please, Colonel.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Koide:

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

DIRECT EXAMINATION (Cont'd)

BY MR. BONDA:

MR. BONDA: I think the question asked before this witness was withdrawn this morning was relative to a punitive expedition made after his arrival in Negros. Will the Commission check me on this?

COLONEL PARMELEE: The answer was, "Yes," correct.

MR. BONDA: Colonel, will you come over here, please?

(Witness complied.)

Q After you went on this expedition eight days after you arrived in Bacolod, where did you go?

A During the middle part of January, since conditions made it necessary for my unit to take over the Yoshiyama

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unit, we went to Fabrica.

Q How long did you remain on that expedition?

A The expedition was carried out the fourteenth, fifteenth and sixteenth, for a period of three days.

Q The area of this expedition was it north or south of the Bago River?

A It was north of Bago and east of Silay.

Q Up to that time had you talked to Major Fukuda?

A No.

Q From that expedition you returned to Bacolod, and then where did you go?

A On the twenty-fourth, we went to Fabrica where the headquarters of the Yoshiyama unit were located, but on the twenty-fifth, we took over control of that Yoshiyama battalion.

Q On the twenty-fourth, you went to Fabrica which is near the northern tip of Occidental Negros, is that correct?

A Yes.

Q Can you tell us what is the custom of taking over command in the Japanese Army, is there a formal taking over of command ordinarily?

A The way the unit is brought to our control is for a commander to go to the higher commander and find out about the real conditions in that island, and that is the way it is carried out.

Q Was your interpretation correct that the commander goes to the higher commander to find out or to apprise him of what conditions are?

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A The commander will listen to the superior officer.

Q Now, after you had taken over command from Major Fukuda in Fabrica on the 25th of January, 1943, where did you then go? Withdraw that. When I said Fukuda, I meant Yoshiyama.

A We returned to Bacolod.

Q And by "we", whom do you mean?

A We brought the Yoshiyama unit under control and then returned to Bacolod.

Q When did you arrive in Bacolod?

A I believe it was the twenty-fifth.

Q Up until that time had you taken control of the Fukuda battalion which was in the area south of the Bago River?

A No.

Q Then when you returned to Bacolod on the twenty-fifth, how long did you remain there?

A We stayed there until the twenty-ninth.

Q And then what did you do?

A On the thirtieth we left for Binalbagan by way of the sea.

Q And did you go by ship all the way to Binalbagan?

A Himamaylan.

COLONEL PARMELEE: Is that Himamaylan?

MAJOR FOJAS: Yes.

Q Instead of Himamaylan you mean Hinigaran?

A Yes, we went by boat to Hinigaran and from there we went to Binalbagan by vehicles. We then went to see the battalion headquarters and learned about conditions from

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the battalion commander, and then took the unit under control.

Q Where was the battalion commander's headquarters located of the unit that you then took control?

A At Binalbagan.

Q And what did you do at that time in Binalbagan to take control of the battalion that was in command at that place?

A At Binalbagan I went to see the battalion commander and heard the conditions in the guard area carefully.

Q And then what else was done if anything, to divest him of control and to take over control yourself?

A I listened to the conditions regarding the bandits minutely.

Q What was the date that you took control of the unit that was stationed in Binalbagan; whose headquarters were in Binalbagan?

A January 30th I heard the conditions from the battalion commander and then I took over.

Q Had you prior to January 30th had any control of any of the area south of the Bago River?

A No.

Q Did any units who were then under your control participate in any activities south of the Bago River prior to the 30th of January, 1944?

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A I do not know.

Q Could any of your units have operated in the area south of the Bago River without your knowing about it?

A Do you mean my unit directly under me?

Q Units under your control?

A Do you mean the units other than the Fukuda Unit?

Q That is right.

A No.

Q Now, when you talk of the Fukuda Unit are you talking of the unit whose control you took over on the 30th of January?

A Yes.

Q Why did you not take control of the Fukuda Unit prior to the 30th of January, 1943?

A The area north of Negros Island was the vital point so therefor I took control of that area.

Q Did you communicate with Major Fukuda prior to the 30th of January, 1943?

A Never.

Q Did you communicate by telephone?

A There was no wireless equipment in the Fukuda Battalion.

Q Did you speak by telephone, not wireless?

A There were no telephones either.

Q Did you send any courier, or messenger by land, to the Fukuda Battalion?

A No, not before January 30th.

Q Do you know anything about an alleged killing at or near the Hacienda in Balabag in La Carlota on or about the

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24th of January, 1943? We are questioning now on Specifications 1, 2 and 3.

A No.

Q Had you ever heard of any such incident?

A No.

Q Where is La Carlota with reference to the Bago River? What direction?

A It is located south of the Bago River.

Q Do you know from either your direct knowledge or from hearsay about any rape that was committed by any soldiers under your command as alleged to have happened on the 24th of January, 1943, near the La Carlota Garrison, La Carlota, Province of Occidental Negros?

A No.

Q Do you know anything either from hearsay or direct knowledge about the alleged mistreating and torture of Emilio Gomilla at the Bacolod Public High School during the month of December, 1943 and January, 1944? Specification 4.

A I do not know the name, but I know that the Kempei Tai and my intelligence section were investigating the spies who went into Bacolod.

Q Do you recall Emilio Go lla was on the stand?

A Yes.

Q Do you remember whether he was one of those who was found to b a guerrilla?

A I did not know at that time until he appeared on the witness stand.

Q When he appeared on the witness stand, you then recognized that he had been a guerrilla?

A Yes.

Q Did you personally interrogate any of the persons who were apprehended by your forces?

A No.

Q Then if any of the witnesses testified here that they saw you personally interrogate persons who were apprehended, would you say that they were either mistaken or wilfully misstating the facts?

MAJOR FOJAS: I will object to the question, sir, as calling for a conclusion from the witness; that conclusion is for the Commission to make. He testified he never interrogated any witnesses.

MR. BOND: There is nothing wrong, sir, if I may be permitted to reply to the prosecutor's statement, there is nothing wrong in having the witness testify that another witness has made a misstatement. I don't know under what theory of law that can be called a conclusion. It is perfectly permissible even if it is a conclusion. It has been done by me in hundreds of cases and I am sure it has been done by the prosecutor in many of the cases he has tried.

MAJOR FOJAS: We submit, sir; we have our objection.

COLONEL FARMELEE: Will the reporter read the question, please?

(Question read.)

COLONEL FARMELEE: Well, from the common sense viewpoint, all this witness is giving is his own opinion, and there is nothing wrong with the question. The objection is not sustained.

A Yes.

Q Who commanded your 1st Company, Colonel, in the early part of 43?

A Captain Takahashi.

MR. BONDA: I want to withdraw that question, and restate it.

Q Who was in command of your 1st Company during 1943, instead of the early part of 43?

A Captain Takahashi.

Q Who commanded your 2nd Company?

A It was first commanded by 1st Lieutenant Yasutake and then after the reorganization in about December, 1943, 1st Lieutenant Ishizuka took over.

Q And who was in command of your 3rd Company?

A First by 1st Lieutenant Shimamura, and later by 1st Lieutenant Okamoto.

Q Who was in command of your 4th Company?

A First it was by Captain Inoue, and later by Lieutenant Nakajima.

Q And who was in command of your Heavy Weapons Company?

A. It was commanded by Captain Inoue after the unit was formed

Q When was that unit formed?

A. December of 1944.

Q December,1943?

A. December, 1944.

Q Now, did you have a Captain Tode in your outfit?

COLONEL FARELLE: I think the witness is thinking over that date again, if you want to give him a little time.

A. December, 1943.

MR. BOND.: Withdraw that last question of mine.

Q Is that the way the units were organized, and were those the names of the commanding officers during 1944 until the middle part of 44?

MAJOR FOJAS: Did you say"1944, and in the middle of 1944?"

MR. BOND.: That is right.

I withdraw that question.

Q Did the commanders that you named as having been in command remain in command during the first six months of 1944?

A. Yes.

Q Did you have a Captain Tode, in your outfit?

A There was a 1st Lieutenant Tode.

Q What company was he in?

A. He was at times attached to the 3rd Company, and sometimes to the Battalion Headquarters, and in the end he was attached to the 2nd Company, and went to Leyte, where he was missing.

Q Missing in action?

A. The 2nd Company went to Leyte and later we did not know what happened to them.

Q Now, the witness Emilio Gomilla testified that he saw you in Bacolod High School, and that you asked him if he was a guerrilla, and then you slapped him; is that correct, did you slap him?

A No, I did not slap him. There were absolutely no times when I, myself, investigated the persons.

COLONEL F. MILLER: Will you read that answer, please?

(Answer read.)

Q Do you know anything about, either from personal knowledge or from hearsay, about the alleged mistreatment and torture of an unascertained number of Filipino civilians, and the torturing and killing of one Abelon Benibes, on or about the 20th day of February, 1944, at Sitio Camay-an, in Cadiz, Occidental Negros which is Specification 5?

A I did not know anything about it until I learned about it in the charges.

Q And do you know anything about the events alleged to have occurred in or near the city of Bacolod in the month of March, 1944, involving the mistreatment and torture of Felipe Lumacang, Epifanio Agravante and one Melecio, alleged to have occurred about the month of March, 1944?

A I do not exactly know their names; however, I do know that the Kempei Tai and my intelligence section were conducting an investigation of the spies which were inside Bacolod, though I did not know exactly who were caught and who were tortured.

Q During the month of March, then, there was a search for spies in the city of Bacolod, and there were people who were arrested, is that correct?

MAJOR FOJAS: I object to the question, sir, as leading.

MR. BONDA: I am merely rephrasing the answer he gave.

MAJOR FOJAS: He said he knew the Kempei Tai and his intelligence section were investigating spies in Bacolod and he did not know who were tortured.

MR. BONDA: I didn't ask him that.

MAJOR FOJAS: That was the statement of the witness.

MR. BONDA: I didn't put in my last question whether he knew who was tortured. I merely rephrased the answer he gave, preparatory to another question.

MAJOR FOJAS: But your last question is entirely different from the statement of the witness.

MR. BONDA: Will you read my question.

(Question read.)

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MAJOR FOJAS: There was nothing said by the witness about search for spies.

COLONEL PARKELEE: That is correct.

MR. BONDA: Whether there was an investigation of spies; I don't see any difference between an investigation and search for spies. If we have to use the exact terminology, I will do that, too. I see no difference. I will withdraw the question.

COLONEL PARKELEE: The Commission will take a short recess.

(Short recess.)

EGM(3)ss

COLONEL FARRELL: The Commission is in session.

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath.

(Translated to the witness by Interpreter Yamamoto.)

Q Were you present in the market place in the city of Bacolod on or about the month of March, 1944, when Felipe Lumacang, who was a witness here, was brought to the market place?

A. I do not know.

Q Did you at any time during the month of March, 1944, in the city of Bacolod or any other place, strike Felipe Lumacang or any other Filipino on the head and beat him or them with your cane?

A. No.

Q Were you ever in the Domestic Science Building at Bacolod High School when Lumacang, who has been a witness on this stand, was brought before you?

A. I was not there. I definitely do not know about it.

Q Is the reason you don't know about it because you don't remember it or because you were not there?

A. I was not there, nor did I ever hear about it.

Q Will you tell us, please, what you know about the events that took place at or near the Barrio Rizal, Iloilo Province, on or about the 7th day of March, 1944, referring to Specification 7.

A. On March 7, 1944, a bandit came in and killed Japanese soldiers and guards.

Since the base of the bandits was located in Barrio Rizal, we executed a mopping up operation in that barrio and in the vicinity.

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Q Do you know who led the guerrillas who infiltrated into the Barrio Rizal?

MAJOR FOJ.S: He did not say "guerrillas", sir. He said "bandits".

Q I will withdraw that question. Do you know who commanded the bandits that infiltrated into the Barrio Rizal?

A. I do not know the name of the commander.

Q Would it refresh your memory if I were to tell you that you indicated to me that the person that led that infiltration into the Barrio Rizal was Antonio Fadios, the oldest son of Sofia Forques Fedios?

A. Since Barrio Rizal was the main point of the bandits' area, I know there were officers with the bandits; but I did not know who the leaders were. I first found out the commander on the specification.

Q Did you ever hear the name of Manuel Forques before?

A. No.

Q Did you hear of Manuel Forques during the course of this trial?

A. Here in the Court, I heard about the name.

Q Do you know how Manuel Forques was killed?

A. In the Barrio of Silay I got a report that one bandit was killed, but I did not receive his name or anything about him.

Q Do you mean the Barrio Silay or Barrio Rizal?

MR. BONDS: (To the interpreter) Did he say "Barrio Rizal"?

(Translated to the witness by Interpreter Koide.)

A. Barrio Rizal.

Q Do you know how that man was killed, either from your own knowledge or from hearsay?

A I received the report that at the Silay Garrison, after the battle, they had enveloped a locality, and one person attempted to escape from the envelopment, and he was killed in the attempt.

Q Was that the only person that was killed in Rizal?

A As far as I am concerned, that is so.

Q Do you know anything about the alleged mistreatment and torture of, amongst others, Maria Forques Alabas, Fanfilio Artagame, Loreto Recabar, Rodolfo Fadios, and Segundo Lapo-os in or near the Barrio Rizal during that operation?

A I had the report they captured some bandits at the key ba then at Barrio Rizal, and they were brought to Silay and Bacolod for investigation; but I know nothing about mistreatment or torture.

BH(9)WO

Q When you use the word 'bandit," how do you distinguish that from the word "guerrilla?"

A I can't distinguish the difference between the two.

Q Will you tell us what you know about the incident that happened in Silay, or is alleged to have happened in Silay, on or about the 7th of March, in which one Leonardo Bebit is alleged to have been killed. This is Specification 9.

A Yes, I know.

Q Will you tell us what you know about that incident.

A I ordered the execution of that person.

Q Will you tell us why you ordered the execution of that person.

A The reason why I ordered the execution of Bebit was due to the fact that he was a corporal in with the bandits, and he led the bandits to attack and kill the guards and Japanese soldiers. Furthermore, he was definitely a spy and also a guerrilla member.

Q When did he lead the attack on the Japanese soldiers?

A March 2nd.

Q How many Japanese soldiers were killed?

A Two Japanese soldiers were killed and one Filipino guard.

Q Where did this event occur, the killing of the two Japanese soldiers and the Filipino guard?

A It was inside the city proper of Silay.

Q Did the report that you received of the investigation of this man indicate that he was the one who led the Filipino forces into that attack?

BSH(9)ss

MAJOR FOJAS: I would object to that question, sir, as it assumes that the report that the accused received was a report of investigation. There was nothing said about investigation having been made.

He just stated he received a report that this man killed so-and-so, nothing about investigation.

Q How did you know that this man led the attack that resulted in the death of the two Japanese and Filipino guard?

A We had an investigation of him afterward, and he confessed that he was the leader of that group.

Q Were you present when he confessed that he was the leader of that group?

A Captain Takahashi captured him and investigated him, and also the Kempei Tai investigated, and both Captain Takahashi and the Kempei Tai made a report to me.

Q Was the report of his capture made to you?

A Yes.

Q Did the report of the capture indicate whether he was carrying arms at the time he was captured?

A Yes.

Q What is the fact, was he carrying arms?

A I personally took the pistol that Bebit wore and shot the pistol directly in front of him, out through a window.

Q And when was that?

A I believe it was about nine o'clock in the morning of March 7th.

Q Did the report that you received of his capture indicate whether he was wearing civilian clothes or was wearing an army uniform?

A According to the report, Bebit was wearing regular civilian clothes.

COLONEL PARMLEE: The Commission will take about a five minute recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamomoto interpreted to the witness.)

Q Do you know anything about an incident that was alleged to have happened at or near the Barrio Sumag on or about the 11th of March, 1944, involving Ernesto Chavez, Rodolfo Padios and Panfilo Artagame? That is Specification No. 10.

A No.

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Q Do you know anything about an incident that is alleged to have happened during the period about the 19th of March, 1944, and on or about the 22nd of March, 1944, at or near the City of Bacolod in which one unidentified person is alleged to have been killed?

A No.

Q Do you know anything about an incident or incidents that happened in or about the months of March, April and May, 1944, at or near the Bacolod High School in the City of Bacolod involving, alleged mistreatment and torturing of an unascertained number of Filipino civilians, including, among others, Roberto Amoloria, Roman Placente, Hermelo Villarete, Martiniano Mejica, Eulogio Naragdao, one Procopio, Ambrosio Ruiz, Jose Mesa, Felix Pena and Alfonso Tan?

COLONEL PARMELEE: That was amended to Mesa in place of Mejica?

MR. BONDA: Mesa, yes.

A I do not remember the names. In Bacolod I knew there were many bandits and that my unit and the Kempei Tai were cooperating in capturing them. As I said, I do not know all these names; however, I remember a certain fellow by the name of Mejica who was captured loading a truck with other bandits. And in this court I have a recollection that I might have met this man somewhere in Bacolod, but I am not too sure about that.

Q Which man do you mean?

A Mejica, when he was loading foodstuffs in the truck.

Q Do you know anything about the incident of these people being tortured and beaten?

TS(10)mm
3nes

A No.

Q Were you present at the alleged mistreatment and torture of persons I named or other persons during that period of time at or near the Bacolod Public High School?

A No.

Q Would you say that if a person testified that they had seen you present at that incident that they were mistaken or willfully mis-stating the facts?

A Yes.

Q Will you tell us what you know, if anything, about the alleged incident or incidents at or near San Juan and Rosario Streets, City of Bacolod, Province of Occidental Negros, in or about the months of March, April and May, 1944, in which an unascertained number of Filipino civilians were alleged to have been mistreated and tortured and among them were alleged to have been Hermelo Villarete, Martiniano Mejica, Eulogio Naragdao and one Procopio?

A No, I do not know them.

COLONEL PARKELFE: The Commission will now adjourn and reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1455 hours, to reconvene at 0830 hours, 8 January 1947.)

TS(10)mm
acm-retyped

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA vs MASAKAZU YAMAGUCHI	)	PUBLIC TRIAL

VOLUME XLII

PAGES 2919 TO 2967 INCL.

DATE 8 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Pommelee
A. L. PAMMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
8 January 1947

Met, pursuant to adjournment, at 0835 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT KO SAMESHIMA	)	
2ND LIEUTENANT SAMUEL S. KOIDE	)	
2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	Japanese
PETRONILO VALLEJO	)	
CAESAR YO ALZONA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER
BERTHA S. HOLTMAN

ss:3nos

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COMM.
Masakazu Yamaguchi (Defense Witness)	2920 (Contd), 2946 (Contd)				

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0835 hours, 8 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P.I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

MAJOR FOJAS: May it please the Commission, before we proceed with the examination of the witness, may I inquire if the Commission takes judicial notice of the fact that there was a change of command from AFWESPAC to PHILRYCOM? I don't know if we have to take notice also of the change of command of AFPAC.

COLONEL PARMELEE: No, that doesn't affect the validity of the orders in any way. It is merely a change in designation.

MAJOR FOJAS: I just merely thought it should be in the record, sir.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Koide:

MAJOR RAMIREZ: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Yamamoto.)

EGM(1)ss
3nos

DIRECT EXAMINATION (Cont'd)

BY MR. BONDA:

Q Will you tell us, please, whether you know anything about an alleged incident that occurred on or about the 19th day of April, 1944, at the town of Talisay in the province of Occidental Negros, in which certain persons are alleged to have been tortured and killed, and if you do know of that incident, will you tell us what you know, Referring to Specifications 14 and 15.

A The bandits infiltrated and planned to attack Talisay and the sugar company; that is what the report we received mentioned, so the Talisay garrison was reinforced by the Bacolod garrison, and we carried out mopping-up operations.

Q Will you tell us what else you know about that alleged incident?

A After the mopping-up operations, one suspected bandit was captured and then went to Bacolod. At that time the suspects were investigated at the Talisay Park, and during the investigation, six suspects escaped and during the attempt of escape, they were killed. The twenty-four suspects were then returned to Bacolod and sent to a spiritual training camp, and later after their education they were released.

Q Now, how many guerrillas were rounded up in the mopping-up operations around Talisay about that time?

MAJOR FOJAS: I will object to the question as there is no testimony on the part of the witness that those rounded up were guerrillas.

MR. BONDA: This is direct testimony, sir, and I want to find out what happened. Now, he testified there was

EGM(1)ss

guerrilla activity there, and they sent reinforcements to gather them up, and I don't know what your objection is based on.

MAJOR FOJAS: I think you should ask whether there were guerrillas rounded up.

MR. BONDA: He said there were. I don't know what your objection is; I really don't.

MAJOR FOJAS: I have my objection, sir.

COLONEL PARMELEE: Will the reporter read the testimony back?

MR. BONDA: Rather than read it back I will save time by asking him the question that the prosecutor wants.

COLONEL PARMELEE: I might say this: that to get at it the same way would be to ask him how many Filipinos were rounded up, and what their status was considered to be. If the word "guerrilla" is in the testimony of the witness, we could ascertain that from reading.

MR. BONDA: Withdraw the question and I will get it another way. I insist that the prosecutor is absolutely wrong, and is merely being captious when he prevents me from asking the question.

MAJOR FOJAS: I object to the remark, sir. I had been listening to the testimony and what has been said was that there were suspects caught and six escaped, and the rest were taken to Bacolod, and then he put in the question "the guerrillas" which does not exist in the testimony.

MR. BONDA: Isn't it also true, sir, that he

EGM(1)ss

testified that there were a number of them taken to Bacolod? Now, how can he deny the testimony shows there were a large number of guerrillas that were captured?

COLONEL PARMELEE: I think the point here is whether the word "guerrilla" was testified to, the use of that word. It could be ascertained by reading back the record, but the same foundation can be laid by a couple of questions. I believe that is the objection of the prosecution. Now, as I understand, the defense has withdrawn the question and is going to develop this matter with other questions, is that correct?

MR. BONDA: Yes, sir.

MAJOR STEVENS: May I say a word? I believe the word the witness used was "bandits."

MR. BONDA: Yes, sir, and he used it synonomously with "guerrillas" and we can use the words interchangeably, and the prosecution can have no objection to it. The witness himself defined them as being synonomous.

MAJOR FOJAS: He just said bandits infiltrated Talisay, and he reinforced the Talisay garrison, and there is no testimony that guerrillas were rounded up and caught in Talisay, and that is precisely the question, and we have the objection.

Q In your mopping-up operations did your troops capture any bandits or guerrillas?

A Yes,

Q And about how many of them were rounded up?

A From my memory thirty were captured, six men attempted

EGM(1)ss

to escape and twenty-four were taken to Bacolod.

Q Now, these persons that were rounded up, did you testify they were first taken to the park in Talisay?

A Yes.

Q Were you present when they were brought into the park in Talisay?

A I was in command of the overall men there, but I personally did not directly do the investigation, but I was present within the vicinity of the city.

Q You say you were present within the vicinity of the city, but were you in the immediate vicinity of the place where these soldiers were shot -- withdraw that -- where these guerrillas were shot?

A I was on the southeast end of the park about 300 meters from the spot of the killing.

Q Was there a bandstand in the park?

A There was a cement construction which was elevated which resembled a bandstand.

Q Now, what side of that bandstand were you on, and by "side" I mean what direction from the bandstand were you located?

A I was on the southeast end from the direction of the bandstand.

Q With reference to the bandstand, from what direction did you hear these shots come from?

A . There was a church that was located on the northwestern part of the park, and the direction of the sound was from that direction.

EGM(1)ss

Q Now, was there any obstruction that would prevent you from seeing to the place where you heard the shots come from, between you and the location of those shots?

A There were many trees between us, so I couldn't see what was occurring on the other side.

Q Now, were you at any time while these guerrillas were gathered at the plaza, near the north side of the church, that was near the plaza, and by "near" I mean within fifty to a hundred meters or closer?

A I was not that near.

Q Did you at the time when you were at the plaza on that day carry any weapons?

A I was not armed, but I wore a sword.

Q Then, when you say you were unarmed, you mean you carried no pistol or rifle or other explosive weapon?

A I was wearing no firearms.

EGM(1)mm

Q You say you received a report while you were south of the bandstand that six persons were killed attempting to escape. When did you receive that report?

A Immediately after the firing of the shots I received the report that six men were killed.

Q How long did you remain in the vicinity of the plaza on that day, the 19th of April 1944?

A I don't remember very clearly, but I think it was until evening.

Q Did you investigate the report of the killing of six men at the plaza?

A Yes, I did.

Q What did your investigation disclose?

A I found out during the investigation six men suddenly attempted to escape, and during the attempt to escape they were shot.

Q Were these six men amongst those who were captured as guerrillas or bandits?

A Yes.

Q What happened to the rest of the captured guerrillas or bandits?

A The rest of them were taken to Bacolod and placed in a Spiritual Education School.

Q Do you know whether any of the persons who were captured near Talisay and brought to the plaza, and later taken to Bacolod, were killed during the period from the 19th of April to the 25th of May? Referring to Specification 16.

A No, I don't know.

Q Well, do you know anything about the alleged killing of certain Filipinos during the period from the 19th of April 1944 to the 25th of May 1944, at or near the city of Bacolod, amongst them being persons named in Specification 15, whom you have described as having been in the plaza, captured as a result of the mopping up operations that went on around that time?

A. I positively had no knowledge of such an incident, and I first heard about it here in Court when I was given the Charges and Specifications.

(The witness continued speaking to the interpreter.)

MR. BONDA: Please read the question and answer so far.

(The requested portion was read by the reporter.)

COLONEL MARLLEE: (To the interpreter) In general, is the answer that you have there responsive to that question?

MAJOR FOJAS: That is responsive. We would like to find out what he has given so far.

MR. BONDA: May I suggest that the record show that he has been talking in Japanese, and that the answer is not yet completed.

(Statement off the record by Mr. Bonda.)

MAJOR FOJAS: We would like to find out, sir, what has been said already. If he were testifying in English, it would be in the record just the same.

MR. BONDA: I want it in the record.

COLONEL MARLLEE: Let us ask the interpreter. Does that seem to be responsive to that question? We will get it anyhow.

INTERPRETER KOIDE: He is generalizing the Charges and Specifications again. He is putting up his stand on a general basis. It is not specific to the question.

MR. BONDA: May I suggest a one-minute recess, sir?

COLONEL MARKELLE: Yes. The Commission will take a short recess.

MR. BONDA: And I suggest that you and I listen to the matter.

(Short recess.)

BH(2)WO

COLONEL PARKELEE: The Commission is in session.

MAJOR FOJAS: During the recess the reporter read to the defense counsel and the members of the prosecution staff the rest of the answer of the witness, and we found that answer is not responsive to the question and inasmuch as he has already given a responsive answer to the question, we believe that the rest of the answer should not be read into the record.

MR. BONDA: There is no objection by the defense, sir.

COLONEL PARKELEE: The answer that has been recorded in the record, I believe, is responsive. Now, the matter that the witness testified to, and is not to be presented before the Commission, pertains to supplemental narration that the witness gave over a period of about ten minutes, is that correct?

MAJOR FOJAS: Yes, sir.

MR. BONDA: Yes, sir.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

Q During the period 19th of April to the 25th of May, 1944, your headquarters were in Bacolod, is that correct?

A Yes.

Q If certain persons were killed during the period from 19th of April, 1944 to the 25th of May, 1944, would you have known about it? If those killings took place in or near the City of Bacolod?

A If it comes in my unit I think I would have known about it.

Q Referring to Specifications 17 and 18, did you know about the killing of six unidentified Filipinos at or near the town of Himamaylan and Kabankalan during the period April and May, 1944?

A I first learned about it in the court in the charges mentioned.

Q Did you know of Sofronio Sabollon?

A No, I do not remember him.

Q He was in court and testified as a witness. When he testified, do you recall having seen him before?

A Yes, I remember his face but I do not know his name.

Q On the expedition that you took during the months of April and May, 1944, in the vicinity of Himamaylan and Kabankalan, did that man travel in close proximity to you?

A No.

Q He testified that he was a stretcher bearer. Is it the custom in the Japanese Army for the stretcher bearer to travel with the battalion commander?

A No.

Q Where does the stretcher bearer travel, with what sub-unit?

A He traveled at the very end or rear with the medical corps or medical doctor.

Q Did you order any persons executed on that expedition?

A No.

Q As far as you know, were any persons executed on that

expedition other than through combat action?

A No.

Q If six persons had been killed, six Filipinos had been killed on that expedition, could you attempt to account for their killing? I withdraw that question and ask you, do you know whether any Filipinos were killed on that expedition other than members of the Standing Army or the Philippine Constabulary?

A I never ordered the executions, but do you mean whether the execution was ordered by someone else?

Q No, were any persons killed, to your knowledge, on that expedition other than Japanese soldiers or Filipino Standing Army soldiers or Philippine Constabulary, other than those people were any persons killed on that expedition?

A Guerrillas were killed in battle.

Q How many persons were killed in battle?

A I do not know since we were firing at each other, and I know that we had casualities and the other side also had casualities.

Q How many Japanese casualities were there?

A Seven or eight soldiers were killed, and about fifteen were wounded.

Q What was the purpose of that expedition?

A Kabankalan and Himamaylan were enveloped by the bandits so we went to rescue them.

Q Do you know what the force of guerrillas was that enveloped the town that you went to rescue on that expedition?

A There were about 200 at Himamaylan and about 600 at Kabankalan.

TS(3)LM

Q Were there any other towns involved in that envelopment besides Himamaylan and Kabankalan?

A Yes

Q What were the names of the other towns?

A There were La Carlota and Binalbagan.

Q What was the strength of the guerrilla forces around La Carlota?

A It was about 1000 in La Carlota.

Q And how many around Binalbagan?

A About 500.

Q What would you say the casualties of the Japanese were on that expedition?

A I remember there being seven or eight soldiers killed and fifteen wounded.

Q Do you know what the guerrilla casualties were?

A It may have been the same as Japanese soldiers, or it may have been more.

Q Referring now to Specification 19, will you tell us what you know, if anything, about the incident alleged to have occurred in or about the period of 19th of July, 1944, to the 25th of July, 1944, at or near the City of Bacolod involving the names of Porfirio Garina, Teofilo Hisona, Jesus Gonzaga, and approximately 35 unidentified Filipino civilians?

A I know that Jesus Gonzaga and one other, he was mayor of the town of Sipalay, were killed, but for others I do not remember.

Q When you say you do not remember do you mean that there were no others killed, or if they were killed you know nothing

TS(3)LM
3nos

about them?

A I actually do not know that people were killed.

Q Were Jesus Gonzaga and the men you called Hi[illegible] civilians or guerrillas?

A They were guerrillas.

Q Why was Jesus Gonzaga executed?

A He was the mayor of the town of Hinigaran, appointed by the enemy. He also acted as a guide and led Japanese soldiers and then killed them, and also burned the town of Hinigaran so we caught him and later released him. Then he went to the mountains and later returned saying that he was surrendering, but we know he was working as a spy for the bandits and also he made plans of attack on Hinigaran, so we caught him and brought him to Bacolod and he was killed there.

Q Before he was killed you ordered an investigation of the activities of this man?

A Yes.

Q How long did that investigation last?

A About two months.

Q And was the report of the investigation submitted to you?

A Yes.

Q Was it as a result of that investigation that this man was executed?

A Yes.

Q Now, can you tell us why Hisona was executed?

A He was the mayor of Sipalay, appointed by the enemy, and he killed the ten survivors of the Japanese ship which was shipwrecked, although I do not know the name of those ten Japanese survivors, I know two of them by the names of Abe and Okamoto. Later the town of Sipalay was attacked and he killed five Japanese soldiers, and we knew that he was also the leader of the ring making plans to attack Sipalay.

Q Was this man investigated?

A Yes.

Q How long was he under investigation?

A He was brought from Sipalay to Bacolod, and he was investigated for about three months thoroughly.

Q And was the report of this investigation made to you?

A Yes.

Q Was his execution as a result of that report?

A Yes.

Q Do you know anything about the killing of Porfirio Garina during the periods named in Specification 19?

A No.

Q Do you know anything about the alleged killing of thirty-five unidentified Filipinos during the periods named in Specification 19?

A I absolutely do not know anything about it.

Q If thirty-five persons were killed at or near the city of Bacolod during the period of July 19 to the 25th of 1944 would you have known about it in the ordinary course of events?

A At that time there were already naval units and air force units with many men in Bacolod, so I do not know anything which they did.

Q If any of the men under your command had killed any of the thirty-five unidentified civilians, Filipino alleged civilians, would you have known about it?

A Yes, I believe I would.

Q During the period from the 19th of July to the 25th of July, who was your superior officer?

A General Kono. Yes, I am sure it was General Kono.

Q Do you know where General Kono's headquarters were during that period?

A In Cebu.

Q When did General Kono come to Negros Island?

A August of 1944.

Q Prior to his coming personally, did other units other than those of your command come to Negros Island?

A Yes.

Q What units came to Negros Island who were independent of your command?

A There were naval units and units concerned with air force came gradually.

Q Now, can you tell us during that period of the 19th of July, 1944 to the 25th of July, 1944, approximately how many members of units other than those under your command were present in Negros Occidental?

A There were naval units and many various units concerned with air force in Bacolod.

Q Yes, but can you tell us the approximate number of persons in those units?

A I don't know exactly, but there were about a thousand men in the navy units, and about two thousand men in the units concerned with the air force.

Q Now, can you tell us where the - - - withdrew that.

Were any of these units stationed in and around the city of Bacolod during that period July, 1944?

A Yes.

Q Where were the headquarters of those units if you know?

A The security units of the navy was located at the Sugar Refinery Company in Bacolod, where there were also air force construction units present. The supply depot of the navy was located in Bacolod park. The air force had its headquarters in Bacolod Air Field and was scattered all over. Naval combat units were located at the pier in Bacolod.

Q Were all these units that you have just enumerated independent of your command?

A Yes.

COLONEL MIRELLE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: Sir, I ask that a new interpreter be sworn.

(Lieutenant Ko Sameshima was duly sworn as an official court interpreter.)

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath.

(Translated to the witness by Interpreter Koide.)

Q Will you tell us what you know, if anything, about the incident named in Specification 20 as having occurred on or about the 26th day of November, 1944, at the Barrio Santa Cruz in Murcia, involving, amongst others, persons by the name of Paypon.

A On the morning of the 26th of November, the advance party of our group made an attack on an observation point in Santa Cruz.

Q How far behind the advance group were you travelling on that expedition?

A I was approximately at a point 100 meters behind the advance group.

Q In proceeding on that expedition to this observation point, did you hear any singing, laughing, coming out of the house at or near the Barrio Santa Cruz?

A I heard music during that movement to Santa Cruz.

Q Did you hear any shots?

A First, I heard the music, and then I heard a few shots.

Q Were those shots that you heard rifle shots or pistol shots?

A I heard both rifle and pistol shots.

BSH(5)ss

Q At the time you heard the shots, was it dark or light?

A Pitch dark.

Q How soon after you heard those shots did you come to the place where the shots originated?

A About three or four minutes.

Q When you got there, what did you find?

INTERPRETER SAMESHIMA: He found what he calls a coconut lamp. Oil, probably. Probably coconut oil.

A And within this place I found one corpse of a woman, and a little to the outside, two corpses of men.

Q Do you know how those persons were killed?

A Immediately after I heard the rifle shots, I got a report saying that three guerrillas and seven women who were drinking and singing were surrounded, but they resisted capture and fired pistols, so we fired at them and killed them.

BSH(5)ss

Q Now, do you know whether any arms, firearms were found in the vicinity of this house other than those belonging to the Japanese?

A One pistol and two rifles.

Q How long did you remain at this house?

A About five minutes.

Q During that time did you order the house burned?

A No.

Q And when you left after you had been there about five minutes, do you know whether the rest of your men left?

A Yes.

Q Where did you go from there?

A We made a break through there and attacked the enemy position immediately behind.

Q Immediately behind what?

A About 1000 meters on the other side.

Q Did all of your men go to that engagement about 1000 meters from this house?

A Yes.

Q Did you at any time during that day return past this house?

A I went by there on the way back.

Q How long after you had been there the first time did you go back?

A I believe it was about five hours.

Q Then when you came back, did you stop at the house?

A I passed by.

Q And what did you find when you passed by?

A I saw another corpse and there were two or three women sitting in front.

Q These two or three women were alive, were they not?

A Of course, they were alive.

Q Did they run away when they saw you coming?

MAJOR FOJAS: Object to the question. It is leading.

MR. BONDA: Withdraw that.

Q What did the women do when they saw you coming?

A They just stayed there. They just remained seated.

Q Was the house still standing?

A Yes.

Q It was not burned to the ground?

MAJOR FOJAS: I object to the question. It has been answered and now he is leading him to another thing,

TS(6)ss

suggesting it to him.

MR. BONDA: I withdraw that.

Q Was the house burned down?

MAJOR FOJAS: Your witness has stated he saw the house still standing; now your question is "Was it burned down?" Do you want him to change his answer? Are you impeaching your witness?

MR. BONDA: I know he is telling the truth and will not change his answer.

COLONEL PARMELEE: Are you willing to explain --

MR. BONDA: I'll change that.

Q The witness testified, the prosecuting witness testified that the house was burned to the ground. Now in view of that statement, were they lying when they so stated?

A It was standing when I saw it.

Q Now, you are talking about five hours later when you came back, are you not?

A Yes.

Q When did you leave Bacolod, immediately prior to the time of this incident?

A I left Bacolod on the 24th and went through Murcia on the 25th and got to this place on the 26th.

Q Under whose orders, direct orders, did you leave Bacolod on the 24th?

MAJOR FOJAS: Object to the question as it assumes there was an order for him to leave Bacolod.

MR. BONDA: Isn't it a proper assumption when there is a superior officer that he would travel under someone else's orders?

TS(6)ss

MAJOR POJAS: I don't know in this case.

MR. BONDA: Okeh, I'll withdraw that.

Q Why did you leave Bacolod on the 24th of November, 1944?

A I was given a brigade order to rescue the party that was enveloped by the guerrillas at Murcia.

Q And who was the commanding officer of this brigade whose orders you obeyed at that time?

A Lieutenant General Kono.

Q Did you rescue the Hori Battalion at Murcia on the 25th?

A Yes.

Q And where were you proceeding to when you left Murcia after you had rescued the Hori unit?

A Santa Cruz.

Q What was the purpose of your expedition to Santa Cruz?

A At distant Santa Cruz there was a guerrilla base that enveloped Murcia and we went to attack the base.

Q Did your unit suffer any casualities during this period from the 24th to the 26th of November, 1944?

A Yes.

Q How many?

A There was one officer killed in action and four or five enlisted men wounded.

Q How far from the barrio of Santa Cruz was this house that the incident of Specification No. 20 occurred?

A It was on the eastern outskirts on a hill of the city.

Q How big was this house?

TS(6)ss

A It was built of coconut leaves and was of the dimensions of three meters wide and four meters long; it was a nipa house.

Q Was it large enough to accommodate twenty-nine or thirty people all at one time?

A Of course, they couldn't enter all at once.

Q So if there were twenty-nine or thirty people at a party there, some of them would have had to be outside, is that correct?

A I believe that is true.

Q Now, you say when you went by two or three minutes after you heard the firing you saw two bodies lying outside the house and one body inside the house, is that correct?

A When I went to investigate the house two or three minutes after the rifle shot, one body was inside the house and one outside. At the time of my return, five hours later, I found another body outside.

Q You testified before you found one body inside the house and two bodies outside. Is that an error or is your present statement an error, or is that an error in translation?

A There was one body inside the house at the time, five minutes after the rifle shot, and one body outside. At the time of my return there was another body outside.

Q Now, when you returned and you found this other body outside, was the first body that was outside still there?

A When I returned five hours later I found a new body without finding the body that was there in the morning.

Q The first time you went there, which was about two or three minutes after you heard the shots, did you see any people jumping out of windows or running away from that house?

A I did not see any.

Q You said that when you went there the first time it was pitch dark. Now, when you left, five minutes later, was it still pitch dark?

A It was about 5 o'clock in the morning and it was pitch dark.

Q Now, these three people, live people that you saw when you went by the house the second time, did you recognize them?

A There were three women sitting outside the house, but I

do not remember their faces.

Q Were any of those women witnesses in this courtroom?

A Yes, they did testify, but I do not remember their faces.

Q Did they run away or appear frightened at the time you returned when they were sitting near that house?

MAJOR FOJAS: Object to the question, sir, this witness previously testified the women just sat there and did not run away. He is now repeating the same question to the same witness.

MR. BONDA: If I remember correctly, your witnesses said they were too scared. This man is rebutting their testimony in which he said they did not run away and were not scared. What are you afraid of Mr. Prosecutor?

MAJOR FOJAS: I am not afraid of anything, I am objecting to your question.

COLONEL PARMELEE: The question has been answered that they sat there.

MR. BONDA: That is right and I have a right to show that they not only sat there, but they were not scared and did not attempt to run away.

COLONEL PARMELEE: Will the reporter read the question, please?

(Question was read as above-written.)

COLONEL PARMELEE: Objection is sustained inasmuch as the matter of running away, running away that is in conflict, but the part that appears they were frightened, is something else. Ask the question again, remembering he

testified that they sat there or did they do anything else? Would that solve the difficulty?

Q Did the women do anything besides sit there when you came back five hours after you had been there the first time?

A I remember when I passed there the three women were sitting on a nipa mat, which was between the house and a bush.

Q Were they doing anything besides sitting, did it look like they were trying to run away or did it look like they were frightened?

MAJOR FOJAS: That is leading.

Q What else did it appear to you they were doing besides just sitting there?

A I did not notice anything else.

Q Now, you said that these women testified here, but you didn't remember their faces, what do you mean?

A I just casually passed there and it was three years ago so I hardly could remember anything about it.

COLONEL PARMELEE: The Commission will now recess until 1300 hours, this date.

(The Commission recessed at 1130 hours to reconvene at 1300 hours, this date.)

A F T E R N O O N S E S S I O N

(The Commission reconvened, pursuant to recess, at 1300 hours.)

COLONEL PARKELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

MASAKAZU YAMAGUCHI

a witness in his own behalf, having been previously duly sworn, testified further as follows through Interpreters Koide and Sameshima:

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath.

(Translated to witness through Interpreter Koide.)

DIRECT EXAMINATION (continued)

BY MR. BONDA:

Q Referring now to Specification 21, will you tell us, please, what you know about the incident therein which purports to be an alleged killing that took place at or near the City of Bacolod on or about the 8th day of December, 1944.

A Concerning the Specification No. 21 where Lieutenant Nanjo of the Takahashi unit, I believe, which occurred in Bacolod High School, that Lieutenant Nanjo had alleged to kill Filipinos there. I learned about this incident for the first time here in this court when I was given the charges.

Q On the 8th day of December, 1944, where was Nanjo stationed?

EGM(7)mm
3nos

A He was stationed at Bago.

Q And this incident was alleged to have occurred in the City of Bacolod; was it possible for Nanjo to have been involved in that incident?

A He cannot participate in it.

Q Now, you remained in the area both north and south of the Bago River until what time?

INTERPRETER KOIDE: May I have the question again? (Question read.)

MR. BONDA: I will withdraw that question.

Q When did General Kono arrive in Negros Island?

A August of 1944.

Q And when did Major Hori's unit arrive in Negros Island?

A The Hori unit was divided into two groups, and they arrived in August and September.

Q Now, did you at any time during the months of August, September or October -- withdraw that.

During the months of August, September and October of 1944 was your area of garrison duty and security changed at any time?

A Yes.

Q When was that?

A After the arrival of the Hori unit, the Hori unit were designated to perform security north of the Bago River.

Q What was your movement in Negros Island --withdraw that.

What were the movements in Negros Island of your units during the latter half of 1944?

A My unit took over the security of the area south of the

EGM(7)mm

Bago River including the Bago River.

Q What was the date of that change?

A I believe the date was about the 5th of December, 1944, when I was designated to secure the area south of the Bago River, including the Bago River.

Q By whose order was that change made?

A The change was made according to the orders of Lieutenant-General Kono.

Q When that change was made, did all of your units go with you to Bago and south of the river?

A Yes.

Q Did any of your units remain behind north of the Bago River, other than the City of Bago itself?

A No.

Q Who took over the security of the area that you had vacated?

A The Hori unit.

Q During that time were there any other units besides the Hori unit that were in that area that you had vacated?

A Aside from the Hori unit that took over my headquarters which I vacated, there were many air force units and naval units scattered all over the northern area.

Q Now, during the time specified in Specification 21, was the Hori battalion under your command?

A ~~Yes.~~ No.

Q Were any of the other units that you say occupied that area under your command?

A No.

EGM(7)mm

Q During the time set forth in Specification 21 were any units under your command in any area north of the Bago River including the town of Bago itself?

A No.

Q Did the Takahashi unit go with you to Bago on the 5th of December?

A Yes.

Q Did the Takahashi unit remain in Bago or the area south of the Bago River, and if not, when did they leave?

A The Takahashi unit remained in Bago City until the end of December, and the latter part of December, the Takahashi company was a reserve company for the Kono Brigade.

Q And at that time were you divested of control over the Takahashi unit?

A At that time the Takahashi unit was under the direct command of Lieutenant-General Kono.

Q And did the Takahashi unit ever return under your command after that?

A Yes.

Q When?

A It was about the latter part of March, 1945.

Q Now, did you know Nanjo when he was at the -- withdraw that question.

Do you know whether Nanjo was wounded at any time during the year 1944?

A I heard about it in Bago.

Q Now, do you know from the report that you heard, do you know the date that he was wounded?

EGM(7)mm
3nos

A I do not recollect exactly what date it was, but I believe it was on the 10th of December.

Q What makes you recall the date as being the 10th of December?

A Since I transferred to Bago about the 5th of December, the incident occurred slightly after that, a few days after that.

Q What incident?

A That Nanjo was wounded.

Q When did you go to Bago?

A I believe I went to Bago on the 5th.

MAJOR FOJAS: When?

MR. BONDA: The 5th of December.

Q Now, when you say the incident occurred, you mean that is when you got the report he was wounded, or that was when he was wounded?

MAJOR FOJAS: I object to the question, sir. The answer of the witness is very clear that he was wounded on the 10th of December.

MR. BONDA: There may be some doubt as to when the wounding was. I can see no harm in asking the question.

COLONEL PARMELEE: The question seems to be definitely to ask him whether he got a report, and when he got it.

MR. BONDA: When we say that the answer was definite, there is a question always of interpretation in these trials; there is always a question of understanding the question. I can see no harm in asking the question again.

EGM(7)mm

Now, the Commission has said they want the truth, and the prosecution will have all the chance in the world to cross-examine, and I can see no harm in asking him the question I have just propounded.

COLONEL PARMELEE: Well, the date seems to be as definite as the color black was in the testimony of one other witness.

MR. BONDA: And if I recall correctly, the prosecutor was permitted to ask the same question three or four times.

COLONEL PARMELEE: No, the ruling was made by the law member that the color black was definitely established, but the witness could point to some article which she called black.

MR. BOND: If the Court is going to draw an analogy of a color and a recollection of a date, which in none of the cases have been absolute, the prosecution has always said "on or about," of course I can't question further.

COLONEL PHILLIPS: The question is, unless there is a mistake in interpretation, the answer was the 10th.

MR. BOND: Okeh, if you say he answered that question, that ends it.

COLONEL PHILLIPS: If you think there is any doubt, ask him again.

MR. BOND: If I didn't, I wouldn't pursue it, sir.

COLONEL PHILLIPS: All right, go ahead and ask it.

INTERPRETER KOIDE: May I have the question?

COLONEL PHILLIPS: I want to first ask the interpreter if there is any chance of mistake in interpretation on the date that Nanjo went to the hospital. The answer was given as the 10th, is that correct?

MAJOR FOJAS: There is one thing, sir, here in this question when the witness was questioned about the date, there was nothing said about the report. He was talking all the time about the date of the incident, and now the last question the word "report" is inserted.

COLONEL PHILLIPS: That is right.

MAJOR FOJAS: As to whether it was a report or the incident itself - - -

MR. BOND: The witness himself mentioned the report.

MAJOR FOJAS: No.

MR. BOND: If you want to read the record, he said he got the report when he was in Bago. I will tell you frankly,

that I am taken by surprise because the statement he gave me was it happened on the 5th. I am frank in disclosing my hand. I have it here on his own statement that it was the 5th.

MAJOR FOJAS: Okeh.

MR. BOND: There is a doubt, and I would like to have it cleared up. May I say this - - -

MAJOR FOJAS: The incident took place on the 8th, as mentioned in the specification.

MR. BOND: It isn't important, as far as he was concerned, whether he was wounded on the 10th or the 5th, because Nanjo wasn't there, and couldn't have been there, and the time he was wounded is merely cumulative evidence. There hasn't been the slightest repudiation by the prosecution that the unit went south of the Bego River. It is merely cumulative, and I am trying to get the record straight. If I find I am wrong, it will appear in the record I am wrong.

COLONEL BREELEE: Well, I think the matter of the report was linked up with the date of the 10th, and I think that is what the objection is based upon.

MAJOR FOJAS: That is correct, sir.

COLONEL BREELEE: And right at the start I thought that the date the 10th was definite, if there was no mistake in interpretation, so you might pursue the matter of the report as to what date he received it.

MR. RODDAN: Sir, there may be some question as to the exact question put to Colonel Yamaguchi on that matter; in other words, the question asked Colonel Yamaguchi, I think, although I am not sure, was, "Did you hear when he was wounded," or something to that effect; in other words, not so much as the

date he was wounded, but the date he heard it.

COLONEL KNELLER: Well, let's check back on the record to get the exact question. If that is the question, that is different.

MR. BONDS: Well, I think I can clear it up by a few more questions.

COLONEL KNELLER: Let's read the record and establish the question because all this discussion here has been based upon the fact that a definite question was asked as to when he was wounded, and if the question is as assistant defense counsel stated, of course that would give latitude for asking something else.

(Record read.)

MR. BONDS: That is what I am getting at, and I can see no harm in trying to clear it up. Are we trying to get at the truth, or aren't we?

MAJOR FOJAS: Yes.

MR. BONDS: Is this a game?

MAJOR FOJAS: We are after the truth, and I think the truth is coming out right now, because we allege in the specification that the incident took place on the 8th, and they are trying to put on a defense that Nanjo was wounded sometime before that date, and now comes the commander of Nanjo and says the incident took place on the 10th.

MR. BONDS: This isn't a game, and I want to find out whether he was mistaken in that, or whether that is the date. If that is the date, that is the date.

MAJOR FOJAS: You are making it a game, I am not.

COLONEL PARKELEE: The position of the law member is this, that the answer seems to have been a definite date, and the reporter has read the answers, and there is a date several days later, or a few days later from the 5th, which would indicate that it was after the 5th. I don't know when. Now, that is the basis of the ruling.

MR. BONDA: But my statement is that we had in that question, we had report mixed up in it. We are not asking a question in English where you can pin a man down, and say, "This is what he understands by it." The report was mixed up in that somewhere.

COLONEL PARKELEE: All right, now, we are getting right back to what I stated when this first started that the date seemed to be definite, and the objection would be sustained on that ground, but if you wanted to ask about the date that he got a report, if he did get a report, that would be a suggestion.

MR. BONDA: That is okeh, that is what I am trying to find out.

COLONEL PARKELEE: Then, you went on for ten minutes or so. All right.

Q When did you receive the report that Nanjo was wounded?

A I believe it was about the 10th of December.

Q Did this report tell you when Nanjo was wounded?

A Since at that time we had reports that the United States forces might land somewhere in Negros, I was absorbed in the work in the defense areas, and consequently I am not sure of the date.

Q When you say you are not sure of the date, do you mean you are not sure of the date of the report or the date that he was injured?

A The date when he was wounded.

Q Do you know where he was wounded?

A The report stated that he was wounded in the vicinity of Bago, during the training of troops, by accident.

Q Do you recall how you got the report that he was wounded?

A I heard about it. I heard orally.

Q Was it an official report to you?

A It was official.

Q After you left your old security area north of the Bago River and went to Bago, did you then again with your troops ever go north of the Bago River?

A Yes.

Q When?

A I returned to Bacolod on March 5, 1945, after I was wounded in Pontevedra.

Q Why did you return to Bacolod on the 5th of March?

BSH(8)ss

A I was wounded during the punitive expedition.

Q What is the date that you were wounded?

A As I remember, the 6th of March.

Q Do you have any scars as a result of that wound?

A Yes.

Q Will you show us the scars, please?

A (Demonstrating.)

MR. BONDA: Indicating a scar about two and one-half inches long running from a point about an inch above the left wrist diagonally to a point about three and one-half inches from the left wrist; and indicating a scar on the right shoulder about an inch long.

Q What caused those wounds?

A I was wounded by a carbine.

Q What fixes the date that you were wounded in your mind?

A I remember because my birthday is the 7th of May, and the day was two days previous to my birthday.

(Discussion off the record regarding the month.)

I correct myself. It is March.

MR. BONDA: His birthday is in March.

INTERPRETER SAMESHIMA: He corrected himself.

MR. BONDA: Whose correction is that?

INTERPRETER SAMESHIMA: His correction.

COLONEL PARMELEE: Let us ask him the date of his birth.

Q What is the date of your birth?

A My birthday is the 7th of May. That happened two days previous to the day of the month when my birthday

happened.

MR. BONDA: Two days previous to the day of the month.

COLONEL PARMELEE: I think what he has reference to is that he remembers that his birthday was a certain day of the month and this was two days before then. That is what he means.

A I remember it due to the fact of the connection between the 5th and 7th.

COLONEL PARMELEE: He accentuates the days of the month and the date. Is that a correct deduction?

MR. BONDA: It seems to me to be the proper deduction.

MAJOR FOJAS: What is the answer now?

COLONEL PARMELEE: The answer is as he originally gave it, that his birthday is in May -- May 7th.

MAJOR FOJAS: May 7th?

COLONEL PARMELEE: That is right. He has explained it, I believe. I may be wrong. I think the Commission is under this impression, that when he says two days before the day of his birth, that he means it was on the 5th. That is two days before the 7th, which is the date of his birth. He doesn't mean it is in May.

INTERPRETER SAKESHIMA: May I explain it off the record?.

COLONEL PARMELEE: You may explain it on the record.

INTERPRETER SAKESHIMA: What he means, in Japan they say the fifth month, the seventh day. That is his

BSH(8)ss

birthday. The fact that it was the 5th of March, and the connection between the 5 of that, which is the 5th of March, and the 7th day of May, the same relation -- 5-7. There are two "5-7's."

COLONEL PARMELEE: That is the impression we have, I believe. All right.

Q After you were wounded, where did you go or where were you taken?

A That same night, by automobile, I reported to the brigade headquarters of General Kono, and then received treatment.

Q Did you have a conversation with General Kono at that time?

A Yes.

Q And what was that conversation?

A I gave a summary of the situation, and also the condition of my wounds.

Q Prior to reporting to him, you had received first aid on the place where you were wounded, hadn't you?

A Yes, I did.

Q After the conversation that you have just related that you had with General Kono, what happened?

A I went to the hospital and was operated on, given treatment.

Q What happened with relation to your command as a result of your conversation with General Kono?

MAJOR FOJAS: I object to that question, sir; there's no foundation.

MR. BONDA: That is what I am asking -- what

BSH(8)ss

happened.

MAJOR FOJAS: There is nothing said about command conversation of this witness with General Kono.

COLONEL PARMELEE: Perhaps if you asked him if his status changed as a result of this wound, that is, as to duty or not.

MAJOR FOJAS: He has asked whether he had a conversation with General Kono.

COLONEL PARMELEE: Yes.

MAJOR FOJAS: There was nothing said about that conversation except that he reported the condition of the area. There is suddenly a question as to what happened to his command as a result of that conversation.

COLONEL PARMELEE: The transition is a little too abrupt, is that it?

MAJOR FOJAS: That is correct.

MR. BONDA: I would like to have the parties concerned reread the record of the direct examination of the prosecutor and his fifty or sixty witnesses he has had, and we will see if the transition is more abrupt here than it has been in his case.

Q Did anything happen as a result of your conversation with General Kono on the night of the 5th of March, 1945?

A Yes.

Q What?

A We discussed the matter of the relieving commander of my unit.

Q Did your status change as a result of that conversation?

BSH(8)ss

A It was decided that the senior ranking officer, Captain Inoue, and I would alternate.

Q What do you mean by "alternate"?

A I mean that the command was changed, that Captain Inoue took command.

Q And when he took command, were you relieved of command?

A I was told to devote myself to my wounds, and that Captain Inoue would take over the command.

Q Did you again after that assume command of the battalion?

A Yes.

Q When?

A I had not received direct orders to relieve the commander of my unit; but on the 29th of March, when the American forces had landed, I was forced to leave the hospital, in spite of my wounds, and go to the mountains.

Q And is that the date, then, that you assumed command again of your battalion?

A Yes, the 29th.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

BSH(8)ss

COLONEL PENELEE: The Commission is in session.

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Interpreter Samoshima interpreted to the witness.)

Q Other than the Takahashi Company did your unit, the Yamaguchi Battalion, return north of the Bago River at any time after they went there on the 5th of December, 1944?

A Yes.

Q When?

A As I remember, the latter part of March, 1945.

Q Under whose command?

A Under the command of Captain Inoue.

Q When they returned the latter part of March, where did they go?

A We dispersed and established a bivouac in an area east and away from the City of Bacolod.

Q And was that your entire unit other than the Takahashi Unit?

A The Okamoto Company remained south of Bago in garrison duty near the area of La Carlota.

Q How long did that company remain south of Bago River?

A Until immediately prior to the 29th, when the Americans made their landing.

Q Do you know where the Cubay Garrison is in the Province of Silay?

A No.

Q Is Silay north or south of the Bago River?

A To the north of it.

Q Will you point on the map where Silay is?

(Witness complied.)

MR. BOMDA: Witness indicating on the map of the Philippines, previously referred to, Map of Negros, scale 1:200,000, Coast and Geodetic Survey, 1935.

Q On the 8th of March, 1945, were any troops of the Yamaguchi Battalion in that vicinity?

A No.

Q You had been relieved of command, you said, on the 5th of March. Did you still know where the Yamaguchi Unit was located during the time you were relieved of command?

A On garrison duty in Bago and in the area south of Bago and also establishing positions in Bago.

Q And this was during the time when you had been wounded and were receiving medical treatment, during which time you were not in command, is that correct?

A Yes.

Q Now, do you know anything at all about the alleged acts set forth in Specification No. 22, which were alleged to have occurred near the Cubay Garrison in Silay on the 8th of March, 1945, in which certain persons were supposed to have been killed?

A I learned by the Specification that members of the garrison committed murder, torture and rape.

Q What do you know about the possibility of your troops having engaged in that affair?

A My unit had absolutely no connection with those incidents.

TS(9)LM

Q Where were your units located during the time of this alleged incident?

A In Bago, and in south of Bago.

Q Do you know anything about the alleged incident of rape at or near the Cubay Garrison at Silay on or about the 8th day of March, 1945?

A I first learned of it when I heard the Charges read here.

Q What is the possibility that your troops or any troops of the Yamaguchi Battalion who had been under your command prior to the 5th of March, 1945, could have participated in that event?

INTERPRETER SAMESHIMA: What is the question, please?

(Question read.)

A Absolutely no connection.

COLONEL PARMELEE: What was that answer?

INTERPRETER SAMESHIMA: Absolutely no connection.

Q What units other than members of the Yamaguchi Battalion were in Occidental Negros on or about the 8th day of March, 1945?

A There were army and navy units, especially a large number of air force units.

Q Do you know "Fumi"Tanaka?

A Do you mean Hizumi Tanaka?

Q Yes.

A Yes, I do.

Q What is his rank?

A Sergeant.

Q Was he a member of your battalion?

A He was a clerk in the battalion headquarters.

Q What was his particular job as clerk?

A He was in charge of citations and decorations.

Q Awards and decorations?

A Yes.

Q As far as you know was that his job until the end of the war?

A Yes.

Q As far as you know did he ever have any other job?

A No.

Q Do you know Koichi Tanaka?

A After coming here I knew who he was.

Q Was Koichi Tanaka ever a member of the Yamaguchi Battalion?

A No.

Q Will you tell us, please, what you know about the events set forth in Specification 24, being an alleged mistreatment, torture and killing of Filipinos at or near the Barrio Buenavista, Pontevedra, on or about the 18th day of March, 1945?

A I learned about it after I received the Charges.

Q Do you know anything about it other than what you heard after you received the Charges?

A I do not know anything about it besides what I learned from the Charges.

Q Would it have been possible for anybody to have seen

you at or near the Barrio Buenavista, Pontevedra, on or about the 18th day of March, 1945?

A No.

Q Why not?

A I was wounded, and I was in Bacolod.

Q Did any of your -- withdraw that.

Did you have any regulation in your unit as to wearing of the uniform, or civilian clothes, by members under your command?

A The regulation was that all members of my unit always wore the regulation uniform, khaki-color uniform.

Q Was there any exceptions to that in the case of your intelligence officers?

A The noncommissioned officers who were to do special work were allowed to wear the civilian uniform.

Q What special work do you mean?

A I allowed the noncommissioned officers of the headquarters who made contacts with the head of the province to wear civilian uniform, and also the noncommissioned officers of that unit that was concerned with the infiltrating men, such as spies and guerrillas.

Q Did Nanjo wear civilian clothes or army uniform?

A He was wearing the army uniform at all times.

MR. BONDA: The defense has no further questions at this time, and at this time I request that I be permitted to recall this witness for further direct examination.

MAJOR FOJAS: We have no objection to that request, sir.

COLONEL PARMELEE: Would you like to start your cross-examination in the morning?

MAJOR FOJAS: That would be preferable, sir.

COLONEL PARMELEE: The Commission will now adjourn, and will reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1440 hours, 8 January 1947, to reconvene at 0830 hours 9 January 1947.)

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME XLIII

PAGES 2968 TO 3031 INCL.

DATE 9 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee
A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Resilence
Manila, P. I.
9 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. POJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT KO SAMESHIMA	)	
2ND LIEUTENANT SAMUEL S. KOIDE	)	
2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	Japanese
PETRONILO VALLEJO	)	
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MACARIO E. BELAONG	)	
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ELIZABETH G. MCNAIR
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I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM.BY COM'L.
Masakazu Yamaguchi	2968				

SS

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, in Court No. 2, High Commissioner's Residence, Manila, P.I., 9 January 1947.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Koide:

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Interpreter Yamamoto interpreted to the witness.)

MAJOR FOJAS: This is now cross-examination, sir.

COLONEL PARMELEE: That is correct.

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q What was the exact date when you arrived in the Philippines? Do you remember?

A January of 1943.

Q What date in January?

A 6th.

Q You mean that was the date when you first arrived in the Philippines?

A Yes.

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Q Didn't you say that you first arrived in Cebu in the Philippines?

A Yes.

Q What was the date when you arrived in Cebu?

A January 2.

Q How long after you arrived in Cebu did you receive the order to proceed to Negros?

A On January 4.

Q Was it a written order which you received directing you to proceed to Negros?

A Yes.

Q Will you please tell us again what was contained in that written order in connection with your assignment in Negros?

A Do you mean just the important points or the entire order?

Q The entire order.

A This is the entire contents of the order:

First, the situation of the bandits is as of the information record of December.

Second, the garrison will have Colonel Yamaguchi's unit go to Negros in order to strengthen and increase the security of the said island.

Third, Colonel Yamaguchi will leave one company in Cebu which will be put under my command. The word "my" refers to Major General Inoue. The remaining force will leave Cebu January 4 and proceed to Negros.

After grasping control of the Yoshiyama and Fukuda units on that island, they will be put under his command, in order

to carry out security duty on Negros. The details of disposition, of security, etc., will be taken care of by Colonel Yamaguchi.

Fourth, both the Yoshiyama unit and Fukuda unit will be taken away from my command; "my" referring to Major General Inoue. They will be put into the control of Colonel Yamaguchi, which will later be commanded by him.

Fifth, I will be at the garrison headquarters in Cebu; and this is signed by the garrison commander, Major General Inoue.

The distribution of this order was to go to Colonel Yamaguchi verbally and later by written order.

MR. BONDA: I suggest we have the answer read back so there will be no question.

COLONEL PARMELEE: Yes. Will the reporter please read the answer back and check it.

(The last answer was read by the reporter.)

Q When were you informed verbally of this order?

A On January 2, when I went to see Major General Inoue at the Cebu headquarters to report to him, I was then given the order.

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Q You received the verbal order on that date, is that correct?

A Yes.

Q And you received the written order on January 4th, is that right?

A After I received the verbal order, I received the written order.

Q You mean to say you received the written order on the same day that you received the verbal order?

MR. BONDA: Object. He didn't say that. He said after receiving the verbal order, he received the written order.

MAJOR FOJAS: All right, I withdraw the question then.

Q When did you receive the verbal order?

A The adjutant received it before leaving.

Q Do you know when?

A Before leaving for Cebu.

COLONEL PARMELEE: Can you ask him the date that he received it?

MR. BONDA: Wait a minute. You said before leaving or from Cebu?

A Received it before I departed from Cebu.

Q Was it on the 3rd of January --

MR. BONDA: Just one minute. Was it before or from?

A It was from Cebu.

MR. BONDA: You said, "for" in the original

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answer, I want to correct it.

COLONEL PARMELEE: Read the answer, please.

(The answer was read as above written.)

MR. BONDA: That is "for Cebu." That should be corrected to read, "leaving from Cebu."

COLONEL PARMELEE: Yes, that should be changed to read, "before leaving from Cebu."

Q Was it on the 3rd of January, 1943, that you received this written order?

A I do not remember the date the adjutant received it.

Q Do you still have a copy of that written order?

A All the orders were burned in the mountains before coming down.

Q Did you burn those orders deliberately before coming down?

MR. BONDA: May we ask the Court to take judicial notice that all armies, at least to my knowledge, do burn all orders before they go down to surrender.

MAJOR FOJAS: Are you sure of that, that even the Japanese army had the same orders?

MR. BONDA: Well, they burned their legation orders before they surrendered to the Americans.

MAJOR FOJAS: I think it would be better, sir, if we get an answer from the witness. In the American army it may be true, and in the Philippine army but --

MR. BONDA: The only reason I raised the point, the question would seem to indicate that the accused burned them rather than to have them used in evidence against him.

COLONEL PARMELEE: I believe the Commission will take judicial notice of the fact that prior to surrender, the command decision will be made or an order will be made to burn certain documents, and the fact that the accused did burn this order, if there was such an order to do so, or he, as commander, decided to do it himself, that would be perfectly proper.

MAJOR FOJAS: I'll withdraw the question.

Q Who was the adjutant that received that written order?

A First Lieutenant Mizoguchi.

Q Now, are you sure that you have stated to the Commission all the contents of that order which you received from General Inoue?

A Yes.

Q Didn't you tell the defense counsel on direct examination the other day that that order also said something like this, "that all matters of details such as to the security of Negros Island, Colonel Yamaguchi will take the necessary measures"?

A Yes.

Q And did you mention that this morning when I asked you about the contents of that order?

A Yes, I told about the details concerning disposition, and so forth.

Q Who was the over-all commander in Negros Island before you received these orders, do you know?

MR. BONDA: Objection, sir, the over-all commander of Negros Island is a very vague term. It might go all the

TS(2)mm

way up to the emperor or someone else in the chain of command. I think it should be put more definitely as to what it means.

MAJOR FOJAS: I'll rephrase the question.

Q Who was the highest ranking officer immediately in command in Negros Island before you received these orders?

A I do not know if Colonel Ota of the 21st Division was commanding the entire unit or whether he was commanding aside from Yoshiyama and Fukuda, however, Colonel Ota was the senior commander and the highest ranking officer.

Q Do you mean by that answer that the Fukuda and Yoshiyama battalions were under Colonel Ota before you were assigned to Negros?

A No.

Q What do you mean when you said, "no", they were not under Colonel Ota or you do not know?

A He was not under Colonel Ota.

Q Under whose command in Negros were the Fukuda and Yoshiyama battalions before you were assigned to Negros?

MR. BONDA: If the Court please, won't you change the question to immediately before, it might be confusing.

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MAJOR FOJAS: All right, immediately before.

COLONEL PARMELEE: Amend the question to read immediately before.

A Major General Inoue.

Q You mean to say that the Fukuda ---

A Major General Inoue was in direct command. That is how I believe.

Q So in other words, there was no intervening officer between the commanders of the Fukuda and Yoshiyama Battalions and General Inoue? He was in command of those battalions?

A Yes.

Q What were the units, if you know?

MR. BONDA: Just a minute, to keep the record straight, that was a negative question and that "yes" might be a little confusing in the record unless we got a clarification of it. I think yours was a negative question.

COLONEL PARMELEE: That was the question before the last one asked?

MR. BONDA: Yes, before the last "yes".

COLONEL PARMELEE: Will you read that question, please?

(Question was read as above-written.)

MR. BONDA: There were two questions and the first part was negative.

MAJOR FOJAS: All right, I'll withdraw the last question.

A In the written order I received it said that Yoshiyama Unit and Fukuda Unit will be taken away from my command; "my"

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referring to Major General Inoue.

Q Do you mean to say now, that you do not know whether or not there was an intervening officer between the commanders of the Fukuda and Yoshiyama Battalions and General Inoue who was in command of those battalions?

A There were no intervening officers.

Q And you said that because you implied from your order that there was no such intervening officer because it was already stated that the two battalions would be taken away from his command, is that correct?

A Major General Inoue was in direct command so he wanted me to proceed to Negros and there command both Yoshiyama and Fukuda Units in order to strengthen the security in that island.

Q That is not the question I am asking you. The question is, you knew that there was no intervening officer between General Inoue and the commanders of the two battalions because you implied that simply from the orders that you received to the effect that the two battalions would be taken away from the command of General Inoue, is that correct?

A Major General Inoue was in direct command, so I believe he gave out an order for me to take over the two units.

Q How did you know that there was no intervening officer between the commanders of the two battalions and Major General Inoue?

A Because there were none.

Q How did you know that there was none?

A Because there were actually none.

Q Can you not explain to the Commission how you found out that there was no such commander?

A Do you ask that question because I mentioned Colonel Ota of the 21st Division?

Q You answer my question. The question is simple. You told us there was no intervening officer between the two commanders of the two battalions and General Inoue. General Inoue was in direct command of the two battalions, and what I want to find out is, how did you know that?

MAJOR FOJAS: May we know part of the answer, find out if he is giving a responsive answer?

COLONEL PARMELEE: Is the answer responsive?

MAJOR FOJAS: I would like to find out part of the answer to find out if it is responsive or not.

MR. BONDA: Wait a minute, you want to have a recess and talk with me and find out whether it is responsive, whatever way you want is all right with me.

MAJOR FOJAS: I would like to have a recess to find out if this answer is responsive.

COLONEL PARMELEE: You want to consult with the defense counsel and find out if the answer is responsive?

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: All right, the Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Koide.)

MAJOR FOJAS: I think, sir, the witness has given a partial answer to my question, and I would like it to appear in the record.

COLONEL PARMELEE: You would like the answer --

MAJOR FOJAS: The answer to be in the record.

COLONEL PARMELEE: The defense and prosecution were going to get the interpretation during the recess, is that correct?

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: Very well. And the prosecution now wants the translation in, so far. Very well.

A Because there were confused situations due to Bago there were not enough strength or soldiers on Negros, and therefore, the Ota regiment of the 21st Division in Bataan was taken to Negros. The Yoshiyama and Fukuda units of the 16th Division was guarding the security on that island.

MAJOR FOJAS (To interpreter): Please ask him if he has something more to say on that.

(Translated to witness through Interpreter Yamamoto.)

A After the Ota regiment was removed, my battalion took the place of the regiment, and I was the commander of the Yoshiyama and Fukuda units.

Q Now, in spite of that long answer, you have not yet answered my question. The question is: "How did you know that there was no intervening officer between the commanders

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of the Fukuda and Yoshiyama battalions and General Inoue?" Will you please tell the Commission how you found that out?

A According to the order, since there was no intervening officer, I was ordered as the intervening officer.

Q Was that stated in the order, that because there was no intervening officer you were placed in Negros to act as the intervening officer?

A I judged from the order to such a conclusion.

Q So, in other words, you simply implied that there was no intervening officer; you simply implied that fact from the words in the order, that the Fukuda and Yoshiyama battalions would be taken away from the command of General Inoue. That is what you mean to say now?

A Yes.

Q All right. What units of the Japanese Army were under the command of Colonel Ota immediately before you were assigned in Negros?

A The Ota regiment of the 21st Division.

Q Did you know the strength of that regiment?

A I believe it was not a full-strength regiment.

Q Do you know the strength of that regiment?

A I don't know.

Q Now, I will ask you again if it is not a fact that immediately before you were assigned to Negros Island, that Colonel Ota was the commander of all the Japanese troops in that island?

A No.

Q Are you sure of that now?

A Yes.

Q Do you remember the other day you were asked by defense counsel this question, and you gave this answer:

"Q Who was in command of the troops in Negros Island prior to the time you arrived there?

"A Colonel Ota of the 21st Division."

Q Do you remember having given that answer the other day?

A My reply was I meant Colonel Ota was the commander of the Ota regiment.

Q In other words, you want to change your testimony now, instead of saying that Colonel Ota was the commander of the Japanese troops in Negros Island prior to the time you arrived there, he was only commander of the Ota regiment; that is what you want the Commission to understand now, is that right?

MR. BONDA: If the Court please, there is no inconsistency between what he said then and what he says now. The question is, "Who was in command of Japanese troops?" and he answered, "Colonel Ota," which was correct, and the question was, "Who was in command of Japanese troops before," prior to his arrival, and he said the same thing now, "Ota was". He didn't say he was the only one who was in command of troops. There is nothing inconsistent about it. I object to that line of questioning on the basis that there is nothing inconsistent between his previous testimony and the testimony today.

MAJOR FOJAS: I have no comment to offer, sir, except the words speak for themselves.

MR. BONDA: Yes, they do.

MAJOR FOJAS: That whom he said was in command of the troops in Negros Island, and when you say "troops," in

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my simple understanding of the English, included the Ota regiment and all other units in Negros Island, provided they were Japanese troops, and the answer was, "Colonel Ota." I don't know how you can stretch the interpretation of such words.

MR. BONDA: The prosecution left out the words "prior to your coming here."

MAJOR FOJAS: I am giving your witness a chance to explain.

MR. BONDA: I am pointing out it isn't inconsistent.

COLONEL PARMELEE: The views of the defense counsel are in the record, and the cross-questioning now going on is in the record, and in the final analysis, the Commission must make the determination as to whether there is an inconsistency, is that correct?

MAJOR FOJAS: That is correct, sir.

MR. BONDA: That is correct, sir, but the questioning based on inconsistency is not permissible if there is no inconsistency,.

COLONEL PARMELEE: Yes.

MR. BONDA: It is a wrong line of pursuit if there is no inconsistency. It is not merely a matter in the final analysis of the Commission in scanning the record, saying, "Well, there is no inconsistency." It is a matter of what questions may be permitted. If the Court please, I have objected to very few questions, but I don't think I have objected to too many. I want everything to go in on every specification because I want a full cross-examination

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on this case, but there is a limit and I don't think that even an accused should be subjected to questioning based on something that isn't a fact. That is the only reason for my objecting to this line of questioning.

MAJOR FOJAS: If it please the Commission, I don't like to offer any comment because I thought it is very obvious for everybody to see, but if Mr. Bonda wants, I will show the inconsistency.

COLONEL PARMELEE: Well, just one more remark from the Commission, and that is this: That of course, there will be conflicting views between opposing counsel as to whether there is an inconsistency, but is it not true that the one questioning, if he contends there is an inconsistency, should point it out.

MAJOR FOJAS: That is right.

COLONEL PARMELEE: And that is what you are going to do now?

MAJOR FOJAS: That is what I am going to do now, sir.

COLONEL PARMELEE: Very well.

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Q In the question and answer which was read, it was stated that Colonel Ota was the commander of Japanese troops in Negros Island. There was no qualification whatsoever as to what those troops were. Anybody who would be reading this testimony would have the understanding that Colonel Ota was the commander of all the troops in Negros Island.

MR. BONDA: Wait a minute. The Court has ruled that you may ask the question - - -

MAJOR FOJAS: Be patient, let me explain. I have given him all the time to explain his position.

MR. BONDA: Hasn't the Court ruled that he may ask the question?

MAJOR FOJAS: After all, the Commission is the one to decide whether what I am saying is correct or not. I have read the question and answer to the witness, and he has acknowledged that he has given that testimony.

From that testimony, anyone who will read this record will come to understand that Colonel Ota was the commander of all Japanese troops in Negros Island.

Now, this morning this witness testified that Colonel Ota was only commander of the Ota Regiment in Negros Island; and we know that there were other Japanese troops on Negros Island - - - the Fukuda and Yoshiyama Battalions, for instance.

This witness would like us to understand now that the Fukuda and Yoshiyama Battalions were not under the command of Colonel Yamaguchi. Isn't that statement inconsistent with his previous testimony?

MR. BONDA: I thought the Court ruled he may pursue that line of questioning. The only justification for the

statements now made is final argument. I don't know what the prosecutor is talking about now.

COLONEL PARKELEE: Since the defense has asserted that in his opinion there was no inconsistency, the prosecution is merely making clear his views, and for the benefit of the Commission, which is not ready to state at this time, or willing to state, that there is any inconsistency, we believe that the matter should be pursued, and the witness given an opportunity to reconcile any inconsistency, if he thinks there is one, or to maintain that there is none.

MR. BONDA: That is what I understood. That is why I can't understand what this most recent - - -

MAJOR FOJAS: That is what I was doing when you objected to the question.

MR. BONDA: I thought that had already been decided by the Commission.

COLONEL PARKELEE: I thought it had, but the prosecutor wanted to make definite his views countering your views.

MR. BONDA: I thought he had already done that, and that the Commission had ruled he may proceed.

MAJOR FOJAS: Will the reporter please read the question?

(The last question read by the reporter.)

MAJOR FOJAS: I want the question before that. Was there a change in reporters?

THE REPORTER: Yes.

MAJOR FOJAS: I will propound the question: When you were being questioned by defense counsel on January 7, 1947, you stated that Colonel Ota was the commander of Japanese troops

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on Negros Island.

Now, this morning you said that Colonel Ota was the commander of only the Ota Regiment, excluding from his command the Fukuda and Yoshiyama Battalions.

Do you want to change your statement, the statement you gave on January 7, 1947 in answer to your counsel?

MR. BONDA: I object to the question, "Do you want to change that?" for the reason that I don't think there is any inconsistency there.

MAJOR FOJAS: This is another question. I have shown there was an inconsistency.

MR. BONDA: You have attempted to show that there was an inconsistency.

COLONEL MARELLEE: It seems that the witness is the one to explain. Is that correct?

MR. BONDA: If explanation is necessary.

COLONEL MARELLEE: That is right. If he sees no inconsistency, he will maintain there is none. In other words, the only way we can get at the prosecution's contention is to have the witness answer the question. Is that correct?

MR. BONDA: Assuming that there was an inconsistency.

COLONEL MARELLEE: Oh yes, surely. He maintains there is. It is his witness. The witness is the one to make the answer.

(Question was translated to the witness by Interpreter Noide.)

A The testimony I gave previously and today fits together. What I mean is that the Ota Regiment from the 21st Division was

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the unit that had the duty of guarding and security of the whole island, and the Fukuda and Yoshiyama Units were from the 16th Division, and were not under Colonel Ota's command.

Later the Ota Regiment withdrew from the island. That is why I was ordered then to combine the Yoshiyama and Fukuda Units with my unit, and take over the duties of the Ota Regiment.

The Ota Regiment was removed to French Indo-China. At that time the situation became very critical, and the liaison between the north and south of the Bago River were destroyed, and it resulted in a confused situation. Therefore, the Fukuda and the Yoshiyama Units were acting separately. I believe I was ordered then to combine those units and to take over the situation.

MAJOR FOJAS: Will you read the answer?

(The last answer was read by the reporter.)

Q. If you said that the Ota regiment was responsible for the security of the whole of Negros Island, can you explain why the Fukuda and Yoshiyama battalions were not placed under the command of Colonel Ota, who was in command of the Ota regiment?

A Since the Ota regiment was going to be returned to French Indo-China, the Yoshiyama and Fukuda battalions from the 16th Division, stationed in Luzon, were sent to Negros about the latter part of December, and my unit was, I believe, then ordered to combine with the Yoshiyama and Fukuda battalions to take over the duties of the Ota regiment.

Therefore, the Fukuda and Yoshiyama battalions were not under the command of Colonel Ota.

Q You have not answered the question. The question is: If you said that Colonel Ota was responsible for the security of Negros Island, can you explain why the Fukuda and Yoshiyama battalions, which you had also in Negros Island at that time, were not placed under his command?

MR. BONDA: Objection. I think he has answered it.

COLONEL PARMELEE: Well, the prosecutor apparently doesn't think so. We haven't any legal right to --

MR. BONDA: You have no legal right to ask a question that has been answered whether you are cross-examining or not.

You can show whether or not it is wrong with another line of questioning, but even cross-examining -- I haven't been permitted to do it, and rightfully so. You can't

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keep repeating the same question when it has already been answered.

COLONEL PARMELEE: The prosecutor apparently feels that the response to the question is not definite. Is that the view?

MAJOR FOJAS: I don't think the question has been answered.

MR. BONDA: I submit the question has been answered. Anything done further has just been for the purpose of embarrassing the witness, and trying to have him change his answer.

COLONEL PARMELEE: The objection is overruled.

(The question was translated to the witness by Interpreter Koide.)

A I don't think the Fukuda and the Yoshiyama units were under the command of Colonel Ota due to the fact that the Ota regiment was going to be returned to French Indo-China, and the Fukuda and Yoshiyama battalions were brought there to take over the duties of the Ota regiment.

In other words, the Fukuda and the Yoshiyama battalions, including my unit, were sent there to take over the duties of the Ota regiment.

Q So you were sent to Negros to relieve Colonel Ota of the responsibility for the security of the whole of Negros Island, and under your command were to be your unit and the Fukuda and Yoshiyama battalions, is that correct?

A Yes, I believe so.

Q So that, insofar as your responsibility for the security of Negros Island was concerned, you were accountable

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to your superior commanding officer, Major General Inoue, from the moment you received the order to proceed to Negros Island, and that was before January 4,1943, is that correct?

MR. BONDA: Will you please read the question?

(The last question was read by the reporter.)

MR. BONDA: Objection. It is a question not based on the evidence. It is assuming something that is not true.

MAJOR FOJAS: I submit, sir, I have no comments to offer.

MR. BONDA: Because there is nothing you can comment on.

MAJOR FOJAS: He said he was to relieve Colonel Ota of the responsibility for the security of Negros Island, and he received that order before January 4, 1943,

The question now is whether or not, insofar as that responsibility is concerned, he was accountable to his superior commanding officer from the moment he received that order.

COLONEL PARMELEE: Just from a practical standpoint, he couldn't very well do anything until he actually got on the ground. He had the order to proceed. In other words, January 6th would be the first day, really, that you could say.

MAJOR FOJAS: I will rephrase the question to read --

COLONEL PARMELEE: In other words, the question, as I interpret it, would be the minute he got the written order in his hand at Cebu he was responsible for something;

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but he was not on the ground.

MAJOR FOJAS: That is an error on my part.

COLONEL PARMELEE: Is that it?

MR. BONDA: Partially.

MAJOR FOJAS: I will withdraw it.

COLONEL PARMELEE: Since there is an objection to the question as it is now, I would suggest that the question be withdrawn and rephrased.

MAJOR FOJAS: I had better withdraw it.

Q So that, insofar as responsibility for the security of Negros Island was concerned, you were accountable to your superior commanding officer from the moment you landed on Negros Island, and that was on January 6th, 1943, is that correct?

MR. BONDA: Objection. That is based on a fact that is not in evidence. The evidence was that the order said, "When you assume control of those two battalions, you shall be responsible for the security of the island."

MAJOR FOJAS: I am not referring to any particular battalion. I am referring to the responsiblity for the security of Negros Island. Now, he is mentioning about battalions.

I don't know if the witness understands English. If he did, it would just be too bad.

MR. BONDA: You have my word for it he does not understand English.

MAJOR FOJAS: I can't accept that word because the first time he was asked a question he said, "Yes."

MR. BONDA: The only question he said "Yes" to

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was, "Is your name Colonel Masakazu Yamaguchi?"

MAJOR FOJAS: Sometimes he talks to us in English in the courtroom.

MR. BONDA: I beg your pardon. He says, "Yes," and says, "No," and he has learned how to say, "Good-bye."

MAJOR FOJAS: We are going away from the point.

COLONEL PARMELEE: Very well. Get back to the objection.

The question seems to be proper in that it has to do with responsibility for the security of Negros Island. It does not have any reference whatsoever to the two battalions in question. Is that correct?

MAJOR FOJAS: That is correct.

COLONEL PARMELEE: The objection is not sustained.

(Question translated to the witness by Interpreter Koide.)

A No.

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COLONEL PARMELEE: Very well, the answer is no.

Q You mean to say now that you did not feel responsible to Major General Inoue for the security of Negros Island, even after you had landed in Negros Island?

MR. BONDA: Objection to the question, how long after he landed?

MAJOR FOJAS: All right.

Q On January 6, 1943?

MR. BONDA: How long after he landed does your question mean?

Q You did not feel responsible to General Inoue on January 6, 1943, when you landed in Negros Island? That is very definite now.

MR. BONDA: Responsible for what?

MAJOR FOJAS: For the security of Negros Island.

MR. BONDA: Okeh.

A No, I was not responsible on that date.

Q When did you feel your responsibility for the security of Negros Island commenced?

A It was after I grasped control of both battalions directly and took command of the two battalions.

Q Where was Colonel Ota when you arrived in Negros Island on January 6, 1943?

A French Indo-China.

Q Do you know how long before had he departed for Indo-China, before you arrived in Negros January 6, 1943?

A I believe it was about the previous year, in the month of September or October.

TS(5)LM

Q You mean September or October of 1942?

A Yes.

Q So that from September or October, 1942, up to the time you assumed control of the troops in Negros Island, there was no officer responsible to Major General Inoue for the security of Negros Island, is that what you mean to say?

MR. BONDA: Objection, he doesn't mean to say anything of the kind. That is a confusing question, we will not get a satisfactory answer, no matter what the answer is. There were officers there as long as there were soldiers there, and in the military an officer is always responsible to a superior. I don't think we will get a clear picture of it based on that question.

MAJOR FOJAS: The witness here is a colonel of the Japanese Army and the defense showed he had extensive military training and I don't think that question will confuse this witness to answer it. If what he is saying is true, the witness will be able to answer the question.

MR. BONDA: Well, the question, do you mean to say such and such a thing, is what I am objecting to, because he didn't say any such a thing or things. I have no objection to your asking who was in control, but that is objectionable when it is not based on anything that is not in the evidence. You can go into it all if you do it properly, but let's not intentionally confuse the witness.

COLONEL PARMELEE: Is the contention of the defense that the question is not clear?

MR. BONDA: The question is based on something that

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is not in the evidence.

COLONEL PARTELEE: In what respect?

MR. BONDA: He says, "Isn't it a fact, don't you mean to say," I am not quoting it exactly, don't you mean to say there is no officer responsible to Inoue for the security of Negros Island during the period from October to January? Now that he didn't say anything of the kind and I am objecting because he follows it with a question, isn't that what you mean to say, that is a question that is objectionable because it is not based on anything in the evidence.

MAJOR FOJAS: I am on cross-examination and I think I have a right to ask this witness this question. We have in the evidence, in the record, that Colonel Ota was responsible for the security of this island. Colonel Ota, according to this witness, left sometime in October or September, 1942. He received an order to relieve Colonel Ota of that responsibility and according to him he did not feel responsible for Negros Island until he assumed control of all the troops. So there was an intervening period from September or October, 1942, to the time he thought he could assume control of troops in Negros Island, in which there would be no officer responsible for the security of that island. I want to find out from this witness ---

MR. BONDA: That does not follow at all.

MAJOR FOJAS: That is why I am asking the witness the question.

MR. BONDA: Well, let me get a couple of words in any-

TS(5)LH

how, at least to earn my money. There is no such fact in the evidence. He made no such statement. As a matter of fact, parts of the statement were that he had the troops under his command during that period. I have no objection to the prosecutor asking any question he wants, showing the responsibility during any interval of time that existed, but I do object to putting the question in such a way as to confuse the witness, and I do object to him asking a question isn't it true you said such and such a thing when the Commission knows he didn't say anything or any such thing. It is exactly the same as misquoting evidence, and that we all know must be quoted or stated verbatim.

COLONEL PARMELEE: Let the Commission take over now. Will the reporter please read the question.

(The question was read as above-written.)

COLONEL PARMELEE: It is the opinion of the law member that the question assumed a fact that, or assumed something that is not true, inasmuch as there must be someone who is responsible to Major General Inoue during that period, and the objection is sustained.

MAJOR FOJAS: May I say a word, sir. The reason why I asked that question I knew that was not true, there must be somebody in command, but I would like to show to the Commission that the witness is not telling the truth in that respect. In other words, that is an absurd conclusion, and I want to find out from the witness if he will adopt such conclusion. The Commission will remember that there was testimony here that Colonel Ota was responsible for the security of Negros Island. The man who was to relieve Colonel Ota now claims that he did not feel responsible for the security of Negros Island until he assumed control of the island, so that in the intervening period there would be no, if we will follow the logic of the witness, there would be no one responsible to Colonel Inoue.

COLONEL PARILLEE: There was someone responsible all right, but who is it?

MR. BONDA: He has not asked him that.

COLONEL PARILLEE: The ruling is made just to that question, inasmuch as in the military, there is always someone in command of someone else. That is the basis of the ruling.

MR. BONDA: I object to the comments made by the prosecutor when he says that he is not telling the truth because that question was never asked of him. He was asked a very definite question and answered very

TS(5)mm

definitely, and the prosecutor avoids asking him who was in command and who was responsible and now is attempting to show that the man is not telling the truth. He never was asked those questions, and of course, now the prosecutor is assuming something when he says he is lying, and as a matter of fact, he is wilfully omitting or leaving something out. The only reason I now object is because that sounds like final argument, and I want to repeat again he never was asked that question.

COLONEL PARMELEE: Well, let's proceed.

MAJOR FOJAS: I think I have to answer him back after those remarks he just made.

COLONEL PARMELEE: Very well, you make one answer, and we will proceed.

MAJOR FOJAS: If I did not ask that question, it was because of the fact I have related that somebody was in command, and he was relieved and there was an intervening period. It was not wilful just to show that the witness was not telling the truth as defense counsel stated.

MR. BONDA: Well, there is supposed to be a situation of fairness on cross-examination also. Why don't you ask him the question then follow it through.

COLONEL PARMELEE: I think the views have been expressed on both sides, can we get back to the questions.

I think it would be a good time at this time for the Commission to take a short recess.

(Short recess.)

TS(5)mm

COLONEL PARKLER: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

Q Now, from the time Colonel Oto left Occidental Negros, as you said in September or October, 1942, up to the time you assumed control of the troops in Negros Island, who was responsible for the security of that island to Major General Inoue?

A I believe that the unit commander Yoshiyama and Fukuda were responsible to the general directly.

Q Is it not a fact that for the purposes of your assignment in Negros Island, the Fukuda and Yoshiyama units immediately came under your command?

MR. BONDA: Object. That question has been asked and answered any number of times, and it is also vague as to what he means, "for the purposes of your assignment."

COLONEL PARKLER: He has covered the assignment and the question appears proper. Objection overruled.

INTERPRETER YAMAMOTO: Sir, if I interpret the words, "purposes of assignment", they are vague in Japanese.

COLONEL PARKLER: Will you consult with the prosecutor and tell him what, tell him in what way it is vague and he can rephrase it.

MR. BONDA: I further object on the ground that the word, "immediately", is also too vague.

TS(5)mm

COLONEL PARIELLE: It is a matter of interpretation apparently.

MAJOR FOJAS: I'll withdraw the question and rephrase it.

COLONEL PARIELLE: Very well.

Q Is it not a fact that insofar as the security of Negros Island was concerned, the Fukuda and Yoshiyama battalions were placed under your command the moment you received your order assigning you to Negros Island?

A The order was given to me, but according to the order, I would not be the direct commander until I take over directly the Fukuda and Yoshiyama battalions. I would not be held responsible for the command until I actually take over the two battalions.

TS(5)mm

Q Did that order state the date when you should take control of the Fukuda and Yoshiyama battalions?

A I grasped control of the Yoshiyama unit on January 24th, and grasped control of the Fukuda unit on January 30th.

Q My question is, did the orders which you received from Major General Inoue state within what period you have to grasp control of those units?

A No.

Q So, in other words - - - withdraw that, please.

Will you please tell us again the formal procedure of grasping control of a particular unit in the Japanese Army?

A When changing the commander directly goes to the site and receives the report of the situation, and is fully informed. At that time it was possible that it be transferred to him.

Q So that if it took you six months from your arrival in Negros Island before you could go to the commander of the Fukuda and Yoshiyama battalions to receive a report of the conditions under their jurisdiction, you would not consider those battalions under your command within that period of six months?

MR. BONDA: May I have that question, please?

(Question read.)

A From the standpoint of common sense, that was done as quickly as possible.

Q Will you please answer the question? The question is if it took you six months to assume or to listen to the commander of that battalion about the conditions in the territory, you would not consider that battalion under your command within that period of six months, that is the question.

A Such suppositions do not exist. The commander goes to that spot immediately and receives a report.

Q Will you please tell us if you would consider the Fukuda battalion under your command if before the expiration of six months you were not able to listen to the commander of that battalion as to the conditions in that area?

MR. BONDA: Object to that question, sir, that that was not the fact. The fact was that it wasn't six months. I don't know what the purpose of that question is. If he is going to make it a hypothetical question, let him ask it as a hypothetical question, and have the witness answer it as an expert, which is a decided difference, but if he is going to set a state of facts it must conform to the evidence in this case.

COLONEL PARKELEE: It is obviously a hypothetical question, but it appears to be a proper question, and if the witness can be assumed to be an expert in the military profession he could answer that question.

MR. BONDA: That is right, but the hypothesis is not one based on the facts in this case. A hypothetical question must be propounded on facts that are in evidence in the case, and the facts are not in evidence in this case.

COLONEL PARKELEE: That is pertinent to this case, and it is right along the line. The objection is overruled.

Request defense counsel make his objection after the English question has been propounded, before the interpreters put it to the accused.

MR. BONDA: I didn't want to interrupt the interpretation. That is why I waited.

(Question interpreted to witness through Interpreter Sameshima.)

A From the standpoint of common sense, such suppositions, to me, will not exist, and furthermore I cannot draw any conclusions concerning the supposition. I believe that Major General Inoue ordered me to go to Negros due to the fact that in Negros the situation was confused and very critical. Therefore I did my best to take over the control of the two units as quickly as possible.

Q Could you not have assumed control of the Fukuda battalion by calling the commander of that battalion to your headquarters in Bacolod and asking him to report to you the conditions in his area?

A At that time the situation was very critical, and I don't think Battalion Commander Fukuda could have come to Bacolod.

Q Now, for the purpose of bringing the Fukuda Battalion under your command, was it absolutely necessary, according to the Japanese custom in the Army, for you personally to go to his headquarters and listen to Fukuda about conditions in his area?

A That is the correct procedure. It is also the positive procedure. Furthermore, at that time there were no wireless equipment, and since they were lacking in materials, there was no alternative but for me to go directly to Battalion Commander Fukuda.

Q All right, let's get this straight. The correct procedure was for you to go to Fukuda and listen to his report in his headquarters, is that correct, in order to assume command of that battalion?

A In order for me to grasp control of the Fuduka battalion I must go directly to meet Battalion Commander Fuduka and listen and learn about the actual situation, and only after that am I really the commander of the Fukuda battalion.

Q And it would not be correct procedure for you to have Fukuda come to your battalion to your headquarters and report the conditions to you there in order to assume command of his battalion, is that correct?

A Concerning the critical situation at this time existing in the Fukuda battalion area, he could not have come directly to me and then give me these reports of the situation.

Q Would you not be able to assume command of the Fukuda battalion if you simply asked Fukuda to come to your headquarters and report to you the conditions in his area? Please answer "yes" or "no."

MR. BORDA: If the Court please, that question has been asked in various forms for the past hour and I think it has been answered, and I think there is a limit as to how far you can go with the same line of questioning.

MAJOR FOJAS: I don't know what kind of answer he has given.

MR. BONDA: You should know, you have been here.

COLONEL PARMELEE: I believe the witness testified the conditions were such that Fukuda could not leave his command.

MAJOR FOJAS: That is not the point, sir. He testified here to a certain procedure by which a certain unit is placed under his command, and that is by him personally going to the headquarters of that unit and listening to the commander of that unit, and that would seem to be the only correct procedure for that unit to be under his command. Now, I am asking him if it would not be correct also if he just called Fukuda and have him make the report in his own headquarters, and he has evaded that question by giving an answer similar to this, that it was not possible for Fukuda to come, and so forth and so on.

COLONEL PARMELEE: In other words, you pursue that question because the response has not been attained?

MAJOR FOJAS: That is correct, sir. There is no response to my question.

MR. BONDA: If the Court please, the man has answered this. He was asked what is the proper way of doing it, and he has told him the proper way, but he didn't say it was the only proper way. He was asked is

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it also proper to have him come to you, and his answer was that the situation didn't permit him to come up there, so what other conclusion can be drawn but that that was proper, but the situation didn't permit he come up there, and that line has been pursued for the last hour or so.

MAJOR FOJAS: That is your conclusion, but I want the conclusion from the witness.

A F T E R N O O N S E S S I O N

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL PARKER: The Commission is in session.

MAJOR RAMIREZ: Let the record show that all members of the Commission are present, the accused and his defense counsel and personal interpreter, and the prosecution staff are also present.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Koide and Yamamoto:

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness by Interpreter Yamamoto.)

MAJOR FOJAS: We have a pending question, sir.

(The last question was read by the reporter.)

A No.

CROSS-EXAMINATION (continued)

BY MAJOR FOJAS:

Q So that the only way for you to assume command of his battalion was for you to go to his headquarters?

A Yes. I must go there and hear the situation, and then take over the responsibility.

Q Is it not a fact that the reason why you have to go to his headquarters was only to acquaint yourself with the condition of the territory?

BH(7)mm

A The condition, especially the enemy's situations.

Q Is it not a fact that for administrative purposes his unit was under your command even before you had been to his headquarters to acquaint yourself with the conditions of the territory?

MR. BONDA: Objection. I can't see the materiality of this question. We are not concerned in this case with administrative responsibility. We are concerned with actual responsibility for the operation of the troops.

There is a big distinction between administrative and tactical or other control of troops.

COLONEL PARMELLE: The matter of when command responsibility commences has many considerations. There is a technical time, and there are things to be considered in connection with it. The question seems to be pertinent.

MR. BONDA: Drawing an analogy from the American army, we have a lot of situations in which one unit would be attached to another for rations and quarters and administration only, and be under the active control of another unit.

I know that situation existed in the recent European war. At various times, we would be in one army for administration and in another army for a tactical situation.

COLONEL PARMELLE: Well, that perhaps is true. It probably is, but this is cross-examination, and I think the prosecution wants to develop this thing from all angles that he can, at the same time testing credibility.

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I believe he is due that latitude, because it certainly is pertinent to the testimony of the accused on direct, isn't it?

MR. BONDA: I don't think it is material is the whole point. Even if it is developed that they were under one unit administratively, no responsibility for their acts can attach for what they did in the field. I think it is immaterial.

MAJOR FOJAS: That is a legal question, and should be determined later on.

COLONEL PARKLEE: You see, the Commission has to make this determination, and the prosecution, I should say, has to develop the situation as much as they can for our information. It is considered material to the point of having some probative value, and objection is overruled.

INTERPRETER KOIDE: May I have the question read?

(The last question was read by the reporter.)

MAJOR FOJAS: May I add to the question this statement: When I used the word, "his", I am referring to Fukuda.

COLONEL PARKLEE: Very well. You had better restate the question then to the witness -- interpret it, rather.

MAJOR FOJAS: I will restate the question.

MR. BONDA: Wait a minute. You withdraw the question?

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MAJOR FOJAS: I withdrew the question.

Q Is it not a fact that for administrative purposes Fukuda's battalion was under your command even before you had been to its headquarters to acquaint yourself with the conditions of the territory?

MR. BONDA: I object to that question for the same reasons as stated as to the question preceding, which has been withdrawn.

COLONEL FARRILLE: Will you read that question again, please?

(The last question was read by the reporter.)

COLONEL FARRILLE: Objection is overruled.

(Question was translated to the witness by Interpreter Yamamoto.)

A Absolutely not. The only way I could control the unit was for me to go over there and listen and be informed of the conditions.

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Q I am not asking you about control of the unit, but I am asking you if, for administrative purposes, the Fukuda battalion did not come under your command even before you went to its headquarters to acquaint yourself with the conditions of the territory.

MR. BONDA: Objection. I think that question is indefinite as to what constituted "administrative purposes." I won't object to the question if the elements constituting administrative purposes are incorporated into the record.

There is a lot of difference even amongst Americans as to what constitutes administrative control and what constitutes other kinds of control.

COLONEL PARKELEE: Can you clarify that a little, or do you want the question to remain as it is?

MAJOR FOJAS: I want the question to remain as it is because "administrative purposes" is a technical term.

COLONEL PARKELEE: It is a military term, and we of the Commission understand what it means. The witness should understand. If he does not understand, he can say so. Objection not sustained.

(Question translated to the witness by Interpreter Yamamoto.)

A Under combat conditions, the administration is quite different from ordinary times. At that time there was battle going on, and one had to go to that site, and then, unless one finds out the actual enemy conditions and terrain,

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order giving responsibility cannot be given.

Q I would like you to answer this question, "Yes" or "No." Is it not a fact that for administrative purposes the Fukuda battalion was under your command even before you had been to its headquarters to acquaint yourself with the territory?

A No.

Q Do you mean to say now that prior to January 29 or 30, 1943, when you said you took control of the Fukuda battalion, that battalion had no relation whatsoever with you as commander of the island of Negros?

MR. BONDA: Wait a minute. I object to that. That question is indefinite. "Relation to you" -- I don't know exactly what that means. I don't think the witness can be expected to know what that means.

MAJOR FOJAS: The entire relation or connection with you.

MR. BONDA: Everybody in the Army has a connection with somebody else somewhere along the line.

MAJOR FOJAS: He can answer the question.

MR. BONDA: I object on the ground that that is too vague and indefinite for the witness to be able to give an intelligent answer.

COLONEL PARMELEE: Will the reporter read the question, please.

(The last question was read by the reporter.)

COLONEL PARMELEE: Objection not sustained.

(Question translated to the witness by Interpreter Yamamoto.)

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A Yes.

Q Do you remember having been interrogated by investigating officers of the War Crimes Investigating Detachment on April 11 and 13, 1946?

A Yes, I remember being questioned.

Q Do you remember having signed a statement in connection with that interrogation?

A Yes, I signed it.

MR. BONDA: Let the record show the prosecutor is going towards some piece of paper, and I want to make this statement:

If the prosecutor is going to use this statement, if he is going to read from it, if he is going to use it for impeachment, I want a recess so I have an opportunity to cross-examine on it.

MAJOR FOJAS: I am laying my foundation for impeaching this witness for having made a contradictory statement previous to his examination in this courtroom.

MR. BONDA: I won't object to your using it. I do want the privilege of reading it before you use it. I want to read the entire document. Otherwise, I object to any part of it for impeachment or any other purpose.

COLONEL PARMELEE: At this point it is believed that a foundation is being laid. That is, the document has not come into question yet.

MR. BONDA: Maybe I am premature, but I assume, and I think my assumption is proper, that the prosecutor is going to read from that record, read from that paper.

COLONEL PARMELEE: Until he does, it would seem

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proper.

MR. BONDA: Before he even reads from it, before he reads one sentence, I want the right to examine the entire document.

MAJOR FOJAS: I am not yet reading from the document.

MR. BONDA: If you are going to refer to it for a contradictory statement made out of court, I will object to any reference whatsoever to it, unless I first have the right to examine the entire document, and not merely an excerpt.

COLONEL PARMELEE: At this point, the document is not in issue. It is true the prosecutor has a paper in his hand. I don't know what it is, nor does any member of the Commission.

MR. BONDA: Well, the prosecutor has questioned him about a statement that has been signed. What other document can he have reference to?

MAJOR FOJAS: I asked him if he signed a statement in connection with that interrogation. That is all. Nothing yet.

MR. BONDA: I am stating my position. I want it clear so there will be no misunderstanding when he pops up and reads very rapidly, as he has done before, from a document before I can stop him.

COLONEL PARMELEE: I am sure that he will agree to read slowly; and the question is ruled proper.

Q Do you remember having stated during that interrogation that you assumed command of all the troops in Negros

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Occidental, especially those troops stationed from Bago to Victorias, and all other troops south of the Bago River on January 4, '43?

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MR. BONDA: I object to that question unless it is stipulated as to whether those are his exact words. If they are his exact words, I want to know how those words were uttered; and if they are in a written form, I want to see those words.

MAJOR FOJAS: I am asking him if he made that statement.

MR. BONDA: I know you are. I am objecting to it. There is no such statement in evidence, sir.

COLONEL MANNIER: He is laying a foundation. I believe that your legal procedure is to ask him if at such and such a time, before a certain person, on a certain occasion, he made a certain statement. Is that correct?

MAJOR FOJAS: Yes, sir.

MR. BONDA: I don't know when the foundation starts and the question itself begins, but apparently the prosecutor has a document in front of him that I would like to see.

MAJOR FOJAS: I will show you it if I use the document. Don't you worry.

MR. BONDA: At which time I would like to have a subpoena issued to the prosecutor that I be permitted to read, to see, an affidavit that he has questioned him about as having been signed by him before an investigating officer at some previous time.

It is an official document. If that is what it is, it is an official document. I have a right to see it.

MAJOR FOJAS: I have no comment to offer, sir.

COLONEL MANNIER: No offer has been made of any document to the Commission; insofar as the Commission is concerned, there does not exist any such document except by inference. There is nothing here that indicates that there is

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any such document that is going to be used in the trial at this point. That statement is the question, I believe, propounded to lay a foundation for -- possibly for impeachment.

MR. BONDA: I have no objection to using a contradictory statement for impeachment. What I want is a right to examine to see whether the questions he asks him are actual questions or whether he is making them up.

It is very easy to ask any question, "Didn't you, on such and such a date, say such a thing?" The witness can't remember whether he did or not.

If it is based on a written document, let us see that document, and see if he did make such a statement. I can't intelligently defend this man unless I know what he is basing that statement on.

I am merely asking for the privilege of seeing a document that has been referred to. That is all I am asking for; and to have a brief recess to scan it.

MAJOR FOJAS: I don't know of any rule of evidence that would require me to do that before asking the question.

COLONEL PARMELEE: In previous trials on which I have been a member of the Commission, the prosecution at times has refused to give such a document to the defense. That is, they immediately said that they did not have to do it as a matter of right, legal requirement.

Some prosecutors did let the defense see it when it was being used. I don't know at this point, however.

The question propounded is ruled proper.

Now, if it turns out that the exact words used are not those in the document, or, that is, that the words in the document that these purport to be are not the same as the words of the document, then that would seem to be a matter of complaint on the part of the defense.

MR. BONDA: How can we tell if we don't examine the document?

COLONEL PARMELEE: I am sure that the prosecutor -- I won't say I am sure. I don't know. I am sure if he uses the document that he will have no objection to letting you see it. I may be wrong.

MR. BONDA: He has already used the document. He has already propounded a question at which time he was using the document. I want the record to show that he has already used that document.

MAJOR FOJAS: What time did I use the document?

COLONEL PARMELEE: The document now is on a lectern which is at an angle, and I cannot see through the plywood. I don't know what it is.

MR. BONDA: If for nothing else than to refresh his memory, he has already used that document. He has based a

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question on what I suppose is in that document, and I don't know because the prosecutor will not let me see it.

MAJOR FOJAS: I will let you see the document if I use that document.

MR. BONDA: Haven't you used it?

MAJOR FOJAS: No.

MR. BONDA: Haven't you read from it when you propounded the question?

MAJOR FOJAS: No, I am trying to find out.

MR. BONDA: Will you please read that last question?

REPORTER HOLTMAN: (Reading) "Do you remember having stated during that interrogation you assumed the command of all the troops in Negros Occidental, especially those troops stationed from Bago to Victorias and all other troops south of the Bago River on January 4, 1943?"

MR. BONDA: Now, I ask the prosecutor whether he didn't get that information from the document?

MAJOR FOJAS: I don't have to answer that, I am entitled to ask that question.

MR. BONDA: Well, it is based on the document and I have a right to see it.

MAJOR FOJAS: There is no rule of evidence which requires the prosecution to submit any document they have in their possession.

MR. BONDA: I challenge that statement. I say if you read from something, from some document, I have a right to see it. You have refused to answer my question. If you base your question on something you are reading from some document, I have a right to see that document.

MAJOR FOJAS: I am merely asking the witness if he has already made that statement.

COLONEL PARMELEE: The question is ruled proper.

A No, I did not say it.

Q Are you sure of that now?

A Yes.

Q You stated that during that interrogation you signed a statement. If I show you that statement would you be able to

identify it?

A I may have signed a statement, but I don't know exactly what I was questioned about.

Q Now, showing you this document, will you please tell us if this is your signature?

MR. BONDA: I would like to see the document, I would like to have a recess so I can carefully scrutinize it before the witness is questioned concerning it.

MAJOR FOJAS: I just want the witness to identify it if he recognizes it, you can see it.

A Yes, that is my signature.

Q Now, are these initials appearing on the other page of this document your initials?

A Yes.

MAJOR FOJAS: Here, you want to see it? (Major Fojas handed the document to Mr. Bonda.)

MR. BONDA: I would like a recess.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

MAJOR FOJAS: I would like to make this statement for the record, that during the recess defense counsel was handed a document, and was given an opportunity to read the document from which the prosecution is going to read some

questions and answers to impeach the testimony of this witness.

MR. BONDA: May I merely state this, sir? It is perfectly proper for a statement made out of court to be used for impeachment purposes, however, this document is identically the same in substance as documents that were taken by the WCID of witnesses produced in this Court by the prosecution. I have asked repeatedly for those affidavits and wanted to use them for impeachment purposes in connection with witnesses called by the prosecution. I was denied that privilege, and now the shoe is on the other foot, and because I was denied the right to subpoena those documents, I was precluded impeaching the witnesses which the prosecution has brought in here. It is exactly the same thing. The privilege of using those documents for impeachment purposes has been denied us, but the right to impeach our witnesses by the use of those documents has been given to the prosecution. I maintain that the prosecutor is right in reading it into the record, but we should have had the same right also. Those documents are in the hands of the prosecutor at all times, and if they were not in court the prosecutor could have produced them. The Court will remember that one of the documents began with number 13 and the prosecutor said that is a part of the file. They had those affidavits, or if they didn't have them in court they could have gotten them. Those documents are made in four copies, one given to the prosecutor, one remains in the file, and I don't know what happens to the other two, but those are public files, public documents and we have a perfect right to see them and the Court denied us the right to have them subpoenaed when we

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wanted to use them.

MAJOR FOJAS: May I say something, sir? There is no privilege being denied the defense in this case, the only question is whether documents which constitute part of the files of the WCID are available to the defense. This question has been appealed to a higher authority and it has been ruled that those files are not available to the defense, and that is the only thing that has been denied the defense.

MR. BONDA: That is a very empty gesture. We have not been denied the use of the document, to use the documents, but we have been denied access to them. You have no better standing in this Court than the defense has. You can't use a WCID file if we aren't permitted to do so, and it wasn't the WCID files we wanted, but particular documents that were named by the prosecution witnesses. I wanted to get those particular documents for impeachment purposes and was denied that right, and I want that to show clearly in this record.

MAJOR FOJAS: I believe that has been brought to the attention of the higher command and that the decision was adverse to defense.

MR. BONDA: I deny that statement, that was not stated.

MAJOR FOJAS: May I proceed, sir, with the examination of the witness?

COLONEL PARMELEE: Proceed.

Q Now, can you remember having been asked the following questions and given the following answers in this statement which you have just identified, that has been signed by you

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during the interrogation made by investigating officers of the WCID on April 11 and 13, 1946:

"Q At the time your battalion arrived in Negros on January 4, 1943, who was in command of the Japanese Army garrisoned in Fabrica?

"A The Yoshiyama Battalion. It was then under the command of Lieutenant Colonel Yoshiyama, referred to previously as Major Yoshiyama.

"Q When you took command of all forces in Negros, who remained in command under you of the garrison in Fabrica?

"A I was in command of the whole island, divided into different sections. (The witness draws a sketch identified as number 2 showing the battalion of Yoshiyama in northern Negros, his own battalion of troops in central Negros, and the battalion of Major Fukuda in southern Negros.)

MR. BONDA: While you are reading that, may I have Major Ramirez's copy to follow?

MAJOR FOJAS: It is all right.

MR. BONDA: The Court will notice there are at least two copies of those available to the prosecution.

MAJOR FOJAS: May I proceed now?

MR. BONDA: Yes, what page are you reading on?

MAJOR FOJAS: 7.

"Q Is this sketch No. 2 the way you set up the command in Negros at the time you arrived?

"A Yes. Generally speaking this sketch identified as No. 2 shows the command.

"Q At the time you arrived in Negros, in addition to the

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Yoshiyama Battalion being in northern Negros, and the Fukuda Battalion being in southern Negros, who occupied the area on the sketch No. 2, identified as eastern Negros?

"A One company of the battalion of Fukuda occupied southern Oriental Negros south of a line crossing Negros from the Bago River (a point just north of the town of Pulapandan in Occident· Negros.) to a point just north of Bais in Oriental Negros. The rest of Fukuda's Battalion occupied Occidental Negros south of a line crossing Negros from the Bago River to the point just north of Bais. My battalion occupied the area from the Bago River north to the town of Victorias. The battalion of Yoshiyama, at this time, occupied northern and northeastern Oriental Negros from Victorias to the point just north of Bais.

"Q Is it correct that you were the commander of the battalion that garrisoned the area from Bago River to Victorias and in addition the commander of all Negros from January 4, 1943 until the middle of August, 1944?

"A Yes."

Do you remember having made those answers to the questions I have read?

A Yes, I remember for sure.

COLONEL PARMELEE: Off the record.

(Off-the-record discussion.)

Q Now, can you explain to the Commission why you said in this statement in effect that the Fukuda and Yoshiyama battalion came under your command on January 4, 1943, and now in your testimony in this case, you maintained that the Fukuda and Yoshiyama battalion did not come under your command until the 29th and the 25th of January, respectively?

MR. BONDA: He didn't say the 29th; he said the 30th.

MAJOR FOJAS: The 30th.

COLONEL PARMELEE: The 30th of January.

Q The 30th of January, and the 25th respectively.

A My statements I made are true.

Q Is that the only explanation you want to give to the Commission?

A On January 4th, I was beginning the mission ordered by Major General Inoue to proceed to Negros and take over the command, but in actuality to be my responsibility of command I went to Fabrica on January 24th, and met Major Yoshiyama and took over the Yoshiyama battalion under my command, and on the 30th of January at Binalbagan I went to meet Major Fukuda, and after hearing of the conditions, and so forth, I took over the command of the Fukuda battalion. Therefore, from that date on it was in reality my responsibility of command. Therefore, according to the

EGM(9)mm

order which I mentioned this morning in the third paragraph concerning the details of this position in Negros, that I, Colonel Yamaguchi, would be in command after directly grasping control of the battalions.

Q Did you not testify that you made an expedition on the 14th, 15th and 16th of January in the territory east of Silay in Negros?

A Yes.

Q And did you say Yoshiyama was with you on that expedition?

A Yes.

Q Did not Yoshiyama inform you of the conditions of his territory during that expedition?

A At that time we did not discuss the matter. We did not discuss the security area under the command of Yoshiyama.

Q Did you also testify that you met Yoshiyama in Bacolod sometime on the 8th of January, 1943?

A Yes.

COLONEL PARMELEE: May I verify that date, the 8th of January?

MAJOR FOJAS: The 8th of January.

Q And did not Yoshiyama inform you of the conditions in his territory on that occasion?

A At that time we discussed and I learned about the over-all conditions concerning the guarding duty of the Ota unit, and I did not receive any report concerning the situation that occurred at the Yoshiyama battalion area, and I received that only on the 24th of January at Fabrica.

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COLONEL PARKER LEE: The Commission will take a short recess.

(Short recess.)

EGM(9)mm

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness by Interpreter Yamamoto.)

MAJOR FOJAS: I would like to make a correction in my previous question. Instead of stating "the 8th of January, 1943," I would like to state, "within the first eight days after he arrived in Negros in January, 1943."

MR. BONDA: I ask that his answer "Yes," be stricken, and that it be put to him again.

COLONEL PARMELEE: I believe we should refer to the question. The witness was asked if it was correct that he had a conference with Major Yoshiyama on January 8th in Bacolod, or words to that effect. The date is the important thing.

According to the evidence, that date was never fixed. It was within the first eight days, the witness had testified on direct examination, and he answered that it was on January 8th.

I believe it would be prejudicial to let that answer stand, because I don't believe he understood the question, and there is nothing in evidence to show that that was the specific date.

If the prosecution wants to ask that question only, and use "within the first eight days after he arrived in Negros," we will strike the previous question and answer if there is no objection.

MR. BONDA: No objection.

MAJOR FOJAS: I am willing to do that, sir.

BSH(10)ss.

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness by Interpreter Yamamoto.)

MAJOR FOJAS: I would like to make a correction in my previous question. Instead of stating "the 8th of January, 1943," I would like to state, "within the first eight days after he arrived in Negros in January, 1943."

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If the prosecution wants to ask that question only, and use "within the first eight days after he arrived in Negros," we will strike the previous question and answer if there is no objection.

MR. BONDA: No objection.

MAJOR FOJAS: I am willing to do that, sir.

BSH(10)ss.

Q Did Yoshiyama inform you of the conditions in his territory at the time you met him in Bacolod during the first eight days after you arrived in Negros in January of '43?

A Yes, he told me the overall situation.

COLONEL PARMELEE: I believe the accused should be informed of that correction unless the personal interpreter will do it.

MAJOR FOJAS: Should be informed of the error in the date?

COLONEL PARMELEE: Yes. That he was asked that question, and the question put was given specifically as January 8th. He answered, "Yes." This question now is to cancel that, and show that it was within the first eight days after his arrival.

MAJOR FOJAS: If the personal interpreter will step forward --

MR. BONDA: Do you understand the change?

PERSONAL INTERPRETER: Yes.

MR. BONDA: I think the official interpreter can explain that better than the personal interpreter.

COLONEL PARMELEE: The question was asked if he was informed on January 8th of the situation by Yoshiyama, when he visited presumably in Bacolod.

Nothing in evidence showed the date of January 8, so the question has been asked again, based on the evidence brought out on direct examination, which was "within the first eight days after his arrival in Bacolod," and this question was just to correct that.

(Translated to the witness by Interpreter Yamamoto.)

MAJOR FOJAS (To Interpreter Yamamoto): Are you telling him the situation?

INTERPRETER YAMAMOTO: Yes.

COLONEL PARMELEE: All we are doing is substituting that "within the first eight days," he was informed by Yoshiyama for a specific date of January 8th. He had testified that was the date.

MR. BONDA: I would suggest, sir, that the prosecutor and I find out what he said, and see whether it is responsive to anything that is pending.

COLONEL PARMELEE: Yes. We will withdraw without taking a recess. We will withdraw.

(A session off-the-record.)

Q At the time you met Yoshiyama in Bacolod, did you inform him that you came to Negros to take over command of the island?

A Yes.

Q And did you inform him on that date that you were to take control of the Yoshiyama and Fukuda battalions?

A I received an order to take command.

Q Did you inform Yoshiyama of that order when you met him in Bacolod?

A I told him that I had received an order that his unit would be put under my command.

Q Did you mention to him also the fact that you had an order to take command of the Fukuda battalion on that occasion?

A Yes.

Q Having been informed by Yoshiyama some time in the first eight days after your arrival in Bacoled of the overall situation in northern Negros, and having taken Yoshiyama with you on an expedition for three days, why was it that you assumed control of his unit only on the 24th of January?

A I heard about the general overall situation of northern Negros. There was a bandit base east of Silay, and in order to accomplish my duty of guarding, there was a necessity of carrying out an expedition immediately, for the situation required it at that time.

I, as senior officer, took command of combat, and at the same time commanded the Yoshiyama unit. After the expedition, I grasped control of the Yoshiyama unit for the purpose of security.

Q So you commanded the Yoshiyama unit during that expedition in which you were engaged in battle, is that correct?

A Yes, I commanded the battle.

COLONEL PARMELEE: The Commission will now adjourn, and will reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1500 hours, to reconvene at 0830 hours, 10 January 1947.)

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME XLIV

PAGES 3032 TO 3079 INC.

DATE 10 January 1947

MANILA, P.I.

COPY NO. 4

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
10 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD.L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT SAMUEL S. KOIDE	)	
2ND LIEUTENANT JAMES NAKAMURA	)	Japanese
2ND LIEUTENANT FRANK YAMAMOTO	)	
PETRONILO VALLEJO	)	
CAESAR YO ALZONA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER
BERTHA S. HOLTMAN

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXAM.BY COM'.
Masakazu Yamaguchi		3032 (Cont'd)			

P R O C E E D I N G S

(The Commission reconvened. pursuant to adjournment, at 0830 hours, 10 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P. I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with defense counsel and personal interpreter, and the members of the prosecution staff are also present.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Koide:

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

CROSS-EXAMINATION (Cont'd)

BY MAJOR FOJAS:

Q Before you went to Kabankalan on the 30th of January 1943, did you have any occasion to talk to Fukuda?

A I did not go to Kabankalan.

Q Before you went to Binalbagan on the 30th of January 1943, did you have any occasion to talk with Major Fukuda?

A No.

Q Were you able to inform Major Fukuda before the 30th of January 1943, either by courier or by any other means of communication, that you were assigned to Negros and that you were to take command of his unit?

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A Yes, I believe so.

Q How were you able to inform him of those facts?

A If we went by sea we could make contact.

Q I am speaking of the date or the time before the 30th of January, before you went to Binalbagan, were you able to inform him before that date that you were to take command of his unit, being then assigned to Negros?

A Do you mean me?

Q Yes.

A I believe that the contact was made by the way of the sea.

Q When was that contact made?

A The contact was made on the 30th.

Q I am asking you, if before the 30th, you were able to inform Fukuda that you were to take command of his unit because you were then assigned to Negros?

A It would have been possible, the contacts are made by way of the sea.

Q I am asking you if you made contact with Fukuda before the 30th, will you answer that "yes" or "no?"

MR. BONDA: I think the last question, the question at least originally was, were you able to make contact, not did you make contact, and he answered that by saying it would have been possible to make contact by way of the sea.

COLONEL PARMELEE: Will the reporter read back the questions and answers?

(Reporter read the questions as directed.)

MR. BONDA: The previous questions all related as

to whether it was possible to make contact.

COLONEL PARMELEE: If he was able to.

MR. BONDA: That is right.

COLONEL PARMELEE: And he said he thought it could have been done by way of the sea.

MR. BONDA: That is right, and now he is asking did you, that isn't the question that was originally asked.

COLONEL PARMELEE: The objection, I don't quite get it.

MR. BONDA: The objection is to the fact that he is referring in this last question to the fact that he was asking whether he did make contact, actually he said was he able to make contact, because that is what the previous questions were.

COLONEL PARMELEE: He is trying to find out whether any contact was made prior to the 30th of January.

MR. BONDA: That wasn't the point, the point was, were you able to make contact, and now suddenly he says, "I asked you did you make contact," that isn't what was asked.

MAJOR FOJAS: I think, sir, I can ask both questions.

COLONEL PARMELEE: The answer is not strictly responsive then. That is the point.

MR. BONDA: The whole series of questions, up until now, he is trying to find out whether he could have made contact.

MAJOR FOJAS: No, that is not true.

MR. BONDA: We just finished reading the questions and answers, and in every one of those questions you asked were you able to make contact. Okeh, go ahead. We read and

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pointed out what the series of questions were.

COLONEL PARMELEE: The purport of the question is to find out actually whether there was contact made. That is the way the question was asked.

MR. BONDA: Well, you can't shift around and make one question "did you", and another, "were you able to."

COLONEL PARMELEE: The difficulty seems to be over the use of the words "were you able," and the answer does not seem to be strictly responsive.

MAJOR FOJAS: It is not responsive.

COLONEL PARMELEE: Now, is that objection ---

MR. BONDA: My objection is to the last question. The last question does not follow the preceding questions unless he is changing his entire line of questions.

COLONEL PARMELEE: Well, the question appears to be proper to ask point-blank this or point-blank that, to be answered by the witness however he sees fit, objection overruled.

A No.

Q Did you ever make an attempt to get in touch with him before the 30th of January?

A No.

Q Why?

A The northern part of Negros was important, so we tried to control the northern part and then control the south.

Q In other words, you did not believe that it was important enough to get, to grasp control of the unit of Fukuda ---

MR. BONDA: Objection, as much as you have asked. No such evidence there. He said it was important, not important enough compared to something. Ask him questions and use the purport of what he said, please.

MAJOR FOJAS: I have not finished the question, sir.

COLONEL PARMELEE: The question hasn't been finished.

MR. BONDA: We have that much of it which is objectionable.

COLONEL PARMELEE: Let's have the whole question. I can't make a ruling on the question when it isn't finished.

MAJOR FOJAS: I submit no ruling can be made on the question before it is finished.

MR. BONDA: If it starts out leading, you can object to it.

MAJOR FOJAS: That is entirely a different matter.

MR. BONDA: If it shows from the beginning it is objectionable --

MAJOR FOJAS: Will the reporter read the part of

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the question I have already propounded?

(The question was read as directed.)

Q -- compared with the unit of Yoshiyama in the northern part of Negros?

MR. BONDA: Object to the question, important enough compared to, doesn't make sense to me. It is either important or it isn't.

COLONEL PARMELEE: This is cross-examination to test this and that, I believe it is proper.

MR. BONDA: But you still can't repeat words and say did you say this when he didn't say it.

COLONEL PARMELEE: It follows perhaps along the line that the witness has been testifying now. The prosecutor is making certain deductions and is going to propound the question here to test credibility perhaps; objection overruled.

A To explain it in detail, there were many important structures and cities and industrial installations in the northern part, therefore, we controlled that area and then later moved on to the south.

Q Is it not a fact that one of the purposes, while you were assigned to Negros, was to guard the security of the Island of Negros?

A Yes.

Q And in guarding the security of Negros Island, that included guarding against guerrilla activities, is that correct?

A Yes.

Q Upon your arrival in Negros on January 6, 1943, were

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you not aware of guerrilla activities in the southern part of Negros, south of the Bago River?

A Yes, I knew it.

Q And did you not consider it necessary to get in touch with the unit of southern Negros to guard against guerrilla activities?

MR. BONDA: Objection, sir, for a full day now we have had the same question answered in about ten different forms. There must be an end somewhere. There has been a wider leeway in cross-examination than ordinarily is permitted. The question in a different form has been asked for, I wager to say, twenty times already.

MAJOR FOJAS: I have not asked that question except for the first time today.

COLONEL PARMELEE: Well, this is cross-examination, and I presume permissible in testing credibility.

MR. BONDA: Repeated repetition is never permissible. You may repeat one or two times, but you can't go on forever. The man can be on the stand for a year, there is a limit.

MAJOR FOJAS: I have not asked him that question before.

MR. BONDA: At least ten different times in a different form.

COLONEL PARMELEE: Objection not sustained. The question will be answered.

A Yes, that is true.

Q And in spite of that belief, you did not even attempt to get in touch with Fukuda until the 30th of January, 1943,

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is that correct?

A Yes.

COLONEL PARMELEE: That is an answer that is equivocal, isn't it? Read the question and answer.

(The question and answer was read as directed.)

COLONEL PARMELEE: That is an example of that type of question that can be construed both ways.

MAJOR FOJAS: I will ask one more question.

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Q When you say "yes," you mean to say that you did not get in touch with Fukuda, is that correct?

MR. BONDA: That is the same thing.

MAJOR FOJAS: What?

MR. BONDA: Well, then, we won't know whether the answer is "yes, I did not mean it," or "yes, I did not get in touch with him."

COLONEL PARMELEE: The point I make is that the question could be taken two ways; it seems to have two parts. One part of it is, "Is this situation correct," and so forth, "as I stated here," or, "Did you do something, or didn't you do something;" that is the equivocal part of it. Someone who would read the record and didn't know what went before.

MAJOR FOJAS: I think the question is just one part, in spite of his belief that it was important he did not get in touch with Fukuda until the 30th.

COLONEL PARMELEE: Well, then, refer to the question. How does the last question read?

(Question read.)

A. Yes.

Q Where did you establish your headquarters when you arrived in Bacolod?

MR. BONDA: Was that "when" or "where?"

MAJOR FOJAS: Where.

A We often moved. At the end of January I think we established headquarters in the high school.

Q The end of January of what year?

A Of January, 1943.

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Q When you said high school, you meant the Bacolod High School?

A Yes.

Q Until when did you stay at the Bacolod High School?

A I believe it was until August, 1944.

Q Besides your battalion headquarters were there any units stationed at the Bacolod High School during the period from January 30, 1943, to August, 1944?

A There were times when there were other units.

Q What were those units?

A I don't remember clearly, but units which came to Bacolod stayed at my place in the high school, and then departed, and I do not remember the names of the units. When they landed the units had no place to stay, so therefore they came to our place.

Q You do not remember any of those units now, do you?

A I don't remember what units they were.

Q But those units never used the Bacolod High School as their headquarters, is that correct?

A The units just stayed there to stop over and spend the night, so I believe that they did not use it as their headquarters.

Q And those units you mentioned were also under your command, is that also right?

A No, it was not the units under my command.

Q But during the period from January 30, 1943, to August, 1944, there was no unit which used the Bacolod High School as its permanent headquarters except your units, is that correct?

A Yes, that is correct.

Q Are you familiar with the Domestic Science Building within

the compound of Bacolod High School?

A I don't know.

Q Where in the high school did you have your office?

A One room in the area northwest of the school was being used as the unit commander's office, which is my office. The adjutant's room, intelligence room and the intendance office, and so forth --

MR. BONDA: What was that word?

INTERPRETER YAMAMOTO: "Intendance," which means their supply.

COLONEL PARMELEE: I-N-T-E-N-D-A-N-C-E, is it, which is where the noncommissioned officers had their supply, is that correct?

INTERPRETER YAMAMOTO: Yes, sir.

A -- were located in the classroom of the school. I do not know how the classrooms were used formerly.

Q Do you know if that building where you had your office was called the Domestic Science Building or the Home Economics Building?

A I don't know.

Q It was a one-story building, was it not?

A Yes.

Q How many men did you have quartered in the high school during the period I have mentioned?

A Depending upon the times; it varies.

Q What was the average number of men that you had quartered in the high school during the period from January 30, 1943, to August, 1944?

A I believe about 140 or 150.

Q Can you recall if there was a guard house in front of the Bacolod High School?

A Yes.

Q Can you recall if in that guard house there were two cells where prisoners were confined and detained?

A Yes.

Q Do you remember if during the period from January 30, 1943, to August, 1944, if any prisoners were ever kept in those two cells in the guard house?

A Yes.

Q And you had an officer who was under you assigned to take charge of the prisoners in the guard house, is that correct?

A That was done by the intelligence section.

Q And the officers and men in the intelligence section were under your command, is that not correct?

A Yes.

Q Do you know in what part of the high school, in what building or room of the high school where investigations of these prisoners were initially conducted during the period January 30, 1943, to August, 1944?

A No. I believe there was no designated spot for investigation.

Q Were you aware that prisoners were investigated within the high school compound during that period?

A Yes, I knew they were being investigated.

Q Did you have a man under you by the name of Akira Takeshita?

A Yes.

Q Do you know if that man had access to the prisoners confined in the guard house during the period from January, 1943, to August, 1944?

A Yes, I believe he investigated.

Q In the Bacolod High School while it was being used by you as your headquarters did you maintain there such a thing as a Spiritual Training School?

A Yes.

Q From what date to what date did you maintain that Spiritual Training School at your headquarters?

A I don't remember exactly, but I believe it was started from February of 1943 until January of 1945.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

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COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness by Interpreter Koide.)

Q Is it not a fact that suspected guerrillas and guerrillas who were brought to the Spiritual Training School were made members of the Standing Army or the Philippine Constabulary after graduation from such school?

A They were not guerrilla suspects, but actually designated and investigated as guerrillas. Not all of the guerrillas were put into the Training School, but just a portion of the guerrillas that were captured were put into the school.

They were put on jobs depending on the interests of the men. Also, taking account of their intelligence, they were placed into the Standing Army, or placed on jobs in a company; and those without any jobs we tried to assist.

Q And the members of the Philippine Standing Army which you maintained in Negros Island during the period that you were commander in that island were under your command, is that correct?

A No. The Standing Army was under my command, but the Philippine Constabulary was not.

Q When you were questioned by defense counsel on Specification No. 4, regarding mistreatment and torture of Emilio Gomilla, you said that you do not know that name, but that you knew that he was a guerrilla. How did you know that he was a guerrilla?

A During the time of the spiritual education, there were approximately a thousand men. Consequently, I cannot remember each and every one's name.

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However, when the said witness came on the stand, I recollect his face, and believe he was in the school; and therefore he must be a guerrilla.

Q In other words, you did not know personally that he was a guerrilla, but because you saw him, and you remembered that he was a member of the Training School, you came to the conclusion that he was a guerrilla, is that correct?

A Since the said witness was in the Spiritual Training School, he is a guerrilla.

Q Is it because he was in the Training School that you concluded he was a guerrilla, or was it because at that time - - it was December 1943 - - members of your Intelligence Section and the Kempei Tai were conducting investigations of spies and guerrillas in Bacolod?

MR. BONDA: Will you read the question.

(The last question was read by the reporter.)

MR. BONDA: Objection. He has answered the question and said he knew he was a guerrilla because he was in the Spiritual Training School.

COLONEL PARKELEE: On cross-examination it is proper to ask again, pursue that line for credibility. Is that the law?

MAJOR FOJAS: Yes sir, I thihk so.

MR. BONDA: It may be pursued for credibility, but he can't put words into his mouth that don't exist. There is nothing in the record that says he knew he was a guerrilla because they were conducting a spy investigation.

MAJOR FOJAS: I am not obliged to accept the answer of the witness.

MR. BONDA: I wish you would remember that when I am examining.

MAJOR FOJAS: I did remember that.

COLONEL PARMELEE: Objection overruled.

(Question translated to the witness by Interpreter Koide.

A Do you mean that one of the reasons that I said he was a guerrilla was that after the Kempei Tai investigated the said witness in Bacolod they told me about him?

Q What I want to find out is the real reason why you said he was a guerrilla. When you were questioned by defense counsel about this man, you gave this answer:

"I do not know the name, but I know that the Kempei Tai and my Intelligence Section were investigating the spies who went into Bacolod."

Now, this morning, a while ago, when I asked you, you gave me a different reason; and the reason you gave was that he was in the Training School.

I want to find out which is the real reason. Was it because he was a member of the Training School or was it because the Kempei Tai and your Intelligence Section were investigating spies in Bacolod?

MR. BONDA: Now, if the Court please, the prosecutor, as usual, has misquoted what this man has said on previous testimony. Will you read that question please?

(The first two paragraphs of the question were read by the reporter.)

MR. BONDA: Stop right there. That answer was given in response to the following question, sir:

"Do you know anything either from hearsay or direct knowledge about the alleged mistreating and torture of

Emilio Gomilla at the Bacolod Public High School during the month of December, 1943 and January, 1944? Specification 4."

He does not say that is the reason he knows. He says: "I do not know the name, but I know that the Kempei Tai and my Intelligence Section were investigating the spies who went into Bacolod."

That does not say why he knew him. Here we have the next question that tells why he knew him.

MAJOR FOJAS: That is the next question?

COLONEL PARMELEE: What page is that you are reading from, please?

MR. BONDA: 2904. He says, "That is what your answer was in response to that question." I submit it was not, sir. If you are going to read from the record, read the words of the question, too.

MAJOR FOJAS: It is not necessary.

MR. BONDA: Of course it is not necessary for you, because you are trying to mislead the Commission.

MAJOR FOJAS: No sir. That is why I am asking the witness if he will stick to that answer.

COLONEL PARMELEE: Will the reporter read the question.

(The last question was read by the reporter.)

MAJOR FOJAS: I am asking the witness which is the real reason, why he knew that this man was a guerrilla.

MR. BONDA: He said he gave that answer in response to a question which actually was entirely different from the question which was put to him here.

MAJOR FOJAS: I did not tell him in response to a question. I said, "When you were being questioned on Specification No. 4 you gave the following answer."

MR. BONDA: Yes, but you put that after a question you asked him which was entirely different from the question to which that was a response. That is my point.

COLONEL PARMELEE: Here is a suggestion: Will you state in response to a certain question you gave a certain answer, and then later on gave this other? Will that do?

MAJOR FOJAS: That is all right.

MR. BONDA: But he didn't give another answer to that. This is an entirely different question, sir.

COLONEL PARMELEE: I believe the defense stated he misquoted or misread the record.

MAJOR FOJAS: Which is not true, sir.

MR. BONDA: If I said that, I will change it to read that he read an answer which was not the answer given to the same question which was propounded to him here, which is exactly the same thing, in other words.

If you are going to ask him if he replied in such and such a way, ask him the original question he replied to.

MAJOR FOJAS: I will withdraw the question to avoid any further discussion.

Q Is it not a fact that the reason you recognized Emilio Gomilla to be a guerrilla is that you personally investigated him, asked him if he were a guerrilla, and when he gave a negative answer, you slapped him on the face?

A I have never investigated any guerrillas nor have I ever slapped anyone.

MAJOR FOJAS: May we know if the witness has already given a responsive answer. I think he is trying to elaborate on something that is not called for by the question.

MR. BONDA: What is the question?

(Question was read as above written.)

MR. BONDA: Part of the answer is already in the record, too.

(The answer was read as above written.)

COLONEL PARMELEE: If the defense or prosecution wants to hear the answer, the Commission will withdraw.

(The Commission then left the courtroom while the interpreters gave the answer as given by the witness, after which the Commission returned to the courtroom.)

MAJOR FOJAS: He is explaining his answer, and I don't have any objection if it goes into the record.

COLONEL PARMELEE: He apparently hadn't completed the answer, is that correct?

MAJOR FOJAS: No.

MR. BONDA: That is right.

A The following are my reasons to my answer: (1) Formerly the entire island was controlled by a technical unit

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equivalent to a division, but my unit was only a battalion and I had no staff members. I was directly responsible for the tactical operations, and training and education of my troop and furthermore I had the responsibility of having political connections with the Philippine Government there. In order to carry out all this work, I personally didn't have time to carry out investigation. (2) Under my command, there was an investigation section, and the men in that section were directly responsible for any work in investigation, and they did all the work as far as I know. (3) As unit commander I had no time to take part in any investigation directly nor was I able to take part in any investigation directly and neglect my other responsibilities. (4) Here in the court when the witnesses testified that I investigated them directly and slapped them, I can only say that they had said things that were extraneous and false.

Q You mean to say by that answer that during the entire period of your stay in Negros Occidental particularly, you never talked, or you never asked any guerrilla suspects or guerrillas who was a prisoner in your headquarters?

A Yes.

Q And do you also mean by that answer that during that entire period you did not find time to see or find out how investigations were being conducted by your men of guerrilla suspects and guerrillas who were prisoners in your headquarters?

A I received a report of the investigations and since I do not know the language of the guerrillas and guerrilla sus-

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pects, I cannot directly investigate them.

Q My question is, during the entire period of your stay in Negros Occidental, you did not find time to know or determine how investigations were being conducted of guerrilla suspects and guerrillas who were held prisoners in your headquarters?

MR. BONDA: Wait a minute. Is that a statement or a question?

MAJOR FOJAS: I said that is my question.

MR. BONDA: It sounds like a statement to me. Will you read that please?

COLONEL PARMELEE: I believe the statement was a question which was explanatory to the witness because the answer to the previous question was not considered exactly responsive, is that correct?

MAJOR FOJAS: That is right.

MR. BONDA: It still sounds like a statement.

COLONEL PARMELEE: Will you read the question, please?

(The question was read as above written.)

COLONEL PARMELEE: It is prefaced by, "is that correct", or something to that effect.

MR. BONDA: It says, "my question is", followed by a statement. I object, but I suppose they will understand it to be a question.

MAJOR FOJAS: To avoid further discussion, I will add --

Q Is that correct?

A I know and I got the report that during investigation

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carried out that all prisoners were placed in the guard house.

Q Did you find time to find out how investigations were being conducted by your men?

A No.

Q You didn't even adopt any measures to find out what methods were being used by your men in the investigation of prisoners, did you?

A I did not investigate that. Concerning the use of supply which the witnesses have testified here that no food or water were given to them for approximately four days, I affirm and positively state that no such thing occurred.

Q When you were being examined by defense counsel, you were asked the following question, and you gave the following answer:

"Q Do you know anything, either from hearsay or direct knowledge, about the alleged mistreatment and torture of Emilio Gomilla at the Bacolod Public High School during the month of December, 1943, and January, 1944? Specification No. 4.

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"A I do not know the name, but I know that the Kempei Tai and my intelligence section were investigating the spies who went into Bacolod."

Will you please explain to the Commission what you meant by that answer? Did you know of that mistreatment or did you not?

MR. BONDA: Wait a minute, how can he be asked to explain an answer that there can't possibly be any doubt about.

MAJOR FOJAS: That is the most obscure answer I have ever seen in my life,"I do not know the name, but I know that the Kempei Tai and my intelligence section were investigating the spies who went into Bacolod."

MR. BONDA: What is ambiguous about that?

MAJOR FOJAS: Did he say anything about the fellow being investigated?

MR. BONDA: Why didn't you object that it wasn't responsive at the time?

MAJOR FOJAS: I didn't have to object to it being not responsive, I can clarify it on cross-examination.

MR. BONDA: Well, what is doubtful about that answer?

MAJOR FOJAS: I want to know something definite about this from the witness, his answer is very general.

MR. BONDA: Well, ask him my question and see what answer you get.

MAJOR FOJAS: Well, I have a right to carry on my cross-examination ---

MR. BONDA: Sure you have a right to cross-examine,

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but no doubt appears in that answer.

MAJOR FOJAS: I submit it to the Commission.

COLONEL PARMELEE: Will the reporter please read the question?

(The question was read as above-written.)

MR. BONDA: I submit he can ask the same question I did and see what answer he gets.

MAJOR FOJAS: This witness was asked on a specific matter or incident, and he gave a general answer leaving us confused whether he knew or did not know of that incident. Am I not entitled to clarify it?

MR. BONDA: The way to clarify it is to ask the same question.

MAJOR FOJAS: The trouble with defense counsel is, that he is trying to direct my prosecution for me.

MR. BONDA: Well, I am not trying to do anything of the kind, but I am trying to have the prosecutor follow the rules of evidence which they know about.

MAJOR FOJAS: Well I am following the rules of evidence if you will allow me to proceed.

MR. BONDA: I am not trying to correct you or your case, but I do have a right to have you abide by the rules of evidence.

MAJOR FOJAS: Well, you can be sure that we are abiding by them.

COLONEL PARMELEE: It seems that the question calls for a clarification inasmuch as the witness has been asked what he knows about the incident of mistreating, is that correct?

MAJOR FOJAS: The only point is how he knew, the question by defense counsel was about the entire Specification, we want to know if he knew or did not know anything about that Specification because the answer he gave was very general and nothing definite has been given.

COLONEL PARMELEE: Doesn't the question specifically mention mistreatment as alleged in that Specification, and you are asking if he knows anything about that alleged mistreatment?

MAJOR FOJAS: Yes, sir.

MR. BONDA: Then I submit that they should ask that question and find out, but to ask him to explain an answer given yesterday, to which no objeccion was made, it is unfair. They can get the proper results they want by asking him the question which I asked the witness.

MAJOR FOJAS: I do not know under what rules of evidence the prosecution cannot ask for an explanation of the witness's answer.

MR. BONDA: Because it is clear and you can read English.

MAJOR FOJAS: I submit it, sir.

COLONEL PARMELEE: The objection is overruled.

A I don't know anything about the torturing and mistreatment of Emilio Gomilla.

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Q On or about the 20th of February, 1944, did you receive reports of the guerrilla situation in and around the municipality of Cadiz, Negros Occidental?

A I do not remember.

Q Do you know what was the guerrilla situation in or around Cadiz, Negros Occidental, on or about the 20th day of February, 1944?

A I do not know about the city of Camay-an in Cadiz.

Q Do you know the guerrilla situation, the general situation of the guerrillas, in or around the municipality of Cadiz, on or about the 20th of February, 1944? Will you please answer that question?

A The city of Cadiz and its vicinity was a key point for the materials to flow through into the mountains and consequently the guerrillas were making contacts and liaison with the city there.

Q And that was true on or about the 20th of February, 1944, that situation was true?

A It was not on the 20th of February, but the general importance of the city.

Q And when did that situation exist in Cadiz, if it was not on the 20th of February, 1944?

A Always.

Q You mean to say that throughout the period you were commanding officer in Negros, that situation was true in Cadiz?

A Yes.

Q Did you maintain a garrison unit in the municipality of Cadiz at any time during the period you were commanding

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officer in Negros?

A Yes.

Q Do you know if your garrison unit maintained sub-garrisons in the different barrios of the municipality of Cadiz?

A One: The Cadiz was under the jurisdiction of Yoshiyama unit, and the security area of the Yoshiyama unit.

Two: The Yoshiyama unit had a garrison unit in the vicinity of Cadiz. On February 20, 1944, I believe Kawata took over the command instead of Yoshiyama.

Q But you have not answered the question. The question is: Do you know if there were smaller garrison units in the barrios of Cadiz aside from the garrison unit in Cadiz proper?

A No, I don't know.

Q Now, what measures did you take to guard against guerrilla activities in Cadiz and in the barrios of Cadiz?

A One: The area around Cadiz was not under my direct command.

Two: The Cadiz garrison unit that was stationed in the proper of Cadiz had a duty of preventing any liaison between the mountains and the city.

COLONEL PARMELEE: The Commission will take a short recess.

(Short Recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath.

(Translated to witness through Interpreter Yamamoto.)

MAJOR FOJAS: May I have my last question?

(Record read.)

Q As commander of Negros Island, did you not consider it your responsibility to guard against guerrilla activities in and around Cadiz?

A Yes. I think it was my responsibility.

Q Knowing that that was your responsibility, do you mean to tell the Commission that you did not take any measures to guard against guerrilla activities in that area?

MR. BONDA: Objection. There is nothing in the evidence to show that he did not take precautions against guerrilla activities in that area.

MAJOR FOJAS: I submit the question be answered.

COLONEL PARMELEE: The witness, I think, can answer the question. I mean it is a question -- I think the Commission understands that you may have a directive to do something. Whether you can do it or not is another question.

MAJOR FOJAS: No, sir.

MR. BONDA: I don't get it.

MAJOR FOJAS: I asked him what measures he took to guard against guerrilla activities, and he gave the answer it was not under his direct command. There was another answer which was entirely foreign to the question.

MR. BONDA: He said it was not his responsibility. He said there was a commander there.

MAJOR FOJAS: No.

MR. BONDA: What do you mean "no"? He said Kawada came in, didn't he?

COLONEL PARMELEE: Objection not sustained. Proceed.

(The question was translated to the witness by Interpreter Yamamoto.)

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A That was the security area in charge of the Yoshiyama Garrison. We had the Yoshiyama Garrison stationed in Cadiz, and prevented liaison, and kept watch over it, and destroyed liaison, also. Cut the liaison.

Q When you said "destroyed the liaison," by that "liaison" what did you mean? Liaison with what?

A The liaison between the mountains and the sea.

Q Did you ever personally go to Cadiz to determine the guerrilla situation in that area?

A Yes. I went there once.

Q Can you recall when that was?

A I do not remember when.

Q Do you not remember it was on or about the 20th of February, 1944?

A I don't remember.

Q When you went to Cadiz on that occasion, did you reach as far as the Sitio Camay-an?

A No. I absolutely did not go there. I heard about it first in this Court.

Q When you went to Cadiz on that occasion, did you take along with you any troops, soldiers?

A Yes. I took some troops to the town of Cadiz.

Q How many soldiers did you take along with you on that occasion?

A About 200.

Q Why did you take so many troops with you to Cadiz on that occasion?

A We carried out the expedition in the vicinity of Cadiz.

Q And that expedition was carried out for the purpose of

mopping up guerrillas in and around the vicinity of Cadiz, was it not?

A Yes.

Q Can you recall whether that expedition was undertaken approximately within the month of February, 1944?

A I don't remember that date.

Q You do not even remember the month?

A No.

Q You do not even remember the year?

A I think it was 1944.

Q Do you remember the places within the municipality of Cadiz you visited in the course of that expedition?

A The town of Cadiz.

Q Did you go to any of the barrios of Cadiz?

A Does it include Camay-an? Cadiz is very wide, and I went to the town of Cadiz.

Q My question is: Did you visit any of the barrios of Cadiz?

A I went to the town.

Q Did any of your soldiers who went along with you go to any of the barrios of Cadiz on that expedition?

A Is the town and the barrio different?

Q Yes.

A No. We did not go to the barrios.

Q How can you explain the fact that those two witnesses testified before this Commission to the effect that on the 20th of February, 1944, they saw you in the City of Camay-an, Cadiz, Negros Occidental?

A I did not go there. I know the town of Cadiz, but I

do not know the barrio of Camay-an.

Q Do you remember if on that expedition your troops captured any suspected guerrillas or guerrillas in Cadiz?

A We captured several suspects.

Q Where in Cadiz did you capture these suspects?

A In the town of Cadiz.

Q Do you recall if during that expedition your troops captured any suspected guerrillas outside the town of Cadiz?

A No. We did not capture any outside.

Q Where did you come from when you went to Cadiz on that expedition?

A From Bacolod.

Q Is it not a fact that you left Bacolod at midnight on that occasion?

A No. We did not leave at midnight.

Q At what time of the day did you leave Bacolod on that expedition?

A We left Bacolod about 6 A. M.

Q How did you go to Cadiz? Did you go there by trucks or by what manner of conveyance?

A By truck.

Q And you arrived in Cadiz about midnight, is that correct?

A No. It was about ten in the morning.

Q And what time did you leave Cadiz?

A I don't remember the time, but I believe it may have been two or three in the afternoon.

Q So you did not spend the night in Cadiz?

A No.

Q When you were questioned by defense counsel on Specification No. 6 regarding mistreatment and torture of Felipe Lumacang, Epifanio Agravante and one Melecio in March, 1944, in the City of Bacolod, you said that you knew the Kempei Tai and your intelligence section were investigating persons in Bacolod, but you do not know who were tortured.

Now, I ask you: Do you mean by that answer that you knew that there were some persons who were tortured on that date?

A I do not know those names you mentioned, but I knew that bandits or spies had infiltrated, and that the intelligence section of my unit and the Kempeis were conducting an investigation. I do not know if there was torturing going on.

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Q Where did the Kempei Tai and members of your intelligence section investigate persons in Bacolod?

A I believe the Kempeis were conducting an investigation at their Kempei Tai unit, but I do not know where my intelligence section were conducting theirs.

Q You did not even know whether your intelligence section were investigating these persons in the high school in your headquarters?

A I knew that there was an investigation going on in the high school.

COLONEL PARWELEE: The Commission will now recess until 1300 hours this date.

(The Commission recessed at 1130 hours, to reconvene at 1300 hours.)

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A F T E R N O O N S E S S I O N

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution are also present.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Koide:

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

CROSS-EXAMINATION (Cont'd)

BY MAJOR FOJAS:

Q Now you said you knew that there was an investigation going on in the high school in March, 1944. Do you know in what particular place in the high school this investigation was going on?

A No.

Q And do you know who among the officers of the intelligence section in your unit conducted this investigation?

A Captain Inoue was in charge of the intelligence; at times it differs, but there were other officers and NCO's and they followed Captain Inoue's wishes or orders.

Q Do you know if Takeshita participated in this in-

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vestigation?

A I believe there were times when Takeshita had participated.

Q And do you know if during this investigation the persons who were being investigated were either mistreated or tortured?

A I do not know.

Q Did you ever make an attempt to find out whether those persons who were being investigated were being tortured or mistreated in the course of the investigation?

A No.

Q What was the reason why you made an expedition to the Barrio Rizal on the 7th of March, 1944?

A The expedition was carried out since the Barrio Rizal and its vicinity was the base of the bandits.

Q What elements of your unit did you take along with you in that expedition to Barrio Rizal?

A The Bacolod and the Takahashi unit.

Q How many soldiers ---

A (continuing) -- The main element of the Takahashi unit was in Bacolod, and a portion was in Silay. I took along the main element of the Takahashi unit in Bacolod and my unit on the expedition.

Q Now, how many soldiers in all participated in this expedition?

A I believe it was approximately 300 men.

Q Can you recall the names of the officers of the Takahashi unit, or the portion of the Takahashi unit who participated in this expedition?

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A Yes, I generally know the officers who were on the expedition.

Q Will you please name those officers of the Takahashi unit whom you know participated in this expedition?

A There were two officers, Company Commander Takahashi and First Lieutenant Nishikawa.

Q Did you personally go to Barrio Rizal during this expedition?

A Yes.

Q Was there a garrison unit in the Town of Silay?

A Yes.

Q Who was the commander of the garrison unit in Silay?

A I remember him as being Lieutenant Nishikawa.

Q Is it not a fact that Barrio Rizal was within the jurisdiction of that garrison unit in Silay?

A Lieutenant Nishikawa was in charge of the security in the vicinity of Silay.

Q And Barrio Rizal was within his jurisdiction, is that correct?

A Yes.

Q And you found out the guerrilla situation in Barrio Rizal from reports being then rendered to you by Lieutenant Nishikawa, is that correct?

A I heard it not only from Lieutenant Nishikawa but also from Sergeant Fujita of the liaison personnel and also by courier relaying various information.

Q Was this Sergeant Fujita assigned with your intelligence section?

A Yes.

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Q And was he then assigned as a liaison between you and the Nishikawa garrison?

A No, he was not assigned as a liaison between myself and Nishikawa. He was one of the members in charge of gathering information of air force units in the town of Silay and also to gather various other information.

Q Now, what time on the 7th of March, 1944, did you arrive in Barrio Rizal?

A I am not too sure, but I think it was about four o'clock in the morning.

Q But you are sure that when you arrived in Barrio Rizal about four o'clock in the morning on the 7th of March, 1944, among the officers who were with you were Captain Takahashi and Lieutenant Nishikawa, is that correct?

A I do not know the movements of Lieutenant Nishikawa, but I know that Captain Takahashi and I came together from Bacolod. Nishikawa was the garrison commander at Silay. After coming to Silay, I think that I have met Nishikawa and heard the conditions, but I cannot be too sure about that.

Q In other words, Lieutenant Nishikawa could have been in Barrio Rizal on the 7th of March, 1944, but only you cannot be sure of that you said, is that correct?

A No, there is no possibility.

Q Lieutenant Nishikawa being the garrison commander of Silay was more acquainted with the locality, and I am referring to Barrio Rizal, than any of your officers, isn't that true?

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A Yes.

Q And if you were to take along with you any officer on the expedition to Barrio Rizal, the most logical thing to do was to take Lieutenant Nishikawa along with you, isn't that correct?

A Lieutenant Nishikawa often acted independent of me, and he guided Company Commander Takahashi to the Hawaiian Central where there was a portion of bandits and then carried out the expedition then.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

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COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness by Interpreter Koide.)

Q Who was the officer who guided you to Barrio Rizal?

A Everyone was informed about the terrain features of the place. Therefore, I cannot say who guided us to there.

Q Did you not tell us earlier in my examination this afternoon that among the officers who went with youu to Barrio Rizal were Captain Takahashi and Lieutenant Nishikawa?

A I did not testify to such.

Q When you arrived in Barrio Rizal, you ordered your soldiers to gather the civilians living in that place to a certain locality, is that correct?

A No, I did not give such a command.

Q Did you arrest any persons in Barrio Rizal when you went down on the 7th of March, 1944?

A I did not arrest anyone.

Q Did the soldiers under your command who went to Barrio Rizal on the 7th of March, 1944, arrest any persons in that barrio?

A I believe we arrested the guerrillas and guerrilla suspects.

Q About how many guerrillas and guerrilla suspects were arrested on that occasion?

A I do not remember the number.

Q How did you single out the guerrilla suspects and the guerrillas from the rest of the inhabitants of Barrio Rizal?

BEH(6)ss

A To distinguish the guerrillas and guerrilla suspects from the people was very difficult. That is why we carried out the investigation.

After extensive investigation, from the information gathered from the spies and Sergeant Fujita concerning the guerrilla activities in Barrio Rizal, the following morning we found out where the base of the guerrillas was and surrounded them; and then we captured the guerrillas. With that we arrested guerrillas and guerrilla suspects.

Q When you said you found the place of the guerrillas, you meant Barrio Rizal, is that correct?

A My unit captured the guerrillas in Barrio Rizal. The Tekahashi Unit captured their prisoners at Hawaiian Central.

Q And so it was Barrio Rizal - -

MR. BONDA: Wait a minute, he hasn't finished his answer.

MAJOR FOJAS: Is that in addition to his answer?

MR. BONDA: Is that his complete answer?

MAJOR FOJAS: That was all the answer?

INTERPRETER KOIDE: Yes.

Q So it was Barrio Rizal which you surrounded in an effort to capture these guerrillas, is that correct?

A Yes.

Q And how many persons did you find within Barrio Rizal when you surrounded that place?

A I do not know how many were in that city.

Q Were there women and children in Barrio Rizal when you surrounded that place?

A I believe there were women and children, women spies.

Q And also children spies?

MR. BONDA: Now, he didn't say, object to that question, that was a remark, it wasn't a question. He didn't say that.

MAJOR FOJAS: I am asking him.

MR. BONDA: Well, ask him if there were children spies.

Q Were there children spies?

A If you were thinking in common sense you would know the answer.

Q How many men did you find in Barrio Rizal?

A I don't know the exact number.

Q Did you arrest all those people that you found in Barrio Rizal?

A No, only those who were guerrillas and guerrilla spies.

Q All right, now how did you determine which of those people were guerrillas and guerrilla spies in order to enable you to arrest only guerrillas and guerrilla spies?

A You cannot determine who is who. That is why I took them to Bacolod and had them investigated.

Q But did you not say that you found men, women and children in Barrio Rizal, that you arrested only the guerrilla spies and guerrillas, that there were some people you did not arrest, and the question now is, how did you determine which of those people you were going to arrest and which you did not arrest?

A We conducted an extensive investigation by our agents and intelligence men and from their reports we determined who were suspected of guerrilla activities.

Q You mean to tell us now on the morning of March 7th, 1944 you did not make an investigation in Barrio Rizal to arrest guerrillas and guerrilla spies?

A After we captured them, I conducted an investigation.

Q You conducted an investigation right in Barrio Rizal, is that what you mean to say?

A We conducted an investigation in Barrio Rizal and also in Silay and also we carried on our investigation after they were removed from the place of arrest.

Q Did you conduct that investigation personally?

A No.

Q Who conducted the investigation?

A I believe the Kempei Tai and the members of my own Intelligence Section carried out the investigation, mainly by the Kempei Tai.

Q And isn't that a fact that investigation was conducted in an effort to find who were guerrillas and who were not?

A It was to distinguish between the people and guerrillas. Since we couldn't determine exactly on some occasions who were guerrillas and who were not, for example these women witnesses who testified here in this court that they were brought over to Bacolod and investigated again.

Q And after that investigation in Barrio Rizal, you took some of them to Bacolod but left some of the people in Barrio Rizal, is that correct?

A Those who were positively not connected with the guerrilla activities were left in Barrio Rizal. Only those suspected of being guerrillas or having any connection with guerrilla activities were brought to Bacolod.

Q Were you personally present when these investigations were being conducted in Barrio Rizal?

A No.

Q Did you receive a report as to how many persons were subjected to these investigations on the 7th of March, 1944 in Barrio Rizal?

A I do not know the details such as how many persons were investigated.

Q Did you receive a report of these investigations?

A I received a report that an investigation was conducted.

Q What did you do personally in Barrio Rizal?

A I was in the rear of the unit that was surrounding the place and entered Barrio Rizal in the early dawn and then I went to the garrison unit at Silay.

Q But you were the overall commander of all the units which participated in this raid on Barrio Rizal, is that correct?

A Yes.

Q And in that particular raid on that occasion the Kempei Tai Units which participated therein were under your command on that date, is that correct?

A The Kempei Tai cooperated with us on that expedition, however, the Kempei Tai acted independently of us and pursued their own interests. The Kempei Tai listened to the orders I gave to my own unit, however, after gathering that information and basing their movements on that order, they worked independently of us and pursued their own interests.

Q And the members of the Kempei Tai who participated in that raid, and in the investigation of persons found in Barrio Rizal, submitted also a report to you on ---

MR. BONDA: Object, no evidence in the record such as that. I have permitted a lot of questions to go in that are not based on the record, but there is a limit, there was no such evidence in the record and the evidence is contrary. I permitted it in the question, but I think there is a limit.

MAJOR FOJAS: That is the reason I am asking it to find out.

MR. BONDA: That is not the way to ask it. That is done for the purpose of confusing the witness and you know it.

COLONEL PARMELEE: Here is a suggestion, do you want to ask him what the Kempei Tai in this incident did in the way of cooperation?

MR. BONDA: No, he finished with the Kempei Tai. I have no objection to him saying or asking if they made a report to him.

COLONEL PARMELEE: I mean the question would elicit such an answer.

MR. BONDA: My position is I don't care what they ask, provided they ask it in the proper way and not confuse the witness.

MAJOR FOJAS: Well, what isn't proper about that?

MR. BONDA: I am not going to argue with you any more about it.

MAJOR FOJAS: This witness testified he was in command of all units, as a matter of fact I am just being

generous in trying to ask relative to the particular units that participated in that raid. If I leave the answer as it is, anybody who reads the testimony will come to the conclusion he was in command of everybody in that raid. I am giving him a chance to state out if that unit was under his command.

MR. BONDA: You ask the question and I will answer it. You know you can't suggest an answer that is not in evidence even on cross-examination, is that correct?

MAJOR FOJAS: No, that isn't.

MR. BONDA: Well, then there is no use of us arguing on rules of evidence. You can suggest an answer that is already in, but not one that isn't already in the record.

MAJOR FOJAS: Well, I request a ruling from the Commission.

COLONEL PARMELEE: Will the reporter please read the question?

(The question was read as above-written.)

MR. BONDA: I submit there is nothing in the record and he is suggesting something that isn't in the record. He can ask if they submit a report and I won't object to that.

COLONEL PARMELEE: I don't remember the record on that particular point, does the prosecutor want to ask him did they submit a report, or does he want to maintain his stand in the matter?

MAJOR FOJAS: I am willing to follow the suggestion of the Commission in the interest of saving time, although I still believe my question is proper.

COLONEL PARMELEE: Thank you.

Q Did the Kempei Tai submit any report to you on the

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investigation they conducted in cooperation with your unit in the Barrio Rizal, on the 7th of March, 1944?

A The Kempei Tai did not report to me.

Q In other words, the only report which was submitted to you was the report from members of your unit?

A Since the Kempei Tai was not under my command they did not make any report to me. In fact, a report is only given from the subordinate to the commander. However, the Kempei Tai informed me of any activities they thought was vital in that expedition.

COLONEL PARMELEE: The Commission will now adjourn and reconvene at 0830 hours tomorrow morning.

(The Commission adjourned at 1505 hours, to reconvene at 0830 hours, 11 January 1947.)

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME XLV

PAGES 3080 TO 3113 INCL.

DATE 11 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Pardelee
A. L. PARDELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
11 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member

MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsell
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

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2ND LIEUTENANT FRANK YAMAMOTO	)	Japanese
2ND LIEUTENANT SAMUEL S. KOIDE	)	
PETRONILO VALLEJO	)	
CAESAR YO ALZONA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER
BERTHA S. HOLTMAN

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COMM.
Masakazu Yamaguchi	3080 (Cont'd)				

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, at Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P. I., 11 January, 1947.)

COLONEL PARMLEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

COLONEL PARMLEE: Off the record.

(Off-the-record discussion.)

COLONEL PARMLEE: Will you stipulate in the record of this trial where Colonel Ota, O-t-a, appears it is the same person as Colonel Ohta, O-h-t-a, is that correct?

MAJOR FOJAS: It is agreed to by the prosecution, sir.

MR. BONDA: It is agreed to by the defendant, and I would suggest we can say that wherever "Ota" is referred to, or "Ohta, O-h-t-a", it is one and the same person.

MASAKAZU YAMAGUCHI

a witness in his own behalf, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Koide:

CROSS-EXAMINATION (continued)

BY MAJOR FOJAS:

Q You stated yesterday that when units of the Kempei Tai cooperate with you in your expeditions, you received reports

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from them on important matters, is that correct?

MR. BONDA: Will you read that question, please, Grace?

A The report is made by subordinate units to me; however, in this case important matters was just informed to me.

Q And when you say, "in this case", you were referring to the expedition on Barrio Rizal on the 7th day of March, 1944, is that correct?

MR. BONDA: Just one minute. I would like to get from the interpreter -- (to interpreter) did he mean in the case of the Kempei Tai, or did he mean in this case he was referring to in the specification? Did you interpret that correctly?

MAJOR FOJAS: Off the record.

(Off record statement.)

COLONEL PARMELEE: Did you want the first question read?

MR. BONDA: No, sir, I got it.

INTERPRETER YAMAMOTO: What was the question, please?

(Question read.)

A All important matters are usually informed to me.

Q Now, I would like to find out from you if on the 7th day of March, 1944, when you made this expedition to Barrio Rizal if the members of the Kempei Tai made the report to you on the investigations of persons conducted in that place?

A Yes, sir, I believe I did.

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Q And you also stated that a person was killed in Barrio Rizal on the 7th day of March, 1944; were you still there when that person was killed?

A Do you mean at the spot where the man was killed?

Q In Barrio Rizal.

A No.

Q Were you still in Barrio Rizal when the persons apprehended in that place were investigated by the Kempei Tai and by members of your units?

A No.

Q Did you find out from the reports that you received in connection with this expedition in Barrio Rizal on the 7th of March, 1944, if the persons rounded up in that barrio were mistreated and tortured?

A I do not know about the mistreatment, but I believe I received the report saying that they were investigated.

Q Did you ever receive any information from any source whatever that there were mistreatments committed in Barrio Rizal on the 7th of March, 1944?

A I do not know about the mistreatment, but I think I did receive a report concerning their investigations.

Q Do you mean to say now that you never heard of mistreatments having been committed in Barrio Rizal on the 7th day of March, 1944?

A I do not know about the mistreatment, but I knew they were being investigated.

Q Did you testify in the case of the United States of America vs Kiyoshi Nishikawa as a witness?

A Yes.

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Q Do you remember having testified in that case on the 23rd day of September, 1946, to the following effect:

"Q Did you ever hear of any sort of mistreatments or torture during the investigation of the captured guerrilla or guerrilla suspects?

"A I have heard of it later on."

Do you remember that?

A Did you say the mistreatment?

Q Yes.

A No.

Q You don't remember having given that testimony?

A I don't know anything about receiving a report concerning the mistreatment; however, I did receive a report concerning investigations.

Q I will further refresh your memory by quoting the questions and answers that you gave when you testified in that case previous to testifying that you have heard of such mistreatments:

"Q Did you capture any guerrillas or guerrilla suspects at the Barrio Rizal?

"A I believe that some were captured.

"Q Do you know what disposition was made of the guerrilla or guerrilla suspects that were captured?

"A I believe they were investigated.

"Q Did you ever hear of any sort of mistreatment or torture during the investigation of these captured guerrillas or guerrilla suspects?

"A I have heard of it later on."

Now, does that refresh your memory having given such

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testimony in the case of the United States of America vs Kiyoshi Nishikawa, Volume VI, Page 330?

MR. BONDA: I object to that answer unless it is followed by the following question in which he is asked how he heard it later on, and he said he heard it in court. I object to it unless the entire thing is read showing when he heard it, just exactly as he testified here, sir, that he did hear it later on, that he heard it in court.

MAJOR FOJAS: That does not take away the fact this witness said he heard such things.

MR. BONDA: Yes, he did hear it, but it is misleading the Court unless you read the same part that coincides with what he answered here.

MAJOR FOJAS: No, sir, that is entirely misleading what defense counsel has stated before the Commission; it is entirely misleading. I am willing to read the rest of the question, but I would like to correct what defense counsel has stated here. The witness has stated later on that he became certain of those mistreatments and tortures when he received the charges in this case.

MR. BONDA: That is when he found out about it.

MAJOR FOJAS: The fact is he heard about the mistreatment before he received those Charges and Specifications Now, if defense counsel would like to have me read everything he stated in that connection, I will do so.

MR. BONDA: He heard it in connection with the trials, yes.

MAJOR FOJAS: No sir.

MR. BONDA: Okeh, read it all, and read the part where he says --

MAJOR FOJAS: All right, I will read it.

MR. BONDA: -- where he says it is common in the Japanese Army, and he tried to stop it.

MAJOR FOJAS: That is for you to do that.

MR. BONDA: It is in the answer.

MAJOR FOJAS: I want to show an inconsistency in the answer.

MR. BONDA: You are showing an inconsistency by stopping at a certain place and omitting the part that coincides with what he said in court here.

MAJOR FOJAS: That is not true, sir. I will read everything.

COLONEL PARMELEE: Can't this be resolved by you reading what you want, and let the defense counsel put in what he wants?

MAJOR FOJAS: That is the way I understand it should be, sir. If I read something from portions of the document, defense can read the rest of the document, and that is the reason the request of defense counsel is not proper.

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MR. BONDA: If the Court please, that is not correct. The correct way is to quote all pertinent parts to it. You can't stop in the middle; that is wilfully misleading the Court. If a man says a certain thing, and in the same answer qualifies it, or there was a mistake -- we had the same thing happen here a number of times, where an answer would be a certain way and later on we would go on with one or two questions, and we would find that wasn't what was meant at all. That is the very thing the Commission has been asking us to try to avoid, and that is to get an answer used in a later case, and apparently different from what was intended, we have been trying to correct it. And that is what is happening here.If that is pursued one more question it will be found he heard about it in court, or as a result of the Charges and Specifications, and that is exactly what he has been saying. But by reading that portion of it the prosecution is trying to infer he is telling a different story than he did there, to wit, that he knew about it all the time.

MAJOR FOJAS: Now, here is the situation, sir, in my offer, if what defense counsel is saying is true, there is nothing which would prevent him from exposing what I have done in court. If I mislead this witness he can show it to the Court upon the direct examination. I maintain that I am not misleading the witness, that I am reading here testimony given by the witness in another trial, and if he is certain, and if he is sure that the witness just heard about these tortures in court he can show it, and I challenge defense counsel that he will not be able to show it. If the witness became certain of those tortures and mistreatments

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when he heard them in court, but before he heard them in court he was informed of such mistreatments and tortures by some other person, only he could not tell who --

MR. BONDA: Now, do you deny that if you read one more question you would find that what he learned about mistreatment and torture resulted from events that happened in connection with the trial?

MAJOR FOJAS: I deny it.

MR. BONDA: Well, read it. Here it is.

MAJOR FOJAS: Wait a minute, I am answering your question. I deny it. The witness said that he became certain of those mistreatments and tortures when he heard them in court.

MR. BONDA: And that is what that question --

MAJOR FOJAS: No sir, he heard that beforehand.

COLONEL PARMELEE. The Commission will take a short recess, in which it is expected that if the defense counsel and prosecution will read over the volume --

MR. BONDA: I have read it, sir, and I know what the next question is.

MAJOR FOJAS: Here is my point, sir. I have a right to show an inconsistent statement made by the witness, and I have my question, and if defense counsel says I am in error he can show it later on, and I think that is the correct procedure.

MR. BONDA: The only use that can be made of reading the statement is a contrary statement out of court, and, now, if it is not a contrary statement it can't be used, and it is not a contrary statement if the entire series of

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questions is read.

MAJOR FOJAS: I have my question, sir, and I submit, and I ask for a ruling from the Commission.

COLONEL PARMELEE: The objection is overruled. The defense may read in anything that he wants in that record.

(Question translated to witness through Interpreter Yamamoto.)

A Whether in actuality it said mistreatment and torture during the course the investigation was made, I do not know, but since here in court the question was placed that the alleged mistreatment and torture was made, and it was then I heard about it.

Q My question is: Do you remember having given such testimony. Please answer that "yes" or "no."

MR. BONDA: Now, wait a minute. Your question is what? You started a sentence, and what was the rest of that? Read what the prosecution said.

(Record read.)

MR. BONDA: Let the record also show he stopped the witness from testifying.

MAJOR FOJAS: Yes, I stopped him because he is not giving a responsive answer.

(Last question read.)

MAJOR FOJAS: That is the question, and he has given a different answer from what he should give.

MR. BONDA: Let's read his answer.

MAJOR FOJAS: That is why I stopped him.

(Record read.)

MR. BONDA: I submit that is a responsive answer, sir.

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MAJOR FOJAS: The words speak for themselves. My question is: "Do you remember giving such testimony in the case of the United States of America versus Kiyoshi Nishikawa --"

MR. BONDA: He has answered that he doesn't remember,"but the fact is as follows." Now, he has answered that, and that is in response to the question.

MAJOR FOJAS: He never said he didn't remember.

COLONEL PARMELEE: The question is does he remember or doesn't he remember having given that testimony, and that, in effect, would call for a "yes" or "no" answer.

MR. BONDA: He answered that, sir.

COLONEL PARMELEE: He started to explain it.

MR. BONDA: Then we can stop the explanation, but he has given it in his last answer. He says, "Whether I gave that testimony or not, I don't remember."

MAJOR FOJAS: That is not what he said.

MR. BONDA: Now, that is responsive. If the explanation is considered unresponsive then there can be a motion to strike that part of it.

MAJOR FOJAS: What the witness said was, "Whether or not in actuality there was mistreatment or torture, I do not know," which was not called for by the question. I have my last question, sir.

(Translated to witness through Interpreter Yamamoto.)

A Yes.

Q Do you also remember having given the following testimony in the same case -- I am now reading from the same volume, page 331 to 333:

"Q What kind of things did you hear?

"A I didn't hear anything concrete in regard to this.

"Q Can you tell me what you heard?

"MR. YOSHIKAWA: I withdraw the question.

"Q You stated just now that you heard later on. Who did you hear from later on?

"A You mean the time that I heard it?

"Q No, who did you hear it from?

"A I can't say who told me this, However, it was after I was charged that I knew for certain that there had been mistreatment and torture at Barrio Rizal. I knew that in general there had been tortures committed by Japanese Army members, because it was one of the bad habits of the Japanese Army. While I was leading the group around Bacolod City, I tried to stop it."

Do you remember having given that testimony, also?

A Yes.

Q Will you explain to the Commission why, when you testified in the Nishikawa case, you said that you had heard of mistreatments and tortures in Barrio Rizal, while here you testified you have not heard of such things?

MR. BONDA: Objection. There is no such testimony in that case. That is why I asked him to read the rest of it. He says he heard of it when the charges were filed. Here he says he heard about it in court. To him both are synonomous.

BSH(2)ss

That isn't important enough to show any discrepancy. The testimony has been consistent and that is why I have asked that that last question be read. It now has been read, that he heard about it after he was charged.

MAJOR FOJAS: I have no comments to offer, sir, because I will be insulting the intelligence of the members of the Commission.

MR. BONDA: That is the best way of avoiding answering my question, by stating you don't want to insult the intelligence of the Commission. That is a fact.

MAJOR FOJAS: He testified he had heard of such things, and he became aware of such mistreatment and torture when he heard of them; but he does not mean he never heard of such things.

MR. BONDA: He said he never heard of them. He said he did not hear about it in this case until he came into court; and in the other case, he said he did not hear about it until he was charged.

You are trying to show he heard about it, and he is consistently saying he did not; and you don't have any evidence that shows there is an inconsistent statement there.

MAJOR FOJAS: I ask for a ruling from the Commission.

MR. BONDA: I submit the prosecution is unfair in even attempting to ask a question along that line when there has not been the least bit of inconsistency between what he testified to in another court and here.

MAJOR FOJAS: I object to the remarks of the defense counsel, but inasmuch as it is not true, it is not

BSH(2)ss

worth answering.

COLONEL PARMELEE. We are right back to where we have been several times before, where there are opposite views as to whether the testimony or the evidence is in conflict. The record will have everything that has gone before and what will follow.

This is the prosecution's case. He contends there is conflict. The Commission will permit him to go ahead, and it will be our duty as members of the Commission to reconcile all these statements.

MR. BONDA: May I please have the Commission tell me what they mean by saying, "This is the prosecution's case."

COLONEL PARMELEE: I mean to say that the prosecution now has the witness for cross-examination.

MR. BONDA: The Commission frequently has made the remark to me, when I had a witness on the stand and I was doing cross-examination -- objections made -- the Commission made the statement, "This is the prosecution's case."

I thought the Commission made that statement at that time because it was still the case in chief of the prosecution. Apparently I was wrong. Now, the Commission makes the same remark when it is no longer in chief, but it is my witness, and it is their cross-examination. The Commission has been inconsistent about that.

COLONEL PARMELEE: Strike everything out about being the prosecution's case. The objection is overruled. Proceed.

INTERPRETER KOIDE: What is the last question?

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(Last question was read by the reporter and interpreted to the witness by Interpreter Koide.)

MR. BONDA: May I please merely request the Commission to have that question amended to say that, when you testified in the Nishikawa case, you testified that you heard of the beatings when you received your charges, and here you heard of the charges when you were in court. Those are the things that are inconsistent, and that is based on something that is not in the evidence, sir.

It is the prosecutor's own statement that that is the way it is. That is an unfair question, because it is not based on the evidence; and it is something that has happened just within today's volume, so we could check on that.

MAJOR FOJAS: I cannot do such a thing, sir, but in view of remarks of defense counsel, I would request that the Commission declare a two-minutes' recess, go over this testimony I have read; and I would request a categorical ruling from the Commission as to whether or not an inconsistency exists.

BSH(2)ss

If the Commission rules there is no such inconsistency, I withdraw the question. Otherwise, I will pursue it.

MR. BONDA: I say there is an inconsistency. The inconsistency is whether he heard it after the charges were filed or whether he heard it in court. That is the inconsistency. That is the only inconsistency. The prosecutor has a right to point out, because it is the only inconsistency that is in the record.

MAJOR FOJAS: No, sir. I take issue directly with defense counsel on that. I say, and I maintain, that the witness testified in the Nishikawa case that he had heard of these mistreatments before he found them out in the Charges and Specifications.

MR. BONDA: I submit that to the Court. Let us have a recess. There it is. Read it.

MAJOR FOJAS: I make a proposition to the Commission.

MR. BONDA: I don't mean to interrupt, but the prosecutor stops for a minute and then I come in, and I see he still has something more to say.

COLONEL PARMELEE: What is the proposal?

MAJOR FOJAS: That members of the Commission read the portions of the testimony of this witness, and determine if this witness testified in the Nishikawa case to the effect that he had heard of such mistreatments and tortures having been committed in Barrio Rizal, which is inconsistent with his present testimony to the effect that he has never heard of such a thing.

Defense counsel maintains that the accused has heard

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of those mistreatments and tortures only in court, and I maintain that he has heard of such mistreatments and tortures before he was in court and before he received the Charges and Specifications.

MR. BONDA: Before he was in court, but not before he received the Charges and Specifications.

MAJOR FOJAS: I take issue with you.

MR. BONDA: Give it to the Court.

(Major Fojas hands a volume to the Commission.)

MR. BONDA: We can read the answer to save time.

MAJOR FOJAS: Let us leave it entirely in the hands of the Commission.

COLONEL PARMELEE: The Commission will withdraw.

(Off-the-record discussion ensued.)

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MAJOR FOJAS: Withdraw the question.

Q Will you please explain why in the Nishikawa case you testified that you had heard of mistreatments and tortures committed in Barrio Rizal on the 7th day of March, 1944, that you became certain of such mistreatment and tortures when you heard the charges in court, while you now testify that you have never heard of such tortures and mistreatments.

MR. BONDA: Objection, the question as phrased makes it appear he heard of the mistreatment and tortures on the 7th of March, 1944. There was no such evidence to be heard on the 7th of March, 1944.

COLONEL PARMELEE: The witness has been asked a question and he can explain that he didn't get such information and so forth, if that is true, he is given an opportunity to explain it.

MR. BONDA: My objection is that he knew about it on the 7th of March, 1944. The testimony in the Nishikawa case is that he heard it later on. Unless the punctuation is exact, that is going to be misleading.

COLONEL PARMELEE: I'll punctuate it, that is my responsibility of the record. The date is definitely linked up with the tortures and mistreatment.

MR. BONDA: My contention is that you can't tell whether it refers to whether he knew or heard about it on that date. It could be rephrased to be more explicit.

COLONEL PARMELEE: The question is clear, and the objection is not sustained. When it is interpreted, it has got to be very clear whether the tortures and mistreatments were committed on a certain date, that is the date the tortures and mistreatments are alleged to have been committed.

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A I heard about it when I received the charges in court.

Q Is that the only explanation that you care to give?

A Of course I know that it is a bad trait of the Japanese people to slap people and hit others, and I believe that this hitting is considered as torture and mistreatment, therefore, knowing such characteristics of the Japanese people, in cases of investigation of the units under me, I made it a general ruling inasmuch as possible not to have the investigation conducted by Japanese but to have members of the Standing Army conduct the investigation. Since the members of the Standing Army know more about this situation and the details, as well as the faces of the guerrillas and guerrilla suspects, they were made to conduct the investigation and have the Japanese soldiers stand by. I testified here that I said I don't know whether there were any alleged mistreatment and tortures at Barrio Rizal and previously I learned about it. What I meant to say was that I learned about it here in this court. If I do not give a lengthy and detailed explanation of what occurred, etc., I believe that the charges made by the prosecution will not be correctly understood.

COLONEL PARELLE: The Commission will take a short recess.

(Short recess.)

COLONEL PARDELLE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Translated to witness through Interpreter Yamamoto.)

Q Now, did any members of the Standing Army participate in the investigation of persons apprehended in Barrio Rizal on March 7, 1944?

INTERPRETER YAMAMOTO: Will you read the question, please?

(Question read.)

A Yes, I believe they participated.

Q Did you make any attempt to find out if any mistreatment or tortures were committed by your soldiers and by members of the Standing Army during the investigation of persons apprehended in Barrio Rizal on March 7, 1944?

A I used the Standing Army so that the guerrillas wouldn't be mistreated.

Q During that investigation, or after the investigation, did you make any effort to find out whether mistreatment or tortures were committed by the Standing Army and your soldiers on March 7, 1944?

A To prevent any mistreatment I used the members of the Standing Army and therefore I conclude and truthfully believe that no mistreatment and torture was committed.

Q Will you please answer this question "yes" or "no." Did you make any attempt or effort to find out whether mistreatment or tortures were committed by members of the Standing Army and by your soldiers during the investigation conducted in Barrio Rizal on March 7, 1944?

A I was positive that there wouldn't be any mistreatment, so I didn't investigate.

Q All right, for the fourth time I will ask you the same question again, and please answer "yes" or "no." Did you make an effort to find out whether mistreatment and tortures were committed by the members of the Standing Army and by your soldiers in Barrio Rizal on March 7, 1944?

MR. BONDA: If the Court please, the witness has answered that. By reason of certain facts he either assumed or was sure that there were no mistreatments. Now, with that as a basis, what reason would there have been for him to have made any investigation?

COLONEL PARMELEE: The question is, "Did he make any effort to find out." He hasn't answered the question.

MR. BONDA: Well, he gives what he thinks is a responsive answer by saying that he used them so there would be no mistreatment or torture, so what was there to investigate?

MAJOR FOJAS: I submit, sir.

COLONEL PARMELEE: Will you read the last answer, please.

(Answer read.)

COLONEL PARMELEE: He still hasn't answered the last question which the prosecution has put.

MR. BONDA: Isn't that responsive, sir? I have objected to the last question because the question has been previously answered.

COLONEL PARMELEE: The point is a person can be positive, but did he make any effort to find out whether he was

right in assuming whether there was any, I believe that is the point.

MAJOR FOJAS: Yes sir, that is correct. I have asked the question four times, and I haven't a responsive answer.

MR. BONDA: And I submit the answer is responsive. If a person knows that a certain thing exists or does not exist, he does not investigate that thing. If the Colonel had a duty to see that certain things were done, and he was sure that the thing was done, he would have no reason to investigate.

MAJOR FOJAS: But he can say "no."

COLONEL PARRILLE: Well, prosecution apparently is not satisfied on cross-examination. The question is admitted, objection overruled.

MAJOR FOJAS: (To interpreter) Tell him to answer "yes" or "no."

A No, I did not.

Q You testified that a person was killed in Barrio Rizal because he attempted to escape. As commander of that expedition, did you make any personal investigation to determine whether that report was correct?

MR. BONDA: Objection; that is immaterial and irrelevant. We have the same procedure in the American Army, and every Army that I know about, that if a report is made by a subordinate we do not investigate the truth of that report unless it comes to us through some other way that it was a false report.

MAJOR FOJAS: I submit, sir, that the question is proper.

COLONEL MILLER: The question is permitted. The witness can answer. That is, the Commission will have to match its military experience against the evidence here.

INTERPRETER YAMAMOTO: Will you read the question?

(Question read.)

A There were guerrillas, and during combat action he tried to escape from the envelopment, so it could not help for him to be killed.

Q Now, will you please answer the question "yes" or "no." Did you make a personal investigation as to whether the report you received of the killing of a man in Barrio Rizal, whom you said attempted to escape, is true or not?

A It was true, so I did not investigate.

Q Now, you testified that some persons who were arrested in the Barrio Rizal on March 7, 1944, were taken first to Silay, and then to Bacolod. Will you please tell the Commission where particularly those prisoners were taken?

A I believe that those guerrillas who were thought to be vital to these Kempei Tai were brought to their unit, and others who were thought to be vital to my unit were brought to my unit.

Q That was only your belief; you were not certain as to whether or not those guerrillas, some of those guerrillas, were taken to the Kempei Tai unit, and the others were taken to your unit, is that correct?

A That is what I believe. As I say, I was in charge of various things, so I don't know the exact details.

Q Did you ever receive any report as to how many of those guerrillas apprehended in Barrio Rizal were taken to Bacolod and to your unit?

A I believe I received the report, but I do not remember it exactly.

Q Those guerrillas who were taken to your unit were taken to your headquarters in Bacolod, is that right?

A Yes, and when there were many guerrillas or guerrilla suspects they were taken to the Philippine prison in Bacolod.

Q They were taken to the Philippine prison in Bacolod simply for the purpose of detention, but those prisoners were also under your charge and custody, isn't that correct?

A Since we had too many suspects we just put them over there.

Q But as long as they were suspects they remained under your disposition, isn't that correct?

A Yes.

Q And for purposes of investigation, even if they were confined in the Philippine prison, they were taken to your headquarters in Bacolod, is that correct also?

A Yes.

Q Now, do you know if any of those prisoners apprehended in Barrio Rizal, and as you said, were taken to the Kempei Tai Headquarters, do you know if they were ever turned over to your headquarters?

MR. BONDA: Wait a minute, do you mean "before" or "after" they were taken to the Kempei Tai."

MAJOR FOJAS: Afterwards.

MR. BONDA: Put that in the question; otherwise it is going to be confusing.

MAJOR FOJAS: I don't think there will be confusion; but you can put it in, "afterwards."

COLONEL FARRELLEE: Will you read the question, please?

(Question read.)

MAJOR FOJAS: You can add "afterwards."

A It might have been possible, but I do not know.

Q Do you know what happened, what finally happened to those prisoners who were apprehended in Barrio Rizal, and were taken to your headquarters in Bacolod?

A They were investigated, and those that were found to be guerrillas were put in the Spiritual Training School, and others were released.

Q Was it not possible that some of these persons were never placed in the training school, but were killed?

MR. BONDA: Objection. There is nothing in the evidence that any of these persons who were captured in Barrio Rizal were ever killed. Object to the question.

MAJOR FOJAS: Rodolfo Padios was killed. He was captured in Barrio Rizal. He was killed, together with Ernesto Chavez.

MR. BONDA: That was in Barrio Sumag.

MAJOR FOJAS: That was in Barrio Sumag, but he was captured in Barrio Rizal.

MR. BONDA: I don't think he was captured in Barrio Rizal. He was captured at another place near Rizal.

MAJOR FOJAS: He was captured in Rizal.

MR. BONDA: I don't think that is correct, but I don't have the record here.

COLONEL PARIELEE: We can very easily check the record. My recollection is that he was captured during that Barrio Rizal or Silay operation.

MAJOR FOJAS: Yes, sir.

MR. BONDA: I withdraw my objection, if that is the Commission's recollection.

COLONEL PARIELEE: That would be about Volume 14 or 15, I think.

MR. BONDA: I withdraw my objection.

COLONEL PARIELEE: Specification 8 contains the name of Rodolfo --

MR. BONDA: That is right. It contains the name, but I think that that was an error at that time;

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but I don't have the record, and I do withdraw my objection. The mere inclusion of the name in the Specification, of course, means nothing.

COLONEL PARMELEE: That is correct.

MAJOR FOJAS: But we have it in the evidence. Our witness testified he was captured in Barrio Rizal.

COLONEL PARMELEE: The Commission is not willing to state definitely that they recall that it is, but the defense has withdrawn its objection.

(Question translated to the witness by Interpreter Yamamoto.)

COLONEL PARMELEE: The Commission will take a short recess. Can you hold that question? We will put it again. Mr. Bonda has a long distance call from New York.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness by Interpreter Yamamoto.)

MAJOR FOJAS: There is a pending question which has not yet been answered, although I think the witness has already given it partially.

COLONEL PARMELEE: The question, I believe, should be put again, and the interpreter read back to him what he has already given.

(The last question was read by the reporter and translated by Interpreter Koide.)

A I firmly believe that all guerrillas were placed into the Spiritual Training School.

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Q Do you know as a matter of fact that all guerrillas were placed in the training school?

A I truthfully believe that all guerrillas were placed in the Spiritual Training School. Those who were found not satisfactory in the training were released. Those who did not have the mental ability to carry on the course were also released.

Q When you said, "I truthfully believe they were placed in the training school," do you mean to say that you know that as a fact?

A I believe that for a certainty.

(Off-the-record discussion as to translation.)

Q In other words, you mean to say by that answer that there was no possibility at all for a guerrilla who was apprehended by your unit not to be placed in the training school, is that correct?

MR. BONDA: Object to that. It is based on something that is not in the evidence. The evidence was that, of those who were apprehended, some were sent to the Kempei Tai, some were retained by his unit. He knows only what happened to those who were retained by his unit. I think that question is not based on anything that is in the record.

MAJOR FOJAS: My question refers to persons arrested by his unit.

COLONEL PARMELEE: By his unit?

MAJOR FOJAS: Yes, sir, that is in the question.

MR. BONDA: But he has been talking about persons who were apprehended by his unit, and sent to his unit, because that was the preliminary question asked by the prosecutor. The evidence shows some were apprehended and sent to the Kempei Tai; some were apprehended and sent to his unit.

MAJOR FOJAS: He testified that all guerrillas retained by his unit were sent to the training school. I only wanted to find out whether he knew that as a matter of

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fact, in view of his answer, "I believe they were sent."

MR. BONDA: If you will amend that question to read, "Were all the guerrillas apprehended by you and retained by you?" then I would have no objection because the evidence clearly is that some were retained by them and some were not.

It is not a question of those that were apprehended. It is a question of those that were retained by them.

MAJOR FOJAS: All right. I will rephrase the question.

Q Do you mean by your answer that there was no possibility for any guerrilla detained by your unit not to be in the Spiritual Training School?

MR. BONDA: Same question. I am only asking that you insert the words, "and retained by you."

COLONEL PARMELEE: That is what he said.

MR. BONDA: He said, "detained."

COLONEL PARMELEE: Will the reporter read the answer?

(Last answer read by reporter.)

COLONEL PARMELEE: He said, "R-E-T-A-I-N-E-D" but she got it "D-E-T-A-I-N-E-D." All right.

MAJOR FOJAS: That should be "R-E-T-A-I-N-E-D."

(The question was translated to the witness by Interpreter Koide.)

A My reasons are as follows:

1. At that time, due to the confusion of combat activities, we were not in the usual calm and deliberate state of mind. Consequently, I cannot affirm or state what

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actually occurred to the prisoners who were captured.

2. However, I firmly believe that no guerrillas were killed, and all of them were placed in the Spiritual Training School.

3. As to the disposition of the guerrillas, in actuality, it was the same as I had explained yesterday.

Q Did you take any step, did you adopt any measure to find out definitely what happened to these guerrillas who were captured in Barrio Rizal and detained by your unit?

A After investigation the guerrillas were placed in a school, and those who were not vital or proven innocent were released.

Q Will you please answer this question "yes" or "no"? Did you adopt any measures to determine whether or not the guerrillas you apprehended in Barrio Rizal and who were retained by your unit were all taken to the training school?

A The chief of the intelligence section was carrying out the investigation and determining who were the guerrillas to be placed in the spiritual training school.

MAJOR FOJAS: I don't know, sir, how I can get an answer from this witness, but I am willing to put the question once again.

Q Will you please answer "yes" or "no". Did you take any measures to find out whether all the guerrillas you captured in Barrio Rizal and who were detained by your unit were all placed in the spiritual training school?

A I believe that those who were convicted and firmly established after investigation as being guerrillas were placed into the spiritual training school. I believe that to be true, but I cannot say for a certainty.

Q Once again. Did you or did you not take any steps to find out whether those guerrillas were taken to the spiritual training school?

A The subordinate had the responsibility, so I should

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not interfere.

Q Is it correct for me to say now in view of that last answer of yours that you did not take any steps to find out?

MR. BONDA: If the Court please, we are exactly in the same position we were in before, that you don't investigate unless there is a complaint made.

MAJOR FOJAS: I want an answer to my question.

MR. BONDA: What is there to investigate unless someone tells you something is wrong?

MAJOR FOJAS: My question is to find out what happened to the guerrillas. I have a question to be answered.

COLONEL PARMELEE: The defense made a comment, is that correct?

MR. BONDA: Yes, sir, I am trying to explain, it doesn't seem likely to me.

A The subordinate had the responsibility so there was no necessity for me to find out.

Q Now, is it also correct to say now that you did not take any steps to find out the final disposition made of these guerrillas who were captured in Barrio Rizal and retained by your unit?

MR. BONDA: What is the difference between that and the preceding question he already answered?

MAJOR FOJAS: That is my question.

MR. BONDA: It sounds exactly the same to me.

COLONEL PARMELEE: Will the reporter read the question, please?

TS(6)mm

(Question was read as directed.)

MAJOR FOJAS: The first line of questioning was about taking them to the training school and now this is as to final disposition.

MR. BONDA: He testified what the final disposition was.

MAJOR FOJAS: I submit the question is proper.

COLONEL PARMELEE: It is cross-examination. He is apparently not satisfied with the answer given.

MAJOR FOJAS: No, sir, I have not asked that question before, to obtain any answer to it.

COLONEL PARMELEE: No I mean satisfied by the testimony given.

MR. BONDA: That is the question he has propounded for the last twenty minutes.

MAJOR FOJAS: No, sir, it is not.

COLONEL PARMELEE: It is along the same line, but not exactly the same question.

MR. BONDA: It may be a different preposition or adverb, but the question is the same.

A It is as I said before.

Q What was it you said before, that you did not take any steps?

A The subordinate had the responsibility, and if I tried to investigate what was being done correctly or not, I would not be able to fulfill my duty as commander.

COLONEL PARMELEE: The Commission will now adjourn and will reconvene at 0830 hours Tuesday, 14 January 1947.

TS(6)mm

(The Commission adjourned at 1130 hours, to reconvene at 0830 hours, 14 January 1947.)

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME XLVI

PAGES 3114 TO 3193 INCL.

MANILA, P.I.

DATE: 14 January 1947

COPY NO: /

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Pardelee
A. L. PARDELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
CONVENED BY THE
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
24 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

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MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

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2ND LIEUTENANT FRANK YAMAMOTO	)	Japanese
2ND LIEUTENANT SAMUEL S. KOIDE	)	
PETRONILO VALLEJO	)	
CAESAR YO ALZONA	)	
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MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
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I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COMM.
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E X H I B I T S

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P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, at Court No. 2, High Scommissioner's Residence, Dewey Boulevard, Manila, P. I., 14 January 1947.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

There is a new interpreter to be sworn.

(Interpreter, Mr. Romualdo Taccad, was duly sworn.)

MASAKAZU YAMAGUCHI

a witness in his own behalf, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Taccad:

CROSS-EXAMINATION (continued)

BY MAJOR FOJAS:

Q Were there any women among those persons you arrested in Barrio Rizal on the 7th day of March, 1944?

A Yes.

Q Do you remember how many women were there?

A No, I don't remember.

Q Were these women also brought to Bacolod?

A I heard in this court that they were brought to Bacolod and then investigated there.

Q Before you heard it in this court, did you know that those women were brought to Bacolod?

A No.

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Q So that you did not know what happened to those women when they were taken to Bacolod?

A No, I heard in the court that they were investigated and then released.

Q And so you did not also know whether those women were guerrillas or spies?

A I believe they were taken there because they were spies, or those that were people whom they were required to investigate.

Q But you did not know of your own knowledge whether those women were guerrillas or spies, is that correct?

A No.

Q Did you receive any report in connection with those women?

MR. BONDA: What specification are you referring to?

MAJOR FOJAS: Specification No. 8.

MR. BONDA: What has Bacolod got to do with number eight?

MAJOR FOJAS: I am examining this witness generally on what happened in Barrio Rizal. There was testimony to the effect that those persons arrested in Barrio Rizal were taken to Bacolod.

MR. BONDA: What happened to them in Bacolod is not material to this issue, sir.

COLONEL PARMELEE: Well, it is covered by a later specification perhaps.

MR. BONDA: No, it isn't, sir.

MAJOR FOJAS: Besides that --

EGM(1)mm

MR. BONDA: Wait a minute. I want to answer that. He said he is questioning him on Specification No. 8, and it is not covered in a later specification as to what happened to those women.

COLONEL PARMELEE: No, but I say the sequence of events that he is touching upon is all covered some place in the specifications.

MR. BONDA: I don't know where it is.

MAJOR FOJAS: I don't have to confine myself, sir to any specific specification. I am testing the credibility of this witness, and I am testing his knowledge about the atrocities, about things which happened in Negros.

MR. BONDA: You have to confine yourself to alleged atrocities that are set forth in the specifications.

COLONEL PARMELEE: Will the reporter read the question.

MR. BONDA: You are bound to get -- what the prosecution wants, of course, is some discrepancies, and you are bound to get them when a man doesn't know about them, and it isn't even alleged in the specifications.

COLONEL PARMELEE: Will you read the question, please?

(Question read.)

MR. BONDA: That refers to a previous question in which he says those women were in Bacolod, and he said he didn't know anything about it.

MAJOR FOJAS: That refers to a previous question referring to men and persons arrested in Barrio Rizal, and I am entitled on cross-examination to examine this witness on anything which happened in Barrio Rizal.

EGM(1)mm

MR. BONDA: I challenge that statement. Your previous questions refer to women only, not men and persons.

COLONEL PARMELEE: Objection not sustained.

MR. BONDA: May I ask the Commission how far the Commission is going to permit the prosecutor to go in acts not set forth in the specifications and not touched on in direct examination?

MAJOR FOJAS: Before anything is said about it, I would like to say this man is charged with command responsibility. He is supposed to know what was taking place in his unit, and what happened to persons that were apprehended by his unit on dates alleged in the specifications.

MR. BONDA: I challenge the prosecutor to show where in command responsibility he is accountable for anything not charged in the specifications. I have heard that argument in other courts, and I have challenged it there.

MAJOR FOJAS: That challenge is accepted, sir. These women arrested in Barrio Rizal are referred to in the specifications, and we have alleged in three specifications, I think, or three or four specifications in connection with that raid.

MR. BONDA: If anything happened to the women elsewhere why didn't you put it in the specifications? We have to have something to meet; we can't just have a book thrown at us, and say, "meet this and meet that." That is the purpose of the specifications. We have a tough enough time as it is, without going outside of them to defend.

MAJOR FOJAS: I am cross-examining your witness.

MR. BONDA: Well, you didn't remember that when I

EGM(1)mm

was cross-examining the witness, and I was stopped at every turn.

MAJOR POJAS: And that is covered by his direct testimony.

(Question translated to witness through Interpreter Yamamoto.)

A No.

Q Do you know if they were placed in Spiritual Training School?

MR. BONDA: Objection. He said he didn't know what happened to the women, and aside from the fact that he has no right to go outside of Rizal with those women, I object because he said he didn't know what happened to the women.

MAJOR POJAS: There is testimony of this witness to the fact that all guerrillas arrested were placed in Spiritual Training School. I would like to test the validity of the statement of the witness.

MR. BONDA: He said he didn't know what happened to the women.

COLONEL PARMELEE: As a matter of examination of the witness for credibility, the prosecution does not accept the statement; is that the basis of the questioning?

MAJOR POJAS: That is the basis of the questioning.

MR. BONDA: Well, that is an improper basis for the question, sir.

COLONEL PARMELEE: Well, I don't think so. I mean, to test the credibility, very often will cause a question to be asked where an answer previously has been

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"no." I believe that has been done by the defense, if they weren't satisfied.

MR. BONDA: Sure, if it is equivocal — it is the same experience we had yesterday, or the last time we were in court, the same question was asked at least ten or fifteen times.

MAJOR FOJAS: That is not true, sir. I did not ask the same question ten or fifteen times.

MR. BONDA: Sure, but in different forms; you put a comma where a semicolon had been, was about the only difference.

MAJOR FOJAS: No, you are just being - - - I don't know - - -

COLONEL PARKILEE: Well, the Commission is here to listen, and the law member to rule. What is the status of this question now? Is that objected to?

MAJOR FOJAS: Yes sir, it is objected to.

COLONEL PARKILEE: Objection not sustained.

(Question translated to witness through Interpreter Yamamoto.)

A No, the women were not put in the school.

COLONEL PARKILEE: Were not placed in the school?

INTERPRETER YAMAMOTO: Yes sir.

Q Do you know that she was confined in jail for a period of about five months?

MR. BONDA: Who is the "she" you were talking about?

MAJOR FOJAS: When I said "she" I am referring to Maria Forques Alabas.

Q Do you know that one of those women arrested in Barrio Rizal on the 7th of March, 1944, Maria Forques Alabas, was confined in jail for a period of about five months?

MR. BONDA: If the Court please, object to that question, and I ask the question be rephrased to say "Do you know that she said she was confined to jail." Not stated as a fact, but as the witness said.

MAJOR FOJAS: I am willing to do that, sir.

COLONEL FARMELEE: If that is the testimony - - - I don't recall exactly. But the question as originally phrased is not based upon the evidence so far?

MR. BONDA: It is based on what she said.

MAJOR FOJAS: To avoid any further discussion, I am willing to rephrase the question, and include that amendment.

Q Do you know Maria Porques Alabas, one of the women arrested in Barrio Rizal on the 7th day of March, 1944, stated in court she was confined in jail by the Japanese for a period of about five months?

MR. BONDA: I object to the question. It is not based on the facts; there is nothing in the record to show she was in for five months or about five months.

MAJOR FOJAS: I submit, sir, that she stated that in court.

MR. BONDA: I have got the exact figures here. The prosecutor ought to know what his witnesses said. That question if put to him, you are going to get an improper answer no matter what it is.

COLONEL FARMELEE: Does the prosecutor have the page number where that statement was made?

MAJOR FOJAS: Right now I don't have it here, sir, but I remember she testified she was confined in jail for several months, and my recollection is that it was about five months.

COLONEL FARMELEE: The Commission will take a brief recess while the testimony of this witness is gotten and the question found.

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MR. BONDA: It will be found on Page 592.

(Short recess.)

COLONEL PARKELEE: The Commission is in session.

MAJOR FOJAS: May I have the last question?

(Question read.)

MAJOR FOJAS: Amend that to state "for a period of three months and seventeen days."

(Question translated to witness through Interpreter Yamamoto.)

A No, The investigation of these women was done by my unit. My unit investigates information concerning operations, and is not the place to handle the investigation of women. I believe they were done by the Kempei Tai, as our unit does not have the accommodations for women.

Q But the fact is you do not know whether or not that woman Maria Porques Alabas, was actually confined for a period of about three months and seventeen days?

A No.

Q Are you sure that none of the guerrillas who were arrested in Barrio Rizal on the 7th day of March, 1944, and were taken to Bacolod, was killed by members of your unit?

A I firmly believe that the guerrillas were placed in the Training School.

Q And either before or after those guerrillas were placed in the Training School, none of those guerrillas were killed by members of your unit, is that correct?

A My policy was to place the captured guerrillas in the Training School, and later release them.

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Q The question is: Do you know of your own knowledge whether any of those guerrillas were killed by members of your unit?

MR. BONDA: If the Court please, I would like to have the question include which particular guerrillas are meant; in other words, is it a general question, or are you referring to specific specifications. I know originally it was a specific specification, but unless the question includes that in it, the accused may think this is another series of questions referring to a general situation.

COLONEL FARMELER: You want to be certain that the witness understands that the question is only within the scope of the specifications?

MR. BONDA: That is right.

MAJOR FOJAS: This witness, sir, has made a general statement that all guerrillas captured by his unit were placed in the Spiritual Training School. Now, I just want to be certain as to whether he knew of his personal knowledge that none of those guerrillas were ever killed by members of his unit, and in that particular question it is specific as to who the guerrillas that I meant were, because I am referring to those persons who were arrested in Barrio Rizal on the 7th of March, '44.

MR. BONDA: That is what I want included in the question.

MAJOR FOJAS: It is included in the original question

MR. BONDA: Well, the original question, but the interpreter puts a different question to him all the time and he doesn't know where the specific question ends and the general question begins.

COLONEL FARMELER: Well, in this particular instance, can we state - - -

MAJOR FOJAS: Yes sir.

COLONEL FARMELER: - - - as to those who were captured at Barrio Rizal.

MAJOR FOJAS: Although it is already stated in the original question, I am willing to restate it.

Q Do you know of your own personal knowledge whether any of those guerrillas who were captured by your unit in Barrio Rizal on the 7th day of March, 1944, was killed?

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A I believe if they were guerrillas they would have been placed in the Training School, and trained, and later released.

Q The question is: Do you know of your own knowledge whether or not any of those guerrillas arrested in Barrio Rizal on the 7th day of March, 1944, were killed either before or after their training in the Spiritual Training School?

A No.

Q Would I be incorrect if I said that it was possible for any of those guerrillas to have been killed without your knowing it?

A At that time combat operations were being carried on, so that may have been possible.

Q You testified during your direct examination that you found out the leader of the bandits in Barrio Rizal from the specifications. Will you please tell the Commission who that man was you found out to be the leader of the bandits at Barrio Rizal?

A I did not know his name, but there was an officer. Later, in the court, I learned about the officer's name.

Q Can you recall the name of the officer you learned in court to be the leader of the bandits in Barrio Rizal?

A Yes. I learned about him in court.

Q Can you name that officer?

A I heard the name, but I have forgotten.

Q And how did you find out that he was the leader of the bandits in Barrio Rizal?

A The mother of the leader of the bandits was taken to Bacolod and investigated.

COLONEL PARTELEE: Is that a response to the English question?

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INTERPRETER YAMAMOTO: No, sir, that is a response to the previous one. (To the reporter) Will you read the last question?

(Last question read by the reporter.)

A I learned from the reports correlated by Lieutenant Nishikawa, and signed "Fujita."

Q When did you learn that the mother of the leader of the bandits was taken to Bacolod and investigated?

A I learned about it in this court.

Q Did you learn also in this court from testimony of any witnesses that she was the mother of the leader of the bandits?

A His mother stated that. She stated, "My son was the officer."

Q So that, in other words, from the investigation, from the report of investigations made of these persons who were arrested in Barrio Rizal, you did not find out who was the leader of the guerrillas?

A No.

Q And when you said that you heard it in this court from the mother of the leader of the guerrillas, you are not sure that you actually heard it, but you only think that you heard it?

MR. BONDA: Objection. It was heard in court. I heard it.

MAJOR FOJAS: You heard it in this court?

MR. BONDA: Yes, sir.

MAJOR FOJAS: In this trial?

MR. BONDA: Yes. To refresh your memory, Sofia

Congues Padios testified that her son, Antonio Padios, was a leader of the guerrillas. He was a lieutenant. And her son Rodolfo, whom she said was not a guerrilla, was killed.

MAJOR FOJAS: I challenge your statement.

MR. BONDA: It is in the record.

MAJOR FOJAS: In the record, Sofia Congues Padios has a statement that she has a son who was a guerrilla, but she never said he was a leader of the guerrillas.

MR. BONDA: She said he was a leader of the guerrillas, an officer, a first lieutenant, I think it was. I am not sure of the exact rank.

MAJOR FOJAS: She did not testify it in this court. We just read the testimony of that witness as given in another case.

MR. BONDA: That is testimony in this court.

MAJOR FOJAS: There is no statement that her son was the leader of the guerrillas.

COLONEL PARMELEE: Do you want to take time out to verify that?

MAJOR FOJAS: I am sure of that. He is the one who is saying that the mother testified that her son was the leader of the guerrillas. He has to show it.

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MR. BONDA: Didn't she testify in person?

MAJOR FOJAS: She testified in person.

MR. BONDA: Why do you say her testimony was read?

MAJOR FOJAS: Her testimony was read.

MR. BONDA: Didn't she testify in person in this case?

MAJOR FOJAS: She appeard in person, but while there we read her testimony.

MR. BONDA: She was here to deny it, if it was not true.

MAJOR FOJAS: We are not denying she stated in her previous testimony she has a son, Antonio Padios, who was a guerrilla; but she did not say he was the leader of the guerrillas in Barrio Rizal. I don't know if there is an objection to my question.

COLONEL PARMELEE: The witness should -- if there is an error, he should so state. If the question, I say, assumes matters not in evidence, he should so state.

MR. BONDA: I say it is in evidence.

COLONEL PARMELEE: There, the prosecutor disagrees.

MAJOR FOJAS: There is no testimony, sir--

COLONEL PARMELEE: That is where we come right back to that conflict. In order to save time, it probably would be better to review her testimony here, because if you don't do that the only way to resolve it is to rely upon the witness making the claim that it is not correct.

MAJOR FOJAS: Here is the exact testimony of Sofia Congues Padios.

COLONEL PARMELEE: Do you want to compare that --

do you want to read it into the record?

MR. BONDA: I would like a recess.

MAJOR FOJAS: No, sir, unless he insists that Sofia

MR. BONDA: Go ahead and read it. I insist on nothing. Get everything in.

COLONEL PARTELEE: The only point is at this particular time we should be sure that the questions we are putting to the witness are based upon matters in evidence, and there seems to be a difference of opinion on this particular point. Now we should be sure that the question is based on something in evidence.

MR. BONDA: I am asking for a recess so we can do that, but the prosecutor objects, so read it in.

MAJOR FOJAS: I am not objecting.

MR. BONDA: You raised your voice when I said, "Let us take a recess and see what is in there."

MAJOR FOJAS: He testified he heard in court who was the leader of the guerrillas in Barrio Rizal. My question, which is objected to, is: Are you sure you heard it, or you think you just heard it?

He objected on the ground that it is in evidence that the mother testified that her son was the leader of the guerrillas in Barrio Rizal. I disagreed with him on that because there is no such testimony. There is testimony that her son was a guerrilla, but not the leader of the guerrillas in Barrio Rizal.

MR. BONDA: Wasn't there testimony her son was an officer in the guerrillas?

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MAJOR FOJAS: What --

MR. BONDA: I am asking you a question. That is all.

MAJOR FOJAS: Yes. That is a question. Do you retract what you said before, that the son was a leader?

MR. BONDA: I retract nothing. An officer is a leader. Whether the testimony of this witness is her son was "a leader" or "the leader" we will never know.

The question was in English, and translated to him by the personal interpreter. You can't deny an officer is a leader. None of us will ever know if he interpreted to him "he was a leader" or "the leader."

MAJOR FOJAS: That is the question I asked him, how he found out who was the leader of the guerrillas in Barrio Rizal.

MR. BONDA: He said he heard it in court. There is testimony here that Antonio Padios was an officer in the guerrillas, testified to by his own mother.

MAJOR FOJAS: What I heard in court is not the same as what the witness testified.

MR. BONDA: The witness testified that he knew that the mother had a son who was a leader. Whether it was "a leader" or "the leader" you and I aren't qualified to judge, and he said that he was the leader of the guerrillas, and he did hear it in court. It is a question whether he heard that he was "a leader" or "the leader."

MAJOR FOJAS: Well, sir, I submit. There is no use discussing it.

COLONEL PARMELEE: Well, now, the defense had asked for a recess to look at the testimony. Do you still want that?

MR. BONDA: No sir. The prosecutor wanted to read it, and I said, "First let us have a recess to see what is in there. Maybe we can agree on it." Then he said, "No sir." I assumed then he wanted to read it. I don't care.

MAJOR FOJAS: I did not say, "No sir." The Chairman of the Commission asked me if I wanted to read it in the record. I said, "No, sir, unless defense counsel insists on what he said."

If he insists Sofia Congues Padios testified that her son was a leader in the guerrillas I will read it into the record.

MR. BONDA: We don't have to read it in. It is already part of the record. On what theory it can be read now I don't know, but I will waive any objection to reading it. I am stating to the Court that she testified he was an officer in the guerrillas and that an officer in the guerrilla, as I say to you, is a leader.

When the interpreter interpreted to him, I don't know whether he used the word "a leader" or "the leader," but that is the way he interpreted it to him.

MAJOR FOJAS: My question to this witness is this: I asked him if he found out who the leader of the guerrillas was in Barrio Rizal, and he said he heard it in court. That is what I am questioning him on right now.

COLONEL PARMELEE: Is that the question right now?

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MAJOR FOJAS: That is the question.

MR. BONDA: I say to you further, it is not a bad assumption to make that in a barrio the size of Rizal an officer that is in that barrio would be the leader in that barrio; and I think any military man would so assume, and the witness is a military man.

COLONEL PARMELEE: What is the technical status? Is there an objection to the question?

MR. BONDA: As I understand it, the prosecutor asked the question, "Do you mean to say that you heard it here in court?"

I made the statement, "Yes, he did hear it in court, because it is a matter of record as to what was read in court, and that is why it is an unfair question." I object to that particular question.

MAJOR FOJAS: That is not the question. The question is, "Are you sure you heard it in court, or you just think you heard it in court?"

MR. BONDA: I see. That is substantially what I said.

COLONEL PARMELEE: Well, let us proceed. Objection not sustained.

INTERPRETER YAMAMOTO: May I have the question?

(The last question was read by the reporter.)

A My interpreter told me that her son was an officer of the bandits, and so I thought that she was also taken to Bacolod and investigated, as she had connections with the officer. I first learned about it in this court, that the woman was also taken

to Bacolod and investigated.

Q So you did not actually hear testimony in this court to the effect that her son was the leader of the guerrillas in Barrio Rizal, is that correct?

A I did not know if the officer was actually the leader of the bandits. However, his mother stated that he was an officer of the bandits.

COLONEL PARKELEE: Let us verify that "an." Is that what it is, "an officer"?

INTERPRETER YAMAMOTO: "An officer."

Q So the fact is you did not hear in court, actually hear in court, that his mother testified that her son was the leader of the guerrillas in Barrio Rizal? Please answer that "yes" or "no."

A His mother said he was an officer of the bandits.

MAJOR FOJAS: Will you put to him the question again, and have him answer "yes" or "no."

MR. BONDA: Isn't that an answer, sir? I submit that that is responsive. I recall that with the Filipino witnesses we repeatedly had this sentence used: "that is the way their mental processes work, and the answer was responsive."

It was a different answer, but it gave the gist of what the reply was. What is the difference here? If that does not answer it, then I don't understand the English language. My information from the personal interpreter is that the same word in Japanese means "leader" and "officer." Is that correct?

PERSONAL INTERPRETER: Yes.

MR. BONDA: "Chief officer" and "leader" are the same

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words used in Japanese.

COLONEL PARMELEE: What is the Japanese word?

(Discussion off the record among the interpreters.)

INTERPRETER YAMAMOTO: Yes. In Japanese the term "leader" also means "the chief officer."

COLONEL PARMELEE: The official interpreter agrees with the personal interpreter, is that correct?

INTERPRETER YAMAMOTO: Yes, sir.

MAJOR FOJAS: But that does not answer my question.

COLONEL PARMELEE: Read the preceding question and answer, and the last question that has not been answered.

MR. BONDA: There is an answer to the last question, sir.

(The requested portion was read by the reporter.)

MR. BONDA: I say the last question has been answered, sir.

COLONEL PARMELEE: The question is whether he heard in court. That is the gist of the thing. That is what he wants a "yes" or " no" answer on.

MAJOR FOJAS: Yes sir.

COLONEL PARMELEE: That answer does not seem to be responsive to the main element of the question. Is that correct? Is that the main element of the question, "Did you hear it?"

MAJOR FOJAS: Yes sir.

MR. BONDA: I don't see why you pick out a main element, Mr. Prosecutor. There is only one question there, and I say he has answered it when he said that is what the

testimony was.

The testimony is a matter of record, and I think we are agreed on what the testimony was. We also now have the statement that the same word means "officer" and " leader." I can see no point in harassing this witness any further along that line. There is nothing to be gained either way.

COLONEL PARMELEE: Before making the ruling, I want to be satisfied that the prosecutor is trying to find out whether he heard or did not hear in this court certain things. Is that correct?

MAJOR FOJAS: That is correct.

COLONEL PARMELEE: That is the reason you want a "yes" or "no" answer?

MAJOR FOJAS: The question is a very definite one.

COLONEL PARMELEE: Objection overruled. Read the question again, please.

(The last question, and the preceding question and answer were read by the reporter.)

A Yes. I heard it from the interpreter.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR POJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

Q Let's get this straight. When was this you heard the report that the son of that woman was an officer of the guerrillas or that he was the leader of the guerrillas in Barrio Rizal?

A I don't know whether or not that woman's son was in Barrio Rizal, but I did hear that he was a guerrilla officer. I did hear in this court that he was a guerrilla officer.

Q Do you know how many persons were arrested at the Hawaiian Central on March 7, 1944?

A I don't remember exactly.

Q Can you recall if there were three or four persons arrested at the Hawaiian Central on March 7, 1944?

A I don't remember the exact number, but there may have been as many as that.

Q Could you recall if besides Leonardo Bebit there were two other persons who were arrested at the Hawaiian Central?

A No.

Q But you are sure that there were more than two persons who were arrested at the Hawaiian Central?

A Yes, I think so.

Q Who were the members of your unit who went to the Hawaiian Central on the 7th of March, 1944?

A Captain Takahashi, the commander of the Takahashi Company, took along his men, together with Lieutenant Nishikawa and his platoon.

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Q Do you know what time on the 7th of March, 1944, these members of your unit went to the Hawaiian Central?

A No.

Q Did you receive any report from these members of your unit who went to the Hawaiian Central on March 7, 1944, as to the mistreatment of persons arrested in that place?

A No, I did not.

Q Did you take any steps to find out whether members of your unit mistreated the persons arrested at the Hawaiian Central on March 7th, 1944?

MR. BONDA: Objection.

COLONEL PARMELEE: Basis?

MR. BONDA: That is like the question, "have you stopped beating your wife." He testified he doesn't know of any mistreatment. What reason would there be for an investigation.

COLONEL PARMELEE: Will the reporter read the question, please?

(Question was read as directed.)

MAJOR FOJAS: The question is very simple, sir, to find out if mistreatments were committed or not.

MR. BONDA: He testified he had no reason or no report of any mistreatments. What does an officer investigate, something he knows nothing about?

MAJOR FOJAS: The witness has testified that it was a bad habit of the Japanese people to mistreat people and said he tried to stop it. We want to find out what steps he took, if any, to stop it.

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COLONEL PARMELEE: He testified slapping was a bad national practice. Slapping, is that correct?

MR. BONDA: Among other things, yes.

COLONEL PARMELEE: The objection now seems to be on the fact that he, the defense contends he did not have any knowledge of any mistreatment.

MR. BONDA: That was the testimony this witness gave.

COLONEL PARMELEE: The question of the prosecution is to the effect as to , whether he made any effort to find out; if he made any investigation to find out, is that correct?

MAJOR FOJAS: Yes, sir. To find out whether he took any steps to find out whether mistreatment was committed or not.

MR. BONDA: I submit it was exactly like the question, "when did you stop beating your wife." He took no steps to investigate and then he tolerated it. The next question he could ask would be why did you investigate if you had no knowledge of any mistreatment. Whatever he says, the prosecutor will pick on that in showing the type of witness we have here. It is a question that cannot be answered.

COLONEL PARMELEE: The question here is whether there were mistreatments or not. He has not stated there were none, he said he had no knowledge of any. As a matter of command responsibility, the question is believed to attempt to elicit the information as to whether he did or did not take any steps to find out whether it was or whether there

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was any mistreatment.

MR. BONDA: Since when does an army officer take steps to find out whether his troops misbehaved, unless he has information to that effect. Has the President of this Commission ever done that, sir?

COLONEL PARMELEE: Yes, it is a question of command responsibility to investigate and take steps that will prevent certain things happening. The question is what did he do about it later, or the punitive action he had taken. Command responsibility does not start when something happens, but it involves anticipatory action to prevent things from happening.

MR. BONDA: Do I understand this? That it is the duty of an officer to investigate

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that certain things have not happened are contrary to rule where he has no information that they have happened?

COLONEL FARMELEE: Oh no, I have just made a broad statement about the responsibilities that attach to command. In this particular question there is nothing in the answer to indicate that certain mistreatment did not happen. He stated he had no knowledge.

MR. BONDA: What does any officer have to investigate if he has no knowledge that a bad condition exists?

COLONEL FARMELEE: The point is that it does not state there was no mistreatment, he said he had no knowledge, the prosecutor is apparently not satisfied that he didn't know the general methods that were, or that there could have been mistreatment.

MR. BONDA: It is over my head, I have never heard of the principle that a person must investigate something that he has no knowledge exists.

MAJOR FOJAS: That is not the point. This officer here was commander of troops. Now do we have to understand he based every act of his simply upon reports he received if he did not do or take any steps to find out if his orders were carried out?

MR. BONDA: In view of that statement, I have no further comment.

COLONEL FARMELEE: The objection is not sustained, the question is ruled proper.

A The troops were up with the expectation of going to battle with guerrilla forces if they came in contact with them, so I never took such things in consideration.

Q Is it correct to say that you did not take any steps to find out whether mistreatments were committed at the Hawaiian Sugar Central on the 7th of March, 1944?

MR. BONDA: Objection. The same objection as to the previous question.

COLONEL PARMELEE: Objection overruled.

A I don't know.

Q When you said, "I don't know," do you mean to say you don't know whether you took any steps or not?

A They went there to engage in battle, not to torture or mistreat. When they were at Hawaiian Central they were fired at.

Q The question is: Did you take any steps to find out whether mistreatments were committed at the ~~Hawaiine~~ Hawaiian Central on March 7, 1944?

MR. BONDA: Same objection as to the previous question, sir. It is still a bad question and objectionable.

COLONEL PARMELEE: Objection not sustained.

A I don't think they would do such a thing.

Q Now, will you please answer the question "Yes" or "No." If you took steps or you did not take steps to find out whether mistreatments were committed at the Hawaiian Central.

MR. BONDA: I think he has answered it by the last answer. Certainly, if an officer doesn't think they would do such a thing, he would have no reason to investigate. If nothing else they said had no validity, if they had no reason to believe those things were done, they would not investigate.

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MAJOR FOJAS: Unfortunately, it is not defense counsel who is testifying. I would like an answer from the witness.

MR. BONDA: Who is what -- I am objecting on the grounds he has answered the question.

COLONEL PARMELEE: Will you read the last question and answer.

(Record read.)

COLONEL PARMELEE: Well, the question again is designed to get a categorical "Yes" or "No" as to whether steps were taken to find out, inasmuch as the answer to the preceding question was "I don't think that there would be such a thing." That does not deny that such a thing did happen. Is that the point?

MR. BONDA: If a man doesn't think such a thing would exist, why would he investigate? Under what principle, under command responsibility, under what principle is there a compulsion of investigation when a man says he didn't think such a thing happened? What is there to investigate?

COLONEL PARMELEE: Well, he doesn't say that it couldn't have happened, or that it didn't happen; he says he didn't think it could happen. Many times commanders will have to stand responsible for the acts of subordinates because they trusted too many people. It happens sometimes in politics, they have to stand responsible for those things, but what did they do to find out how much reliance they could place upon their subordinates that some certain

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things didn't happen.

MR. BONDA: Will the Commission agree with me that a man is not responsible for an isolated instance of rape --

COLONEL PARMELEE: The Commission makes no commitments now.

MR. BONDA: Assuming that a commander then is not responsible for an isolated instance of rape or looting, unless it is a general pattern of that man's troops, now in view of the fact those things could happen when the commander is out in the field, or when his troops are out in the field, I contend -- I will not put it in question form -- that there is no possible theory under which an officer, after an operation is completed, must go out and investigate whether there has been looting, or whether there has been rape, unless a charge is filed by somebody or a complaint comes in, that is the only possible time when there is any compulsion on the part of the commanding officer that he go out and see whether there was any looting -- tooops did do looting -- or whether there was any rape -- and it is possible that troops did rape -- but there is no compulsion, and under no theory can it be said that a commanding officer must investigate after an operation, or after a maneuver, or after a trip in the field to pick violets, there is nothing that says that he has to go out and investigate to see whether his troops committed any of those offenses. He assumes it was not done, and unless there is a complaint made, there is no reason why he should investigate.

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COLONEL PARMELEE: Of course, now, we are discussing things that would properly belong in a final argument, and the Commission is not in a position now to commit itself upon its conception of command responsibility any more than the President had just a few minutes ago. The Commission now has got to listen to the testimony, and they have got to use as a body their accumulated military experience, and their knowledge of regulations, and their concept of command responsibility, which is built up more or less by tradition, and is defined in the regulations, and they have got to adjudicate this case using their experience and their knowledge of the regulations. The question is considered a proper one on cross-examination because it is intended to determine just what was done or what was not done. The Commission makes no commitment at all.

MR. BONDA: Well, that brings us to the question as to whether there was any duty on the part of anyone to find out whether the thing was done when the thing was not required to be done. I agree with the Commission the purpose of cross-examination is to see whether the things were done that were necessary to be done. It was not necessary that that be done, and it is therefore an improper question.

MAJOR FOJAS: I contend, sir, that it is necessary that something should be done by this man who was commander of his troops to find out whether his policies were carried out and whether there were violations of those policies.

COLONEL PARMELEE: Well, in general, this line of questioning is considered by the Commission to give

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them information on just what the accused did in his official capacity as commanding officer, and what he did not do. As stated before, the Commission takes the testimony and applies reasonableness and common sense and its knowledge of the regulations and its experience, and we hope we can apply those fairly, and that is the sum and substance of the whole discussion here. The prosecution is trying to give to us what was done and what was not done, and it is for us to adjudicate it.

MAJOR FOJAS: Is the question permitted, sir?

COLONEL PARMELEE: Yes.

MAJOR FOJAS: I will request that the witness be instructed to answer the question as it should be answered, that is by "Yes" or "No." I have had experience with this witness before where I never got a categorical answer to my question without asking it five or six times.

COLONEL PARMELEE: Well, the question seems to be capable of being answered categorically "Yes" or "No," and that has been followed at the requestof either side, that the instruction has been given to the witness, and it is given here. If there is a possibility that it cannot be answered, the ruling has been set that the witness should explain or give a longer answer. In this case, it is ruled that such an answer can be given.

(Question tranlated to witness through Interpretor Taccad.)

A I think that could be understood from my former answers.

Q We want you to answer "Yes" or "No," whether or not

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you took steps to find out if mistreatments were committed in the Hawaiian Central.

A My answer is the same as the last answer.

MR. BONDA (To interpreter): Did you tell him to answer "Yes" or "No"?

INTERPRETER TACCAD: I told him.

MR. BONDA: Tell him again.

(Question translated to witness through Interpreter Taccad.)

A Do I have to answer "Yes" or "No"? I think that could be inferred from my answers.

Q Yes, you have to answer "Yes" or "No" to that question.

A Whether I took steps or not?

Q Yes,

MR. BONDA: Wait a minute. Whether he took steps to investigate..

MAJOR FOJAS: To find out whether mistreatments were committed in the Hawaiian Central on the 7th of March, 1944.

A I cannot answer "Yes" or "No."

Q Why not?

A Their mission was battle, not mistreatment.

MAJOR FOJAS: I don't know, sir, how I am going to get an answer from this witness, but I would request the question be propounded again to the witness, and he be instructed to answer the question "Yes" or "No."

COLONEL PARMELEE: Well, the witness really cannot be compelled to answer that question.

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MAJOR FOJAS: Is that what the Commission feels, sir, that the witness cannot be instructed to answer the question propounded to him?

COLONEL PARMELEE: He has been instructed to answer it, but he is reluctant to answer it. I don't believe we can compel him to answer if it is incriminating.

MAJOR FOJAS: But the moment he took the witness stand, he waived his rights to self-incrimination.

MR. BONDA: That is right -- I don't know what compulsion can be used on any witness, but I think he should --

COLONEL PARMELEE: Well, there is a provision in the Articles of War of the Genova Convention that a prisoner of war cannot be compelled to admit his guilt. Now, I am not informed of the law on this.

MAJOR FOJAS: The guarantee against self-incrimination, sir, is available to the accused if he does not take the witness stand, but the moment he takes the witness stand, he waives his rights.

COLONEL PARMELEE: Is that agreed upon?

MR. BONDA: Well, it doesn't go that far, but anything that has been touched on during the direct examination, he has waived the right if he has answered that on direct, he has waived any right, I think -- now, I may be wrong on this --

MAJOR FOJAS: I think the rule is general.

MR. BONDA: -- I think if it is a proper answer on cross-examination, I think he can be compelled to answers

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COLONEL PARMELEE: Very well.

MR. BONDA: He cannot be compelled to answer anything that has not been admitted by him or touched on by direct examination.

MAJOR FOJAS: He cannot be compelled to give a certain answer, but certainly he can be compelled to give an answer to a question.

MR. BONDA: Now, wait a minute. That is as far from the truth as any statement can be, that a man is not compelled to give a certain answer, but must give an answer. Now, a witness is supposed to tell the truth; he is not supposed to give an answer unless it is the truth.

MAJOR FOJAS: Anybody who takes the witness stand is supposed to take an oath that he is going to tell the truth.

MR. BONDA: But the statement you made is that he must give an answer --

COLONEL PARMELEE: I don't believe that was what was meant. I believe what was meant was that he must answer the question; that is, in other words, the compulsion is that he must answer the question. Now, at this particular point the question is whether he can be compelled to give a "Yes" or "No" answer.

MR. BONDA: Well, I come back to the proposition that it is a question, "Have you stopped beating your wife?"

MAJOR FOJAS: No, sir.

MR. BONDA: It is one almost incapable of a "Yes"

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or "No" answer.

COLONEL PARKLES: The Commission has ruled on the question proper, and has instructed the witness to give a "Yes" or "No" answer.

MR. BONDA: Will you tell him that his attorney told him to answer that "Yes" or "No," and have that question put again.

(Question translated to witness through Interpreter Taccad.)

A No.

Q Where were these persons arrested at the Hawaiian Central on the 7th of March, 1944, first taken?

A They were brought to the town of Silay.

Q Do you remember what time of the day they arrived in Silay?

A In the morning.

Q About what time in the morning?

A I don't remember exactly, but I think they may have arrived about 8:30 or 9:00 o'clock.

Q Did you not say that these persons were -- withdrew that question, please.

Among those prisoners who were taken to Silay at about 8:30 or 9:00 o'clock in the morning of March 7, 1944, was Leonardo Bebit, was he not?

INTERPRETER TACCAD: What is that question?

(Question read.)

A I think so.

Q Was Leonardo Bebit investigated by Takahashi upon arrival at Silay?

A Yes, I think he was investigated.

Q By Takahashi?

A I think he was also investigated by Takahashi.

Q Do you know how long he was investigated by Takahashi?

A No.

Q But are you sure that he was investigated by Takahashi in Silay?

A No, I don't know whether he was investigated in Silay or before they arrived in Silay.

Q But you are sure that he was investigated by Takahashi?

A Yes, I am sure. Takahashi reported to me.

Q Takahashi rendered to you a written report?

A He rendered a verbal report.

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Q Did you not say that Bebit was also investigated by the Kempei Tai?

A We were the infantry, and we were operational troops. We were supposed to fight. We were not adapted to investigating, and it was not our main duty.

Investigation of criminals was usually done by the Kempei Tai. That was their main work.

Q The question is: Did you not say that Bebit was also investigated by the Kempei Tai?

A No, I did not say so.

Q Do you know if he was also investigated by the Kempei Tai?

A The Kempei Tai reported to me.

Q The Kempei Tai reported to you about the investigation of Bebit, is that correct?

A Yes.

Q Did you order any further investigation of Bebit upon his arrival in Silay?

A I also gave an order, but I think that Captain Takahashi turned him over to the Kempei Tai, with the request that he be investigated.

Q And your decision to have Bebit executed was based strictly on the report which you received from Takahashi and from the Kempei Tai, is that correct?

A Yes.

Q Did you give him any trial at all before he was executed?

MR. BONDA: Object to that question. We have had this up before. The matter of trial is a legal conclusion for the Commission to determine.

COLONEL PARMELEE: I believe that is true. I believe the information should be elicited some other way, because that is a word that it is difficult to --

MAJOR FOJAS: The witness has been asked the same question in previous trials.

MR. BONDA: I don't care what happened in previous trials. I am concerned with this trial here.

MAJOR FOJAS: I expect you to be a little bit tolerant when I am talking --

MR. BONDA: I never know when you are finished. You talk, and stop, and I find you have more things to say.

MAJOR FOJAS: I don't think that is an unfair question, sir. This is a colonel in the Japanese Army, and I think he understands what "trial" means.

COLONEL PARMELEE: The Commission and everybody in this courtroom understands what trial means.

MR. BONDA: I don't. I don't understand what a trial is in Russia. I don't understand what a trial is in Japan. I don't understand what a trial is in Manchuria.

I defy the prosecutor to tell me what a trial is anywhere but in the Philippines and in the United States, unless he studies the laws of those lands.

COLONEL PARMELEE: The question will be permitted. The witness, if he does not know what a trial is, can so state.

MR. BONDA: Are we going to get proper evidence if we permit the witness to judge as to whether there was a trial or not?

COLONEL PARMELEE: He is the judge. He is being asked the questions.

MR. BONDA: He is not the judge as to whether there was a trial there. The Commission is the judge from the facts that are given to the Commission.

COLONEL PARMELEE: Yes. As to the character of the trial. The question right now is whether there was a trial given. He is the one to say that. If he does not understand what a trial is, he can so state.

Now, if he says there was a trial, it would seem proper to develop to see just what was done. That would be what the Commission would be interested in.

MR. BONDA: In other words, the prosecutor is asking a question that he is going to get in trouble no matter how he answers from the Commission's own statement.

If he says there was no trial, they will develop that. Of course, if there is no trial, they don't have to develop it.

If he says there was a trial, which was a conclusion, then the Commission is saying, "Well, being the conclusion, then bring out facts as to what you mean as to whether there was a trial or not."

COLONEL PARMELEE: The assumption is that he knows what a trial is. That may not be true. That is an assumption we make when we ask him the question.

If he does not know what a trial is, he can so state; but the assumption is based on the fact that he was asked the same question. The same words have been used in previous

trials. The Commission does not know it.

MR. BONDA: The same words were used in previous trials I have been in. They have been objected to. The prosecutor did not say that.

When he says they were used in previous trials without objection, again the prosecutor is mistaken, because I have been in previous trials and they have been objected to.

That is not precedent, what others have done in other trials. This question is an improper question, because it is a conclusion.

Might I state this, that if I were asked that question on the stand I could not answer it, because even in the United States different things constitute a trial.

In misdemeanors there is a certain kind of trial; in felony there is another type of trial; and in courts-martial there is another type of trial. By asking him questions like that, how do we get any evidence?

COLONEL FARRELEE: The question is considered a proper question. Now the Commission, if the answer is "yes," assumes that the witness knows what we consider a trial to be. I suppose that is a Commission assumption. The Commission will naturally not be satisfied to merely accept that statement. They will want some development as to just what was done, even if they ask questions themselves, which has been done frequently, you know.

The Commission has asked questions to determine what was done to guarantee the rights, as we see them, of the man accused of something. What opportunity has he had to present his side of the case, to defend himself?

MR. BONDA: Well, I am going to touch on that in final argument. I want to merely state this, that whether he considers a trial was given or not will not be the guiding factor. There are conventions and there are rules of land warfare that will guide.

COLONEL FARRELEE: The question is ruled proper.

(Question translated to the witness by Interpreter Taccad.)

A No. May I be more explicit in my answer? I mean, may I add to my answer?

COLONEL FARRELEE: Yes. Let him add.

MAJOR FOJAS: Yes, surely. He can explain something.

A In the first place, there was only one military court, and that was in Manila.

Secondly, at that time we were in the midst of battle conditions.

Thirdly, we did not have time to try captured persons one by one.

Fourth, there was no time to send them to Manila, and conditions made it impossible to send them - - - no ships.

Lastly, those people were really very bad people, and we did not have either the facilities or the men to keep them in prison, so we investigated them very well. We did take a long time investigating them so there would be no mistake.

COLONEL FARRELLE: The Commission will take a short recess.

(Short recess.)

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COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

Q You explained why no trial was given Bebit before he was executed, and you mentioned about battles. What battles were you referring to when you said you were engaged in battles?

A In general we were constantly oppressed by the guerrillas, and we were on the defensive side.

Q And you mean to say by that that you did not have time to conduct trials, is that correct?

A Yes, that is one of the reasons because we didn't have any time to submit him to court since we were in combat.

Q You also said that Bebit was really a bad man. Do you mean to say that being a bad man you did not feel he should be given a trial at all before he was killed?

A No.

Q What did you mean when you gave as one of your reasons for not giving Bebit a trial, what did you mean when you said that Bebit was really a bad man?

A He was one of the bandits who burned Silay and infiltrated inside the town and killed the soldiers and police force and later in the vicinity of the Hawaiian Central, he made plans to attack the town.

Q And because of having done these things, you considered him a bad man, is that what you mean to say?

MR. BONDA: Is this argument. This question smacks of argument to me. I ask the Court to take judicial

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notice that in view of all these things, that would constitute a bad man.

MAJOR FOJAS: He said one of the reasons Bebit was not given a trial was because --

MR. BONDA: May I ask the Court to take judicial notice of the fact if the enemy infiltrates in your town in civilian clothes and kills men and burns the town, that he is a bad man in the eyes of the person whom he is planning to attack.

MAJOR FOJAS: That is extraneous to the matter. I am asking him if the reason why he gave the answer "Bebit was a bad man" was because he felt he was a bad man and was not entitled to trial.

MR. BONDA: Wait a minute before you go further --

MAJOR FOJAS: Well, you wait. I don't have to wait. Then I asked him a question, and he gave an entirely different answer. My impression that I got was because of these things, Bebit was considered to be a bad man, and depending on that answer, I now propound ---

MR. BONDA: Is there any doubt the question you asked him, do those facts you have related constitute or by that you consider him to be a bad man.

MAJOR FOJAS: I don't know if defense counsel is trying to confuse matters in this trial, but I don't think that is a question I have to answer.

COLONEL PARMELEE: The question is considered proper. Apparently what it is intended that the Commission get from the question, is, the basis or reasons 1, 2, 3, 4, 5, etc. that he had in mind which caused him to term Bebit a

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bad man, is that correct?

MAJOR FOJAS: Yes, sir, that is correct.

MR. BONDA: May I have the statement the Commission just made read?

(The remark by Colonel Parmelee was read as last above written.)

MR. BONDA: No comments, sir.

A There may have been other things, but as I said before it was because he was one of the bandits who burned the Town of Silay and infiltrated inside the town and killed the soldiers and police force and then later made plans to attack the town.

Q And because you considered Bebit a bad man, you did not feel it necessary to give him any trial before he was executed, is that correct?

A As I mentioned before, there was only one court in Manila, and there were no facilities to accomodate them and no personnel to handle them, although we felt it necessary that he should be given a trial. We made a thorough investigation and had more evidence than is required in a court.

Q What time was Bebit killed the morning of March 7, 1944?

A I am not sure, but it may have been about eleven.

Q You mentioned during direct examination that Bebit made a confession, do you know to whom the confession was made?

A He confessed to the Kempei. I think he also said it to Captain Takahashi.

Q Do you know whether or not that confession was written or oral?

A The Kempeis had the confession down on the paper.

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Q Did you see that written confession which Bebit made to the Kempei?

A The Kempei told me as he was looking at the piece of paper, so I believed that it was written down.

Q Did you see if that confession was signed by Bebit?

A I don't know.

Q Is it not a fact that the things written down by the Kempei were just the results of his investigation and not the confession itself?

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A I don't know what it was but the Kempei was reading what he had written down.

Q And that matter he was reading was written in Japanese characters, is that correct?

A Yes.

Q Did you find out how the Kempei or Takahashi got a confession from Bebit?

A No.

Q Do you know what happened to the other persons who were also arrested at the Hawaiian Central, March 7, 1944?

A No, I only know about Bebit, for others I do not know.

Q Those other persons who were also arrested at the Hawaiian Central could have been killed in Bacolod without your knowing, is that correct?

A I do not know about that, but the guerrillas were taken to the training school and trained and released, and the women were released also.

Q The question is, that it was possible for those other persons arrested at the Hawaiian Central, on March 7, 1944, to have been killed in Bacolod without your knowing it?

A I don't know. No, I don't think they would have been killed.

Q But you do not know what happened to them?

A No, I don't know.

COLONEL PARMELEE: The Commission will recess now until 1300 hours, this date.

(The Commission recessed at 1130 hours to reconvene at 1300 hours, this date.)

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AFTERNOON SESSION

(The Commission reconvened, pursuant to recess, at 1300 hours.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

MASAKAZU YAMAGUCHI

a witness in his own behalf, having been previously duly sworn, testified further as follows through Interpreters Yamamoto and Taccad:

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath?

(Translated to witness through Interpreter Taccad.)

CROSS-EXAMINATION (continued)

BY MAJOR FOJAS:

Q Do you know that according to the witnesses for the prosecution, Panfilo Artagame and Ernesto Chavez were among those apprehended at Hawaiian Central on March 7, 1944?

A I learned that in this court.

Q How do you explain the fact that Panfilo Artagame testified that Ernesto Chavez was killed in the Barrio of Sumag, and that there was an attempt to kill him, Panfilo Artagame, in the same place about March 11, 1944?

INTERPRETER TACCAD: What was that question, please?

(Question read.)

MR. BONDA: If the Court please, I object to that question on the grounds if my notes are correct there were

no eye witnesses to the killing of Chavez and Padios, and I object to the question. It is based on something that is not in the evidence.

MAJOR FOJAS: There was testimony on the part of Panfilo Artagame that Chavez, Padios and himself were taken to Barrio Sumag.

MR. BONDA: And that is all.

MAJOR FOJAS: And he found the dead bodies of the two men the next morning, and there was an attempt to kill him by the bank of the Sumag River.

MR. BONDA: That is right, he saw their two bodies, but there was no testimony on his part --

COLONEL PARMELEE: The objection is to the fact that the question stated that he testified as to the killings?

MAJOR FOJAS: I will re-phrase the question, sir, to avoid the objection.

Q How can you explain the fact that Panfilo Artagame testified that he saw the dead body of Ernesto Chavez in the vicinity of Sumag, and that there was an attempt to kill him in the same place by the banks of the Sumag River?

MR. BONDA: If the Court please, I don't think that it is necessary for this witness to explain what the prosecuting witness said. I don't understand under what theory that question can be asked.

COLONEL PARMELEE: Well, I suppose under cross-examination that the witness having testified on direct on this specification that the prosecution is entitled to interrogate him, is that correct?

MAJOR FOJAS: Yes, sir, I think so, because there

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was testimony on the part of this witness that those people were placed in the training school, and it is the theory of the prosecution that those two persons were among those who were arrested in the Hawaiian Central, and he testified that those persons were placed in the Spiritual Training School, and there is testimony to the effect that the dead body of one of them was found in Sumag, and there was an attempt to kill him in Sumag.

MR. BONDA: I have no objection to questions being asked on this specification, but there is a proper way of doing it, and there is an improper way, and the improper way is to ask one witness to explain what another witness said. He could ask him, "If the other witness said such and such was he mistaken, or was he lying," but you can't ask him to explain. How can he know what the other witness had in his mind; how can he delve into his mind? You can't ask him to explain a statement given by another witness.

MAJOR FOJAS: I have no further comment to offer. The question is proper.

MR. BONDA: I submit the question is not proper. It is never proper to have one witness explain what another witness meant. It is one of those questions that is designed to implicate the witness, no matter what his answer is; it is one of those especially designed for that purpose, and can serve no other purpose.

COLONEL PARMELEE: Well, from the strictly lay standpoint, the Commission takes that question as one that is designed to get from the witness a contradiction or concurrence of the testimony of Artagame; in other words, that is the

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interpretation we put upon it, to explain why one witness said one thing, and the accused, as a witness, said another thing. Now, the explanation is merely an attempt to get a reconciliation.

MR. BONDA: The witness didn't say any other thing. The witness said he didn't know anything about those two fellows. He never said anything different.

COLONEL PARMELEE: All right, it is the same thing.

MR. BONDA: No, it isn't the same thing. The other fellow testified he saw certain things, and this witness testified he didn't know anything about those things. Now, how can he be asked to explain what the other man meant about something he testified he knows nothing about? The mere fact he said they were sent to a Spiritual Training School wouldn't preclude persons from being killed.

MAJOR FOJAS: I am not asking this witness, sir, to explain what the other fellow said. I want to find out what he has to say about that testimony, because he has a stand, and he said he did not know what happened afterwards, but he has a stand that all persons, all guerrillas, captured by his unit were placed in the Training School. Now, here is testimony contradicting that exactly.

MR. BONDA: That doesn't contradict it. Under what possible stretch of the imagination does that contradict his statement?

MAJOR FOJAS: Well, we will be arguing back and forth -- what I want now is a ruling from the Commission. If the Commission will consider the question proper, I will proceed, and if not I have no other course.

MR. BONDA: Your question asked for an explanation of somebody else's testimony. If you don't believe it, have the question read back to you.

COLONEL PARMELEE: Will you read the question, please?

(Question read.)

COLONEL PARMELEE: That is compared with the testimony of the witness that all the guerrillas were placed in the Spiritual Training School, is that correct?

MAJOR FOJAS: Yes sir.

COLONEL PARMELEE: The objection is overruled.

A As to that it is only in this court that I learned about such a thing. I only heard that here.

Q In other words, from March 11, 1944, up to the time you were relieved of command, or up to the time you ceased to be commander of Japanese troops in Occidental Negros, you have

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never heard of killings in Barrio Sumag of persons who were apprehended at the Hawaiian Central on March 7, 1944?

A Yes. I didn't know about such things.

Q Were you familiar with the investigations made by Takeshita of prisoners within the compound of the Bacolod High School during the months of March, April and May, 1944?

A I am not familiar. I do not know about the details. My unit was in charge of an area very much larger than what would be taken care of by a division, and there were many activities like spiritual training and security. There were different persons in charge of such training school, as intelligent and military police work, and I wouldn't be familiar with the details of such things.

Q Do you know if Takeshita conducted investigations of prisoners within the compound of the Bacolod High School in the month of March, 1944?

A He may have been conducting investigations.

Q Do you know what methods of investigations he made upon prisoners in the Bacolod High School?

A When Takeshita took the stand he said that he used various methods, so he must have used various methods.

Q And do you know what methods he used before Takeshita took the witness stand?

A No.

Q In other words, you did not know whether Takeshita beat and tortured prisoners he investigated, is that correct?

A I don't know whether he beat them and tortured them.

Q During the time that Takeshita was under your command, did you ever ask him whether he beat or tortured prisoners investigated by him?

A No.

Q In other words, you did not know anything that happened during any of the investigations conducted by Takeshita upon prisoners in the Bacolod High School?

A No, I don't.

Q Did you ever take any steps to find out what methods Takeshita was using in his investigations of prisoners in the Bacolod High School?

A No.

Q Do you know the quarters and office of Takeshita on San Juan and Rosario Streets in Bacolod?

A No.

Q Do you know if Takeshita conducted investigations of prisoners in that house during the months of March, April and May, 1944?

A No.

Q In other words, you did not know, or you do not have any knowledge of any mistreatment of tortures of prisoners made by Takeshita in that house during the period I mentioned?

MR. BONDA: Is that a statement or a question?

MAJOR POJAS: A question.

A No, I don't know.

Q Did you ever take any step or measure to find out if Takeshita tortured prisoners in that house during the months of March, April and May, 1944?

A No, I did not.

Q What time did you arrive in Talisay on the 19th of April, 1944?

A I don't remember exactly the time.

Q Was it in the morning or in the afternoon?

A I think it was about noon, not in the morning.

Q Is it not a fact that upon arrival in Talisay you stayed in the bandstand at the park?

MR. BONDA: If the Court please, there is no such evidence. I donot know what that question is based on.

MAJOR FOJAS: I am asking him if it is not a fact.

MR. BONDA: Wait a minute. When you ask him, when you say, "Isn't it a fact?" whether it is cross-examination or direct examination, if you say, "Isn't it a fact?" it must be based on something that is in the evidence.

MAJOR FOJAS: I don't know whether that is true or not.

MR. BONDA: I know that is true. Otherwise, it is meant to mislead the witness only. I have no objection to your asking him, "Did you go into the bandstand when you came there?" When you state it as a fact, it must have been something that is in evidence as a fact.

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MAJOR FOJAS: The only trouble is that it is a leading question, and I believe that I am allowed to ask leading questions on cross-examination.

MR. BONDA: If you would say to him, "Did you go to the bandstand?" that is a leading question, too. If you say, "Isn't it a fact that you went to the bandstand when you came there?" that is a leading question.

In addition, it is based on something that he has a right to believe is in evidence, which is meant to mislead the witness because it is not in evidence.

MAJOR FOJAS: I submit the question, sir.

COLONEL PARMELEE: I believe it can be construed as an indirect way of getting direct testimony rather than by cross-examination based on something that is in evidence.

MAJOR FOJAS: I did not get the --

Will the reporter read the question again, please?

(The last question was read by the reporter.)

MR. BONDA: I object to that because it is not based on evidence. It can have one purpose only, and that is to mislead the witness.

MAJOR FOJAS: I disagree with defense counsel when he says that everything I have to ask this witness must be in evidence. Granting that that is true, for the sake of argument I would like to state that that matter is in evidence.

Witnesses for the prosecution testified that at first they saw Colonel Yamaguchi in the bandstand at the park, so that in either case my question is proper.

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MR. BONDA: The prosecutor is wrong when he says that he is right because it does not have to be in evidence. All I am doing is objecting to the form of the question that when the question is put in that form it implies that there is something like that in the evidence. If the direct question is asked, even though it is leading, I can't object to it; but where the question comes as a statement of fact, which purports to have been in evidence, then, unless it was in evidence, it is an improper question. That is my only objection.

I have no objection to eliciting this information from the witness. I object to putting it in such a way that the witness will become confused and say, "Maybe somebody did say something; I did not hear it, but maybe somebody did say something like that."

COLONEL PARMELEE: Is Talisay the place where the witness said there was a concrete structure that could be used as a bandstand?

MAJOR FOJAS: That is right.

MR. BONDA: That is right. The testimony was not that he was in the bandstand, but that he was some place behind the bandstand.

I don't recall anybody having placed him in the bandstand. It does not make any difference where he was.

MAJOR FOJAS: I object.

MR. BONDA: Wait a minute. Let me finish. I don't think it is important in this lawsuit. The only thing I am trying to avoid is to have questions put to this witness that are going to confuse him. The question

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can be asked simply.

I am not objecting to the leading feature of it. I am objecting to having it put in such a formras to make it appear it is in evidence. That is my only objection.

MAJOR FOJAS: I object, sir, to defense counsel stating what he has in mind about things I am asking from this witness because, in spite of his assurances that the witness does not understand English, and because of this trial, I have come to find out that whenever defense counsel says something in a matter of controversy, the witness most often follows the suggestions of defense counsel in finally answering the questions.

MR. BONDA: The fact is that this witness, after my objections have been made, has answered the questions the way they should be answered.

He has answered the questions not on my suggestions, but because my objection was properly made; and that is shown by the fact that when the witness answers, it follows those objections.

I am willing to make this statement without making any reservation whatsoever: This witness does not understand English, with the exception of a few basic words, like "No" and "Yes" and "Good-night" and "How did you sleep last night?" which I taught him.

I gave an unequivocal statement, which is more than the prosecutor could have done for any of his witnesses. This man does not understand English, except for a few

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basic words. If the Commission wants to submit him to a test, there are plenty of persons who could conduct that test so there would be no doubt about it.

I wish the Commission would do so; and with that statement, I resent the implication of the prosecutor that this man does, when I made an unequivocal statement before and make it now that he does not understand English.

I have talked to him now for two months, and there is one thing they wan't do, and that is try to avoid understanding their lawyer.

MAJOR FOJAS: I don't --

MR. BONDA: I know it to be a fact.

COLONEL PARMELEE: Let us see if we can get back to the issue. Will you read the question once more.

(The last question was read by the reporter.)

COLONEL PARMELEE: "Stayed in the bandstand?"

THE REPORTER: Yes.

MAJOR FOJAS: "On the bandstand."

COLONEL PARMELEE: The question can be answered by the witness. He is capable of understanding it. Objection overruled.

A When I arrived in Talisay I first took overall command of about three hundred men. Then I went to the vicinity of the bandstand.

Q Did you ever stay on the bandstand?

A I never went up on the bandstand, but I was in the vicinity of the bandstand.

Q How far were you from the bandstand?

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MR. BONDA: Objection unless the time is fixed.

Q When you first came to that place.

A I was southeast of the bandstand. I don't remember exactly the distance.

Q How long did you stay in that place southeast of the bandstand?

A About one hour.

Q After one hour where did you go?

A I think after that I returned. I stayed there about an hour. Then it was already about evening, so we left the place.

Q Do you mean to say now that the entire length of the period that you stayed in Talisay was only about an hour?

A It was not in the morning when we arrived there. We left after about five or six hours.

Q How long did you stay in the park in Talisay?

A About two hours.

Q During the first hour of your stay in the park in Talisay, you were some place southeast of the bandstand, is that correct?

A At the end of those two hours, just before we left, I was there.

Q Do you mean to say now that from the first time you arrived in the park in Talisay you stayed in a place southeast of the bandstand, and did not leave that place until you left Talisay, which was two hours afterwards? Is that what you mean to say?

A I heard rifle shots while I was southeast of the

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bandstand.

Q I am not asking you about rifle shots. My question is this: From the first time you arrived in the park in Talisay, you said you stayed southeast of the bandstand. What I want to find out is: How long did you stay in that place?

A After I stayed there about one hour I heard rifle shots.

Q Did you leave that place southeast of the bandstand after one hour?

A After about one hour, my work of deploying the troops so that they could infiltrate and capture guerrillas was over, so I left.

Q You mean to say you departed from Talisay after one hour?

A One hour or a little more than one hour. I wouldn't say the exact time. At any rate, after some time I left Talisay.

Q Did you not say that the entire length of time you stayed in Talisay was about five and one-half hours?

A Yes. I said so.

Q Where did you stay during the first four and one-half hours, if you stayed only for about an hour in the park?

A I did not say I was in the park one hour. I said that I was one hour at a place southeast of the bandstand. Before that I was in the park, somewhere about east of the bandstand.

Q So that when you first came to the park in Talisay you did not stay at the place southeast of the bandstand, but in

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some other place, east of that bandstand, is that correct?

A Yes, that is right.

Q Did you stay at that place east of the bandstand?

MR. BONDA: Wait a minute.

A I deployed my troops, when we were south of the southern edge of the town of Talisay. Then we all went through the central street of the town, turned toward the west, and arrived at the eastern part of the park.

After that I went to the place southeast of the bandstand. That is the general road I took. I am not familiar with the exact locations, but all I can say is those were the places I traveled.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

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COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Yamamoto interpreted to the witness.)

Q Now, is this correct, there were two places in the park in Talisay where you stayed on the 19th of April, 1944, one was east of the bandstand and the second place was southeast of the bandstand?

A That is about correct. We entered from the eastern entrance and went to the southeastern part of the park, then later we returned.

Q How long did you stay at that place east of the bandstand?

A We went through the eastern entrance and then went to the southeastern portion of the park, then we returned.

Q Did you stay any length of time east of the bandstand in the park?

A We may have been there because we were traveling.

Q How long did you stay there at that place east of the bandstand?

A I don't remember exactly since it has been a long time.

Q Did you stay there for three or four hours?

A We were at Talisay for about five hours, but we didn't stay in the park as long as four or five hours.

Q In that particular place east of the bandstand, did you stay there for at least three or four hours?

A No.

Q How long did you stay there?

A I have forgotten.

Q How long did you stay at the place southeast of the bandstand?

A I don't remember exactly since it has been a matter which occurred three years ago, however, we stayed there for quite a while.

Q Do you think, or can you say, whether or not you stayed there for about three to four hours?

A I don't remember, but I have heard the shots over there.

Q All right, that place southeast of the bandstand where you stayed, was it between the church in Talisay and the bandstand?

A The bandstand is located southeast of the church, and I was located on a spot southeast of the bandstand.

Q Do you mean to say now that the bandstand was between you and the church?

A Yes, that is how I believe.

Q Now, when your troops arrived at Talisay, did they gather the inhabitants of Talisay in the plaza?

A Yes.

Q And did they separate the women from the men?

A Yes, I think so.

Q How many men, more or less, were gathered at the plaza in Talisay on the 19th of April, 1944?

A I don't remember.

Q And where were you in the plaza of Talisay when the men were gathered in that place?

A When I went to the park the people were already assembled

Q How far were you from these people who were assembled?

A There were times when I was close and times when they

were quite far away.

Q Do you mean to say that while the people were assembled in the plaza you did not stay in one particular place all the time, that you were moving from place to place?

A We entered through the eastern entrance and we were going down while the other people were gradually beginning to gather.

Q What was the closest distance that you ever came near these people who were assembled?

A I don't know, I don't remember exactly.

Q Did you ever come as close as three meters to these people who were assembled in the plaza?

A I don't remember.

Q Now, what was done by your soldiers with these people who were assembled in the plaza?

A I passed by the soldiers who were investigating and went to the southeastern portion of the park.

Q So that your soldiers investigated these people who were gathered in the plaza, is that correct?

A Yes. The Kempei from Bacolod and my soldiers were investigating.

Q And that investigation was conducted for the purpose of singling out the guerrillas and suspected guerrillas among those people who were gathered in the plaza, is that correct?

A Yes, that is correct.

Q Do you know if in the course of that investigation people in the plaza were mistreated and tortured?

A No.

Q When you say "no," you mean you do not know?

A Yes, I don't know.

Q You mean you do not know?

A Yes. Since the Japanese soldiers did not know, I used the members of the Standing Army to pick out the guerrillas in the group.

Q But there could have been mistreatment and torture in the course of that investigation, only you did not know, is that correct?

A I believe there was no mistreatment and in order to avoid any mistreatment I used the members of the Standing Army.

Q Now, how many persons were arrested in the plaza on the 19th of April, 1944?

MR. BONDA: Wait just a moment, I would like to ask the interpreter something.

(Mr. Bonda then asked the official interpreter a question which was not made a part of the record.)

A I believe it was 24. That is a report I received.

Q How far were you from this group of people in the plaza when the 24 persons were arrested?

MR. BONDA: I think that question is impossible to be answered, as to how far he was from the plaza when those people were arrested. The testimony was they were arrested at Silay, so how would he know that.

MAJOR FOJAS: That is a thing the witness never stated, that information comes from the defense counsel I do not know for what purpose he is stating that.

The witness just stated that they gathered the people of Talisay in the plaza in an effort to pick up the guerrillas.

MR. BONDA: Fix the time of arrest, I don't know what you mean, if I don't know what you mean, how can the witness know?

MAJOR FOJAS: The witness knows what he is talking about, we are following a line of questioning here which was all right until interrupted by defense counsel.

MR. BONDA: Wait a minute, I have a right to interrupt if I don't understand the question. We don't know what he means by arrest, no testimony as to when the arrest was. Up to now he was talking of the time when they were gathered in the plaza and suddenly he shifts to the time of the arrest. I don't understand the question.

MAJOR FOJAS: I submit the question is proper.

COLONEL PARKER: Isn't there something about twenty-four being arrested?

MAJOR FOJAS: Yes sir.

MR. BONDA: That is right. Now he is talking, there is no testimony where they were arrested. I assume it was in the town of Talisay. What are we talking about, the gathering or the arrests? If we are talking about the arrest, I object to the question, if he is talking about the gathering, let him so state.

MAJOR FOJAS: Defense counsel, if he was listening, would have heard the testimony of this witness.

MR. BONDA: There was no testimony as to whether they were arrested. What do you mean by arrested, do you mean when they were gathered together or when they were investigated

or the time when they were taken away from there. I ask that the question be clarified.

COLONEL FARRELLE: In the sequence of events, there was the investigation and the arrest as the result of the sifting, let us say.

MR. BONDA: We shouldn't have to presume anything in a question. It should be clear and I frankly am in doubt. My objection is to the fact the question is not clear.

MAJOR POJAS: I submit it is clear enough and can be understood by the witness.

COLONEL FARRELLE: It appears to be clear enough to the Commission, the objection is overruled.

A Since the inhabitants were gathered or assembled there were times when I was in that group.

Q Did you see with your own eyes how the investigations were conducted?

A Yes, when I passed by.

Q And did you also see with your own eyes how those persons you said, those twenty-four persons, were arrested?

MR. BONDA: Objection. I still insist that we don't know what he means by "arrest." Now, I don't know where those people were picked up, and there is nothing in the evidence as to where the people were picked up.

COLONEL PARMELEE: I believe the witness used the word "arrested."

MR. BONDA: But we are listening to this through the mouth of somebody else. I frankly don't know when these people were arrested, and there is nothing in the evidence as to when they were arrested. We have to have a definition of terms, otherwise the witness is going to be confused.

MAJOR FOJAS: During the direct examination, sir, this witness testified that thirty persons were arrested, six of whom attempted to escape and were killed, so that when this witness used the word "arrested" in direct examination we have a right to assume on cross-examination he understood the meaning of the word "arrest."

MR. BONDA: Here are the exact words of the accused: "bandits and guerrillas were rounded up in the mopping up operations, and twenty-four were captured, twenty-four were taken, and six escaped." There is nothing in there as to when they were arrested.

COLONEL PARMELEE: Is that the complete testimony?

MR. BONDA: It would be very simple for the

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prosecutor to define his terms. I don't know what the prosecutor is trying to hide here.

COLONEL PARMELEE: Well, the witness brought out the term "arrested," apparently.

MR. BONDA: I don't know whether it was properly translated -- I assume it was, but what is an arrest; when they were apprehended I suppose. If we want to get the truth, let's ask him the question. The prosecutor was talking about a gathering, and then he suddenly shifted to the word "arrest."

MAJOR FOJAS: That is just quibbling. I can change it if he wants me to. When I said "arrested" the witness answered to the word "arrested." And he made an impression that he understood what I meant. We can use the word "capture" or "apprehended," as the defense counsel would want it to be.

COLONEL PARMELEE: I think it makes little difference what words we use. I think it means the same thing, and that is, "Did you decide to take the people and keep them under your control and custody." In other words, you took them and sifted them out.

MR. BONDA: That is what I am trying to find out, and if that is what is meant, I have no objection to the word, but what I want to find out is what does he mean when he propounded the question, so he can't say the man lied, "It wasn't this time, it was that time," but that might be true based on his misunderstanding as to what time was referred to. All I am trying to do is get the prosecutor to fix what he means.

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MAJOR FOJAS: He is just trying to cause confusion. We have gone a long way, and the witness has given several answers, and has given an impression he understood what was meant.

MR. BONDA: I assure the Commission I am not trying to confuse the Commission.

COLONEL PARMELEE: If the witness is asked as to the clarity of the question propounded, or as to the time that is meant -- does the prosecution want to meet any of these desires of the defense counsel now?

MAJOR FOJAS: Yes, sir, I will do that to avoid discussion.

COLONEL PARMELEE: Now, let's get what the desires are. One is what is meant by arrest, and the other is the time of the arrest.

MAJOR FOJAS: May I hear the question again?

Q Did you also see --

COLONEL PARMELEE: Will that be the exact question asked before?

MAJOR FOJAS: Yes, sir.

Q Did you also see with your own eyes how those persons were captured or apprehended in the Plaza of Talisay?

MR. BONDA: Objection. It is contrary to everything that is in the evidence. They were not captured in the plaza; they were gathered in the plaza. They were not captured there.

MAJOR FOJAS: I submit that the question is proper, sir. The testimony of this witness was that people were gathered in the plaza, and the guerrillas were singled out in the plaza by investigating those people.

MR. BONDA: What do you mean, Mr. Prosecutor --

MAJOR FOJAS: There is no evidence those people were captured anywhere else except in the plaza.

MR. BONDA: What do you understand by the word "capture?"

MAJOR FOJAS: I don't know what you understand by the word "capture," but --

COLONEL PARMELEE: Let's ask the witness what word they used in these twenty-four that they had sifted out; were they captured, apprehended, arrested or what.

MR. BONDA: This thing suddenly, for some reason or other, has become complicated to me. The thing is very simple. Now, the prosecution is trying to find out how far he was from these persons at certain times, and "captured" is not the right word because they had already been captured, I assume. All we have in the evidence is that they were apprehended and gathered together in the plaza. Now, if the prosecutor wants to find out how far he was from them at any particular time let him ask that question, but the proper word is not "captured," and I am afraid he will misunderstand it.

COLONEL PARMELEE: You are objecting to the word "arrested," which was an act taken by the Japanese against some twenty-four, after the sifting by investigation of the people gathered in the plaza?

MR. BONDA: I am objecting to the word "arrest," because arrest isn't --

COLONEL PARMELEE: But that is the word the witness used. The witness introduced the word "arrested," the accused

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himself, as a witness.

MR. BONDA: My impression is that that was not used by the witness. It was in response to a question of the prosecutor using the word "arrest." Now, that is my impression.

Now, this thing, for some reason or other, has become complicated, and it will simplify the whole thing if the prosecutor will ask, "How far were you, from that time," or, "How far were you, from this time."

MAJOR FOJAS: In other words, I would be of no use at all here.

MR. BONDA: I don't know what you mean by that statement.

COLONEL PARMELEE: The Commission doesn't want to interfere with the prosecution's method of conducting cross-examination. If the question is not clear the defense counsel rightfully brings it to their attention, but this following along as a sequence, the use of the word, I think is clear to the Commission, the sequence of events and the time. The time is not specifically fixed by hour or minute, that is true, but in relation to the time this whole thing started it is.

MR. BONDA: I ask the prosecutor whether he means by "captured" the time that they were in the plaza. Now, that is a simple question, and if the prosecutor will say that is what he means then the interpreter can properly interpret it to him. What do we mean by the word "capture?" I think the Commission and I have a different idea from what the prosecutor has. I don't think after they are gathered there they are then captured.

MAJOR FOJAS: Here is the situation, sir: I was using the word "arrest," and the witness used the word "arrest." Then suddenly we come to this question as to what we meant by "arrest," and he insisted I use the same word

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which the witness used in direct examination, and that was "captured." And in order to oblige the defense counsel, I have to change the question, and use exactly the same words which the witness used in direct examination, "He captured" -- and I cannot recall right now the other word --

MR. BONDA: Yes, but they didn't capture them in the plaza.

MAJOR FOJAS: That is just the trouble, what you have in mind is a different thing from what we have now. He wants to give the impression the people were captured all over the town of Talisay, but this witness testified the people were gathered in the plaza and investigations were conducted to single out the guerrillas, and after the investigations twenty-four persons were picked up, and when I use the word "arrest" I am referring to the picking out of the twenty-four persons.

MR. BONDA: That is different. Then, why don't you say that, and then we have solved the whole thing.

COLONEL PARMELEE: All right, proceed.

Q Did you see with your own eyes when those persons were captured or arrested in the plaza?

MR. BONDA: Objection. There is no evidence that those people were captured or arrested in the plaza.

COLONEL PARMELEE: Objection overruled. The question will be answered.

A You mean the twenty-four persons?

Q Yes.

A No.

Q Were these twenty-four persons -- withdraw that question.

Were there twenty-four persons or thirty person picked up in the plaza?

A Thirty were captured and six escaped.

Q All right. Were these thirty persons who were captured in the plaza taken to any place near the church in Talisay?

MR. BONDA: Object to the question, "they were captured in the plaza." There is no evidence they were captured in the plaza.

MAJOR FOJAS: No comment, sir.

COLONEL PARMELEE: Objection overruled.

A Yes, in the vicinity of the church.

Q And it was in the vicinity of the church where six of these persons attempted to escape, is that correct?

A That is what I believe.

Q How far were you from the church when you heard the first shot?

A I was about 300 meters away.

Q Did you do anything when you heard the first shot?

A No, there were ten or more shots followed by the first shot.

Q My question is; did you do anything when you heard --

MR. BONDA: Wait just a minute -- (to interpreter) Wasn't that ten or more shots followed?

INTERPRETER YAMAMOTO: Yes, that is right.

Q The question is: did you do anything when you heard the first shot?

A There were many shots, so I inquired what it was about, and I learned that guerrillas were attempting to escape.

Q From whom did you inquire?

A Before I inquired, I received a report to that effect.

Q Did you go near the church, near the vicinity of the church after you heard those shots?

A No.

Q You did not leave your place after hearing those shots, did you?

MR. BONDA: Do you mean immediately after?

MAJOR FOJAS: Yes, immediately after. I will rephrase the question.

Q Did you leave the place where you were at the time you heard the shots, immediately after you heard those shots?

A No.

Q Who reported to you that six prisoners escaped and were shot?

A I don't remember who he was, but I believe he was an officer in the intelligence section.

Q Did you go to the place where those prisoners were shot to find out what happened to them?

A No.

Q Do you know if those persons were ever buried?

A Later I heard that they were buried.

Q Do you know who buried them?

A I don't.

Q Did you know where they were buried?

A I believe the garrison commander at Talisay took care of those things.

Q Did you know if those persons were buried in a hole near the church?

A No.

Q Before you went to Talisay on the 19th of April, 1944, did you anticipate any engagement with the guerrillas?

A We constantly and always anticipated guerrilla warfare or guerrilla attacks. When there are very few soldiers they will attack us, and when there were many soldiers they would not attack us, and we would not know when they would attack us.

Q And were you the one who personally led that expedition to Talisay on the 19th of April, 1944?

A Yes, I had the overall command.

Q Do you want to make the Commission understand that anticipating engagement with the guerrillas, and being the leader of that expedition, you went there unarmed except for a sword?

A No, I did not say that. The commander does not have to be armed since all the soldiers are armed.

Q So you want to make the Commission understand that you did not even have a revolver at that time?

A I did not carry revolvers. As a Japanese custom, military custom, we did not carry revolvers. However, I had a sword with me.

COLONEL PARMELEE: The Commission will now adjourn and will reconvene at 0900 hours tomorrow.

(The Commission adjourned at 1500 hours, to reconvene at 0900 hours, 15 January 1947.)

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Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME XLVII

PAGES 3194 TO 3249 INCL.

DATE 15 January 1947

MANILA, P.I.

COPY NO. I

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee
A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
15 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

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FILOMENA ZOSA	)	

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ELIZABETH G. MCNAIR
THELMA SELZER

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COM.
Masakazu Yamaguchi	3194 (Cont'd)				

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0900 hours, 15 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P. I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

Sir, there is a new interpreter to be sworn.

(Claro Ishita was duly sworn as an official interpreter in this case.)

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita.

CROSS-EXAMINATION (Cont'd).

BY MAJOR FOJAS:

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

Q The 24 prisoners who were captured in Talisay were taken to Bacolod by trucks, were they not?

A Yes.

Q Where in Bacolod were these 24 prisoners taken?

A I think they were brought to the high school.

Q Do you know how long they were confined in the high school garrison?

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A I don't know.

Q Do you know what happened to these prisoners in the garrison in the high school?

A I think the guerrillas were put in the Spiritual Training School.

Q Do you know if all the 24 prisoners who were captured in Talisay were placed in the Spiritual Training School?

A If they were guerrillas, I think all of them were put in the school.

Q Do you know how many of the 24 prisoners, captured in Talisay on the 19th of April, 1944, were guerrillas?

A I think they were all guerrillas.

Q Are you sure of that now?

A I think so.

Q And are you sure now that you know, of your own knowledge, that the 24 prisoners captured in Talisay were placed in the Spiritual Training School?

A I think they were all put in the Spiritual Training School.

Q When you say, "I think they were all placed in the Spiritual Training School," do you mean to say you are sure of that fact?

A That is my firm belief.

Q Will you tell us on what that firm belief is based?

A I received the report.

Q Do you know the final disposition made of those 24 prisoners?

A I don't know, I think they were put in the training school and later on released.

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Q How many of those put in the training school were released?

A I think they were all released. They all entered the school as guerrillas, and I think they were all released.

Q Now, are you sure of these three things; first, that those persons captured in Talisay were guerrillas; second, they were all placed in the training school, and third, they were all released, are you sure of all those three things now?

A Yes, I believe so.

Q Was it not possible for some of those persons captured in Talisay to have been confined in the North Elementary School Garrison?

A I don't know.

Q Did you testify in the case of the United States of America versus Yuzuru Nakajima on the 5th of October, 1946?

A Yes.

Q Do you remember having given the following testimony in that case; I am now reading from Volume 4 of the Nakajima case, page 192:

MR. BONDA: Are you going to read much of it?

MAJOR FOJAS: Yes.

MR. BONDA: I would like to have a recess, sir, while we get the volume.

COLONEL PARMELEE: We won't take a recess, we will just remain in our places while the volume is obtained.

MAJOR FOJAS: May I proceed?

MR. BONDA: Yes, I am ready.

MAJOR FOJAS: (Reading)

"Q How many prisoners were taken in Talisay?

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"A I believe it was 23 or 24.

"Q How long were these prisoners kept there in the high school?

"A I do not know.

"Q After these prisoners arrived at the high school, then Colonel, you don't know what happened to them, is that correct?"

Page 193:

"A I do not know."

Now reading from page 204,

"Q Could it have been possible for many of the prisoners taken at Talisay, on or about the 19th of April, 1944, to have been confined in the North Elementary School without your knowledge?

"A Yes."

Now, will you please explain to the Commission why, in the Nakajima case, you testified you did not know what happened to these prisoners taken from Talisay, while now you say that you know that they were placed in the Spiritual Training School, and later were released?

MR. BONDA: If the Court please, I think that is a misstatement, he said he believed.

COLONEL PARMELEE: I believe the word is believe, you want to change it to that?

MAJOR FOJAS: Yes, sir, I will change that.

Q Why you said you believed that they were placed in the Spitirual Training School and later they were released?

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MAJOR FOJAS: The first question which I would like to propound to the witness is whether he remembers giving such testimony.

MR. BONDA: Are you withdrawing the last question?

MAJOR FOJAS: Yes I will withdraw the last question, first.

A I think so.

Q Will you please explain to the Commission why in the Nakajima case you said you did not know what happened to the prisoners who were taken from Talisay on the 19th of April, 1944 and that were confined to the High School, while now in this case you testified that you believed they were placed in the Spiritual Training School and that later they were released?

A That is what I mean. I meant these three things, one, that prisoners who were confined first at the High School may have been brought later on to the Nakajima Garrison at the North Elementary School but about that I don't know. Two, I really know that the prisoners who were taken in Silay were let out at the North Elementary School, and three, it is possible that the prisoners brought to the High School Garrison by the Nakajima Unit were later returned to the Nakajima Unit, or later returned to the custody of the Nakajima Unit. Four, I mean also that when I am asked questions one after another I don't think that the truth will come out unless I really explain the whole situation.

Q Now I am giving you a chance to explain why in the Nakajima case you said you did not know what happened to these prisoners who were captured in Talisay on the 19th day of April, 1944,

while now, this morning, you said those prisoners were placed in the Spiritual Training School and later released. Will you now take advantage of that opportunity to explain?

MR. BONDA: Objection, he said he believed they were put in the school and when he asked for an opportunity to explain, he asked to explain the entire situation and not this answer alone. I don't want words read into his statement that are not there.

MAJOR FOJAS: I am giving him an opportunity to explain that statement.

MR. BONDA: He said he wants an opportunity to explain the entire situation, which you don't need to give him, but at least that is what he said.

COLONEL PARMELEE: Does the defense counsel raise one question about the word "know" or "believe"?

MR. BONDA: That is right.

COLONEL PARMELEE: Is the "know" in the question?

MAJOR FOJAS: I will amend the question.

Q While you stated you believed, that they were placed in the Spiritual Training School and later they were released.

COLONEL PARMELEE: Now the witness is to be given an opportunity to explain the question.

MR. BONDA: His request was to explain the entire situation, he said he will let him explain what he said is a discrepancy.

COLONEL PARMELEE: I don't think the prosecution will stop on that if he makes some response to this question, is that correct?

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MAJOR FOJAS: Yes sir.

A I said then that I did not know that out of those twenty-four men captured in Talisay some were taken to the North Elementary School Garrison, and now I believe that they were put in a Spiritual Training School and later released.

Q Did you not say in the Nakajima case that you did not know what happened to those prisoners?

A I said I do not know that those prisoners were brought to the Nakajima Unit. If you will read the whole testimony, I think you will understand. At that time I was being questioned by the prosecution, and I said, "I do not know."

Q Now, I will refresh your memory again. In that case you were asked if you knew what happened to the prisoners taken in Talisay, and you said you did not know. You were asked also if it was possible for any of the prisoners taken in Talisay on or about the 19th of April, 1944, to have been confined at the North Elementary School Garrison without your knowledge, and you said, "yes." Now, does that refresh your memory?

A Yes.

Q All right. Now, I want you to explain to the Commission why in the Nakajima case you said you did not know what happened to those prisoners, while now, this morning, you said that they were placed in the Spiritual Training School, and later -- you said you believed they were placed in the Spiritual Training School, and later released. Just explain that first part.

A There is no difference.

Q What do you mean, there is no difference?

A I believe that these 24 prisoners were all placed in the Spiritual Training School. In the Nakajima case I was asked regarding the 24 prisoners who were captured at Talisay, who were later brought to Bacolod, and I believe who were either tortured or killed. The prosecutor asked me if I know about

this incident, and I told him I don't know.

Q When you said at the beginning that there was no difference, what you meant to say was this, that you did not know what happened to those prisoners when they were in Bacolod, is that correct?

MR. BONDA: Now, wait a minute. I object to the prosecutor telling the witness what he meant. He might ask him what he meant, but I object to the prosecutor telling him what he meant.

MAJOR FOJAS: I can ask him that.

COLONEL PARMELEE: The prosecutor is propounding his conclusion and asking him if that is correct.

MR. BONDA: Well, that is not what he is entitled to do. That is a matter for final argument before the Commission. He can't say, "This is what you meant." It would tend to just confuse the witness, and nothing else.

COLONEL PARMELEE: He didn't tell him that. He asked if his understanding of his testimony summed up was correct.

MR. BONDA: He said, "When you said there was no difference, you meant this," and then he goes on with a number of words in there, telling the witness what he meant. He can ask him what he meant, but he can't tell him what he meant, and he can't put the words in his mouth as to what he meant. He can ask him what he meant; I have no objection to that. I am trying to avoid confusing the witness. We are working through interpreters here, and I am trying to avoid confusing the witness.

MAJOR FOJAS: I am not confusing the witness, sir,

and I don't know of any rule of evidence that would bar me from asking that question.

MR. BONDA: If it is based on the evidence you can ask him, but you cannot tell him what you think he meant.

MAJOR FOJAS: I am asking him.

COLONEL PARMELEE: Objection overruled.

INTERPRETER ISHITA: What was the question?

(Question read.)

MR. BONDA: That is not what he said at all, sir. That is based on something that is not in the evidence. He never said that.

MAJOR FOJAS: I think there is a ruling, sir.

A These prisoners were brought to Bacolod and placed in the Spiritual Training School, and later released. In the Nakajima case I said I do not know because the question was what happened to the prisoners who were sent to the North Elementary School, whether they were tortured and murdered, and the answer to that question was, "I do not know."

Q Now, once again I will read to you the question which was propounded to you in the Nakajima case, and the answer which you gave.

MR. BONDA: What page are you reading from?

MAJOR FOJAS: 192.

"Q After these prisoners arrived at the high school, then, Colonel, you don't know what happened to them, is that correct?"

And your answer:

"A I do not know."

Now, will you still insist that you did not give that

answer to that question, but to a question as to whether they were taken to the North Elementary School?

A Yes, that is right.

Q All right. Now, when you said this morning that you believed those prisoners were taken to the Spiritual Training School, and later released, did you not know, as a matter of fact, that those prisoners were taken to the Spiritual Training School, and then released, isn't that correct?

A Now, these prisoners were brought to the Spiritual Training School, and they were later released. Now, actually I don't know whether those in charge of the school did not release them or not. Now, the question in the Nakajima case was if I knew of the men who were brought to the North Elementary School by the Nakajima Unit, and my answer was, "I do not know," because my general policy regarding captured guerrillas was to send them to the Spiritual Training School.

Q All right. So actually you did not know whether those prisoners were released from the training school, is that correct?

MR. BONDA: Well, he has so stated on a number of occasions that it was his belief.

MAJOR FOJAS: I want to have it clearcut on the record, because there are so many answers which the witness has given. There was an incident here one time when we were discussing the matter as to what "I believe" or "what I think" and I think we came to the conclusion it is almost to the point of certainty when a Japanese witness says that, and I don't like to have any confusion in that matter.

MR. BONDA: Oh, wait a minute. I challenge that. That is not so. There is nothing in the record - - -

MAJOR FOJAS: Wait a minute - - -

MR. BONDA: I never know when you are finished; you stop.

MAJOR FOJAS: I think I am entitled to ask him the question which I have just now, to have it clearcut on the record.

MR. BONDA: There is a limit to repetition even on cross-examination.

COLONEL PARKLER: That is just a comment on the part of defense counsel?

MR. BONDA: That is the basis for my objection. It is repetitious.

COLONEL PARKLER: The prosecution apparently feels that it is not a clearly defined answer for the record.

MAJOR FOJAS: That is correct.

COLONEL PARKLER: And the Commission can't go behind that. Objection overruled.

A Now, I trust all my men, and especially the one in charge of the Spiritual Training School, and I don't investigate those men who were placed in the Spiritual Training School, whether they were later released or not. I presume that they were released

Q. And actually also you did not know whether those prisoners were placed in the Training School? Will you please answer that "yes" or "no."

A I can't answer that with a "yes" or "no."

Q Do you know or do you not know?

A I firmly believe they were placed in the Spiritual Training Center because I received reports from the one in charge.

Q You actually did not know whether they were placed in the Spiritual Training School?

MR. BONDA: If the Court please, I submit that there is a limit to repetition. That question has been asked and answered at least three or four times, and I think the picture is clear. At least it is clear to me, and I assure it is clear to the Commission, and it should be clear to the prosecutor.

MAJOR FOJAS: Defense counsel knows it is not my fault if I am repeating the question. It is just that his witness does not answer the questions clearly, and is very evasive.

MR. BONDA: I deny that. I think he has been straightforward, and has told nothing but the truth and in the face of that comment by the prosecutor I think I should be permitted to comment on what my opinion of his testimony has been. It has been nothing but the truth, and it is such a contrast to the Filipino witnesses they have brought in here, I think the prosecutor is caught by surprise.

MAJOR FOJAS: I have to ask my questions four or five times.

COLONEL MINTELER: There may be some difficulty here as to the meaning of words.

MAJOR FOJAS: I don't think so, sir, because the witness has just stated he doesn't like to answer "yes" or "no."

MR. BONDA: Now, wait a minute. That was a negative question, and if the witness hadn't answered that way I would have made an objection. He said that question could not be answered "yes" or "no." Please read that question.

MAJOR FOJAS: So he understands; my point is that he understands - - -

MR. BONDA: Wait a minute. I have asked the question be read.

MAJOR FOJAS: My point is he understands the question. Whether or not he gave the remark, "I don't like to answer 'yes' or 'no,'" - - -

MR. BONDA: That isn't what he said.

MAJOR FOJAS: He said the question could not be answered "yes" or "no," and the implication is he understands the question, so there could be no question as to the interpretation.

COLONEL FARBELEE: The defense has requested you read the question.

MR. BONDA: I want the question read. He didn't say he didn't want to answer "yes" or "no." The witness said, "I cannot answer it 'yes' or 'no,'" and I want to point out that that question could not be answered "yes" or "no."

MAJOR FOJAS: I could be mistaken. He might have said, "I don't like to answer it 'yes' or 'no'" or he might have said the question could not be answered "yes" or "no." In either case I say the witness understood the question, and there could be no question of misinterpretation.

COLONEL FARBELEE: Well, the Commission will take a brief recess, and following that we will read the question and go on with it.

(Short recess.)

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COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

MAJOR FOJAS: I think I have a question, sir, and there is an objection.

COLONEL PARMELEE: There is a question to be read I believe, question and answer.

MR. BONDA: I withdraw my request to read that question, I know what it is, and I think the prosecutor admitted he may be wrong in asking it.

MAJOR FOJAS: Yes, I think it will be proper for me to propound the question again.

Q Actually you did not also know whether or not those prisoners taken from Silay on April 19, 1944, were placed in the Spiritual Training School, will you answer that "yes" or "no"?

A I believe they were placed in the training school.

Q That is only your belief, but you do not know as a matter of fact, isn't that correct?

A My answer is the same as before. Please understand my answer by the words that I used.

Q Don't you want to give me a categorical answer to that question?

A I don't want to give a categorical answer.

Q Will you please explain to the Commission why?

A There is no need to do so.

Q Why is there no need to do so?

A There is no need, so there is no need.

Q Don't you want the Commission to find out what really was the fact?

MR. BONDA: If the Court please, I don't think that is a fair question. I think he has indicated he does want the Commission to know what the facts are. This line of questioning is based on some ambiguous questions, to ask him if he wants to give a categorical answer, don't think that means anything to him. I think if he could he would answer the question "yes" or "no".

MAJOR FOJAS: Do you think it would solve the problem?

MR. BONDA: I don't know what problem you want solved.

MAJOR FOJAS: The point is, he doesn't want me to place the question so I can ask for a categorical answer.

MR. BONDA: Well, I don't know if you understand what a categorical answer is. A categorical answer is when there is more than one part to the question, and each one is answered separately "yes" or "no". I think the question is put wrong. If you ask him to answer "yes" or "no" that is one thing, but to answer it categorically is another thing.

MAJOR FOJAS: I submit it, sir.

COLONEL PARMELEE: What is the objection now?

MR. BONDA: My objection to this line of questioning, I think that it probably is a, or that there is a misunderstanding here. In the first place the question is confusing, and also because it is repetitious. I think the end result is known to the Commission, that he believed certain

things to be true, he firmly believed certain things to be true. He was asked that so many times that the witness now says his answer stands, and I think that is responsive. And now the prosecutor seems to be arguing with the witness.

COLONEL PARMELEE: The question is simple, it is requested that it be answered "yes" or "no".

MR. BONDA: The answer was his former answer stands, and the question was "Is it not a fact, or did you not say," we again have the negative question. Now, if you will put the question positively "did you do this or that," he probably would answer it "yes" or "no".

MAJOR FOJAS: I don't think it is a question of faulty questioning, because the witness told me he did not like to answer "yes" or "no", he told me blankly he did not like to answer "yes" or "no", so there could be no question of misunderstanding the question.

COLONEL PARMELEE: Will the reporter please read the question?

(The question was read as directed.)

COLONEL PARMELEE: The question seems to be clear enough.

MR. BONDA: Well, my objection to the last question is that it is simply argumentative, not my objection to the preceding one.

MAJOR FOJAS: I am asking why he can't or doesn't like to give me a categorical answer, and I think I am entitled to that.

COLONEL PARMELEE: The witness is given an opportunity to explain, if he so desires, the question is ruled

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proper, objection overruled.

A I would like the Commission to know the facts.

Q All right, I'll give you another chance to answer the question. Do you know as a matter of fact, that those prisoners taken in Talisay on the 19th of April, 1944, were placed in the Spiritual Training School?

MR. BONDA: Objection, it is repetition and of no value whatsoever in determining the truth in this case, because it has been asked and answered at least five times.

MAJOR FOJAS: No comment to make, except I am compelled to repeat the question because of the answer given by the witness, and following the suggestion of the defense counsel to ask a positive question.

MR. BONDA: The question itself is not a positive question but a negative question.

COLONEL PARMELEE: Will the reporter read the question, please?

(The question was read as directed.)

MR. BONDA: We have had that same trouble throughout this entire case with questions like that.

COLONEL PARMELEE: I believe the question is clear enough. The question that he knows a certain thing was asked to be answered "yes" or "no". Question is ruled proper, objection overruled.

A I believe that they were put in a training school. I have confidence in my subordinates that they put them in the training school because they always put prisoners in the training school. If there was a mistake, that I could not help it, but I have confidence in my subordinates. As a commander it was not my place to watch my subordinates whether or not they actually carried out my command, whether they did it or not I couldn't help it. With my answer now, I think you will understand. With regards to the taking of prisoners to the North Elementary School, I did not go as far as ascertaining whether they were brought there. That is why I don't know.

Q May I request the Commission to instruct the interpreter to propound the question once again to the witness and ask the witness to give the answer "yes" or "no"?

MR. BONDA: When we had the same situation with the Filipino witnesses, I think the Commission said to me that is the way their mental processes are, and we can't insist

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on a "yes" or "no" answer. This man wants to make his position clear. Whether that is the mental process of the Japanese, I don't know, but certainly it is a natural reaction for a man on trial for his life. I, myself, don't think that question is capable of a "yes" or "no" answer and whether it is or not, the answer has cleared up the situation. There can be no other reason for a request of a "yes" or "no" answer except to harass the witness.

MAJOR FOJAS: No further comment, sir.

COLONEL PARMELEE: The question is ruled proper, and the question may be asked if the prosecutor so desires, but the Commission has been polled on this particular point and feels there is enough evidence along this line in the record for them to make a conclusion. That is merely given for information. The prosecutor is entitled to present his case the way he sees fit and can ask the question if he so desires.

MAJOR FOJAS: In view of the remarks of the President of the Commission, I am willing not to pursue that matter further.

Q . Now will you explain why in the Nakajima case you said it was possible for those prisoners taken in Talisay to have been confined in the North Elementary School, while you said this morning it was not possible?

MR. BONDA: I don't think that he said that, sir.

MAJOR FOJAS: He said that, I am certain of it.

MR. BONDA: I challenge that statement. He did at no time, say it was possible for them to have been in the North Elementary School.

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MAJOR FOJAS: He said that, sir, I took very careful pains to propound that question to the witness, and that was the answer I got. He said it was not possible for any of those prisoners to have been confined in the North Elementary School.

COLONEL PARMELEE: To save time if we recess long enough to get the notes and look it up- - -

MAJOR FOJAS: That was at the beginning of the session. I gave him an opportunity to explain it.

MR. BONDA: He already asked the question and already explained it. I request that the Commission's notes show what he said?

MAJOR FOJAS: I feel obliged to insist on asking the question. As he said in the Nakajima case, he said he did not know the prisoners were taken to the North Elementary School. He testified that it was not possible for them to have been confined there.

MR. BONDA: That is the statement I challenge.

COLONEL PARMELEE: Is that statement on that questioning on cross-examination?

MAJOR FOJAS: Yes, sir, this morning.

COLONEL PARMELEE: I have a recollection, but I would went to be sure.

MAJOR FOJAS: If defense counsel wants a verification, I am willing.

COLONEL PARMELEE: I believe we should do that because it is a basis for further questioning that should be factual in justice to the accused. We will take a short recess and look that up.

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(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Tecoad interpreted to the witness.)

MAJOR FOJAS: During the recess, we verified the exact testimony of the witness on this point, sir, and we found out that he was asked the following question: "Was it not possible for some of those prisoners captured in Talisay to have been confined in the North Elementary School garrison," and the answer was, "I don't know." So I will rephrase my last question.

COLONEL PARMELEE: Very well.

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Q Will you please explain to the Commission why in the Nakajima case you testified that it was possible for the prisoners taken in Talisay on the 19th of April, 1944, to have been confined in the North Elementary School, while this morning, you testified you don't know?

A In the Nakajima case, I was asked whether it was possible for the Nakajima unit to confine the prisoners captured in Talisay, and my answer was, it was possible. Now this morning the question was, was it possible for the prisoners to be confined in the Nakajima unit. My answer was, "I don't know." In the Nakajima case there was a direct question, and it specified or mentioned an incident wherein the prosecutor asked me that there was a case wherein prisoners were confined in the Nakajima unit headquarters, and the question was, whether there was such a possibility; so my answer was it was possible.

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Q Now, was it possible for some of those prisoners who were captured in Talisay on the 19th day of April, 1944, to have been killed in Banago within the City of Bacolod during the period 19 April to the 25th of May, 1945?

MR. BONDA: I object to that question. That is a hypothetical question based on something that I don't think would possibly be within his knowledge, as to whether it is possible for persons to have been killed. They might have been killed in various different ways. It would be impossible for him to tell, whether they were killed by accident, guerrilla activity or by the Japanese. I don't see how that is capable of an intelligent answer.

COLONEL PARMELEE: Well, the question is designed to elicit the information as to whether it was possible for this event to have happened and he not know about it, is that correct?

MR. BONDA: That is not the question that was asked, sir. He was asked whether it was possible for that event to have happened.

MAJOR FOJAS: I will rephrase the question, sir.

MR. BONDA: I don't think the Commission should word the question for the prosecutor.

COLONEL PARMELEE: That was not the intention at all. I just wanted it clear before a ruling.

MR. BONDA: No, I understand that.

Q Was it possible --

MR. BONDA: What is the ruling on my objection?

MAJOR FOJAS: I have withdrawn my question.

MR. BONDA: Are you withdrawing the question?

MAJOR POJAS: Yes, I withdraw the question, and will rephrase it.

Q Was it possible for some of the prisoners captured in Talisay on the 19th day of April, 1944, to have been killed by the Japanese without your knowledge, during the period from the 19th of April, 1944, to the 25th of May, 1944, in a place called Banago in Bacolod?

A I think that is possible, because there were other units stationed in Bacolod, and at the time there were frequent attacks made by the guerrillas against the units.

Q Who was your officer in command at the North Elementary School Garrison?

A First Lieutenant Nakajima.

Q Do you know if Banago was within his jurisdiction?

A Yes.

Q All right.

A First Lieutenant Nakajima guarded the Banago wharf.

Q And Lieutenant Nakajima was in command of the garrison at the North Elementary School during the period 19 April, 1944, to May, 1944, is that correct?

A Yes.

Q And Banago was within his jurisdiction during the same period, is that correct?

A The Barrio Banago is not under the jurisdiction of the Nakajima Unit, but the unit sent patrols to the Banago wharf.

Q But during the same period the area near and including the Banago wharf was within the jurisdiction of Lieutenant Nakajima, is that correct?

A The main responsibility of the Nakajima Unit was the

wharf. Near the wharf was a navy unit named the Ochiai Unit.

Q Were you not responsible for the security of that area, meaning Bamago, during the months of April and May, 1944?

A Yes, I was in charge of the whole Island of Negros.

Q Were you the commander of all the troops which participated in the expedition to Himamaylan and Kabankalan during the latter part of April and the early part of May, 1944?

A Yes.

Q Did you personally take part in that expedition?

A Yes, I did.

Q Do you know how many days that expedition lasted?

A The first expedition was during the latter part of April, up to around May, the 10th. The second was from May 13 up to May 18 or 19.

Q Now, you testified here that you recognized the face of Sofronio Sabellon when he took the witness stand. How did you remember him?

A I don't know the name, but when he took the witness stand I seemed to recollect his face.

Q Do you remember having seen him in the Spiritual Training School in your headquarters?

A It was either at the Spiritual Training Center or in the Standing Army that I saw him.

Q Do you remember having seen him in the expedition to Himamaylan and Kabankalan?

A I don't know.

Q Did you ever use Filipino cargadores in that expedition to Himamaylan and Kabankalan?

A Yes, they were men either from the Spiritual Training

School or the Standing Army.

Q Now, you testified that you ordered the execution of Jesus Gonzaga and Teofilo Hisona. Do you remember who the officers in your unit were that carried out that order of yours?

A I don't know.

Q Do you remember that Jesus Gonzaga and Teofilo Hisona were executed during the period from 19 to 25 July, 1944?

A I don't know.

Q Do you know where they were executed?

A Behind the high school.

Q You mean at the rear of the Bacolod High School, which was then your headquarters?

A Yes, I think that is right.

Q Can you recall if these two men were executed together with other Filipinos?

A That I don't know.

Q When you said "I don't know," you mean you cannot remember whether they were executed with other Filipinos? You mean you cannot remember whether they were executed with other Filipinos?

A No, there were no Filipinos executed.

Q Did you see when these two men were executed?

A No, I did not.

Q How did you know that there were no other Filipinos executed together with these two men?

A After receiving the investigation report I ordered the execution of Jesus Gonzaga and the mayor of Sipalay. I said there were no other executions, because I did not give any

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other order.

Q Do you know, as a matter of fact, whether or not there were other Filipinos executed with these two men, Jesus Gonzage and Teofilo Hisona?

A I don't know.

Q And the persons you ordered to execute these two prisoners, Gonzaga and Hisona, were members of your unit, is that correct?

A Yes, they were my subordinates.

Q Do you remember the officer who conducted the investigation of Jesus Gonzaga before he was executed?

A It was First Lieutenant Toda and Sergeant Takahashi.

Q Do you know how the investigation of Jesus Gonzaga was conducted?

A I ordered the investigation of Gonzaga to First Lieutenant Toda for about two months. Then Gonzaga was first released. That was during the time when one of my witnesses, Coseculluela, was the governor.

Q And you based your order to execute Jesus Gonzaga upon the report which Toda and Takahashi submitted to you, is that correct?

MR. BONDA: Wait a minute. He said that there was an investigation and then he was released. Now, I think that your question is based on the wrong premise, I don't know. But it seems to me his testimony was that after that investigation he was released.

MAJOR FOJAS: This is entirely a different question. What defense counsel is talking about now is in response to a question as to how the investigation was conducted. I am through with that phase of the matter. I am questioning him

now as to whether he based his order to execute this man upon the report which was submitted to him.

MR. BONDA: I have no objection to that, except your form of question seems to follow that as a result of the investigation he has talked about, the man was executed, but it was not that way at all, as I understand, but there was an investigation conducted by Toda, and then Jesus Gonzaga was released. Now, your question seems to be based on that answer, but you are giving a different interpretation from what he said.

MAJOR FOJAS: I submit the question is proper.

COLONEL PARMELEE: Will you read the question?

(Question read.)

COLONEL PARMELEE: That is the question objected to?

MR. BONDA: Yes, because it seems to be based on his previous question in which he said he was released. I have no objection to the question, sir, except that it seems to be related to his previous answer, and I think they are unrelated, as the prosecutor says, but in the interpretation it would seem to be related.

COLONEL PARMELEE: Didn't he say he was first released, and intimated later on he was captured, and that follows the testimony of somebody else?

MR. BONDA: My quarrel isn't with that; it is just I am afraid he will get the wrong impression -- I will withdraw my objection.

COLONEL PARMELEE: I may be wrong, but I recollect the prosecution's witness on the Specification testified that he was released first, and was on a kind of probation, and he was captured again, is that right?

MAJOR POJAS: Even this witness said that.

MR. BONDA: Yes, this witness said that. I withdraw my objection.

COLONEL PARMELEE: All right.

A Yes.

Q Did you give this man Jesus Gonzaga any trial before he was killed?

MR. BONDA: Objection. The same thing we had up once before. A trial is a legal conclusion.

COLONEL PARMELEE: The question has been asked the witness previously, and he apparently understood the word "trial," what it meant. Now, of course the Commission, as stated previously by the President at the time the question was raised, would always be interested in what the trial consisted of, if the answer were in the affirmative.

MR. BONDA: We are not permitted to ask legal conclusions, and then base our questions on that legal conclusion. Either the answer stands or doesn't stand, and it doesn't stand only because later on we are going to find out what he meant by it. I say to the Commission that a trial is a legal conclusion, and we must not ask of the witness legal conclusions. We can ask the facts from which the Commission can determine whether a trial was held. I think it is exactly the same as we have had previously, and I don't think it is a proper question.

COLONEL PARMELEE: The witness can amplify his answer and explain what was done, and if he says "no" or "yes" -- the question is considered proper. Objection overruled.

A Regarding the trials the answer will be the same as the

one I made yesterday regarding Bebit.

Q In other words, your answer would be, "no, he was not given a trial," is that correct?

A Regarding the trials the answer would be the same as the one regarding Bebit.

COLONEL PARKELEE: The Commission will now recess until 1300 hours, this date.

(The Commission recessed at 1130 hours, to reconvene at 1300 hours.)

A F T E R N O O N S E S S I O N

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

CROSS-EXAMINATION (continued)

BY MAJOR FOJAS:

Q Now who was the officer who conducted the investigation of Teofilo Hisona?

A First Lieutenant Toda.

Q Did you know how he conducted that investigation?

A Toda was the garrison commander of Sipalay and as such he knew very well the activities of the mayor of Sipalay, and he investigated this man very well. Toda was a graduate of an American university and was also a linguist, and he knew English and some Visayan, so I chose him to do this investigation.

Q Was Hisona ever confined in the Sipalay garrison?

A I don't know his name, but is he the mayor of Sipalay?

Q Yes, Hisona was the mayor of Sipalay.

A Yes, I think so.

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Q Was he ever taken to the garrison at the Bacolod High School for investigation?

A He was sent from Sipalay to Bacolod.

Q Was he ever investigated in your headquarters, the Bacolod High School?

A I don't know very well where he was investigated.

Q Were you ever present at any time during the investigation of this man?

A No.

Q Did you give this man, Hisona, a trial before he was killed?

MR. BONDA: Objection. Same objection used before in the use of the word "trial."

COLONEL PARMELEE: Objection overruled.

A No.

Q Do you know if Takeshita ever participated in the executions of Teofilo Hisona and Jesus Gonzaga?

A I don't know.

Q How many times have there been executions at the rear of the Bacolod High School while you had your headquarters in that place?

A I don't know about executions at the rear of the Bacolod High School.

Q Were not these two men, Jesus Gonzaga and Teofilo Hisona, executed at the rear of the Bacolod High School?

A I do not know.

Q Did you not testify this morning that these two men were killed at the rear of the Bacolod High School?

A I gave the order for the executions, but whether they

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were executed behind the high school or not, I do not know.

Q Do you mean to tell us now that you did not testify this morning these two men were killed at the rear of the high school?

MR. BONDA: I don't recall him so testifying.

MAJOR FOJAS: I am sure, sir, it is in the record.

COLONEL PARMELEE: I don't recall that myself.

MR. BONDA: My recollection is that he was killed.

COLONEL PARMELEE: Two members of the Commission believe that was testified to.

MR. BONDA: In the rear of the high school?

MAJOR FOJAS: Yes.

COLONEL PARMELEE: If there is any doubt, we should look it up.

MR. BONDA: I don't think it is important enough.

MAJOR FOJAS: But it is important.

COLONEL PARMELEE: If you are going to base some questions on it, and the defense are not satisfied, we should take time out to be sure that it was testified to.

MR. BONDA: Do you recall it was so testified?

MAJOR FOJAS: Yes.

MR. BONDA: This morning?

MAJOR FOJAS: Yes.

MR. BONDA: You mean on this last specification?

MAJOR FOJAS: Yes.

MR. BONDA: Then it should be easy to find.

COLONEL PARMELEE: Are you satisfied --

MR. BONDA: No, if it is easy to find, let's find it. I honestly don't know.

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COLONEL PARMELEE: We will stay in session, but will stand up if you so desire.

(Major Fojas and Mr. Bonda then left the room in order to consult Reporter McNair regarding testimony given during the last session this morning, before the noon recess.)

MR. BONDA: Do I have an objection to that last question?

REPORTER SELZER: No objection, just a statement that you didn't remember the witness so testifying.

MR. BONDA: We have read the testimony, sir.

MAJOR FOJAS: Will you please read the question?

(Question was read as directed.)

A I gave the order for the execution, but whether they were killed at the rear of the Bacolod High School I do not know. It was the prosecutor who said that they were killed behind the high school.

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Q Will it refresh your memory if I tell you that this morning I asked you a question, in effect, where were these two men killed, and you answered behind the High School, and then I asked you when you said behind the High School, if you meant at the rear of the Bacolod High School where you had your headquarters, and you said yes. Would that refresh your memory?

A I don't know because you said they were killed - - - I really don't know because the prosecutor said that they were killed and I have no other knowledge so I said yes. I don't know about that but because the prosecutor said they were killed and I had no proof or evidence to the contrary I said yes. I had no positive evidence to the contrary, so I said yes.

Q The question is, do you now remember you testified this morning that those two men were killed at the rear of the Bacolod High School?

A Because the prosecutor said that they were killed and I had no evidence to the contrary, I said yes, that is right.

Q Do you or do you not remember having testified this morning that those two men were killed at the rear of the High School?

MR. BONDA: If the Court please, I think he has answered the question and added an explanation.

MAJOR FOJAS: I don't think, sir, he has answered the question. He has evaded the question.

MR. BONDA: I don't think he has evaded the question. He said he answered the question.

MAJOR FOJAS: I submit, sir, he has not answered the question.

COLONEL FARRELLEE: Well, the question is proper. The prosecutor apparently is not satisfied.

MR. BONDA: Well, I think it is the Commission who should be satisfied and not the prosecutor. I submit the question has been answered.

COLONEL FARRELLEE: Well, the objection is not sustained. The question is ruled proper.

A Yes.

Q All right. How many other executions do you remember having taken place at the rear of the High School?

MR. BONDA: That question has been asked and answered, sir.

COLONEL FARRELLEE: What was the answer, do you recall?

MR. BONDA: The answer was that he doesn't know.

MAJOR FOJAS: I had rather take it from the witness, sir.

MR. BONDA: Well, that is the answer that is in the record. If we want to go out we will check that again. Do you deny that that is in the record?

MAJOR FOJAS: I don't recall this witness having answered that question.

MR. BONDA: That was the first question you asked this afternoon.

MAJOR FOJAS: You objected to my question as to whether there were any killings at the High School.

MR. BONDA: I beg your pardon. You asked that question and he answered it, and there was no objection to the question.

COLONEL PARTLEE: Well, it might be well to check on that. That question was put, as I remember.

MAJOR FOJAS: There could be no harm if I asked the question again.

MR. BONDA: There can't be any harm, but it just doesn't seem that questions should be repeated constantly. If we get an answer I think that is the answer, unless there is some ulterior motive in repeating the same question.

MAJOR FOJAS: There is no ulterior motive. This witness here at the start this afternoon denied having testified that these two men, Bisone and Gonzaga, were killed at the rear of the High School. After having been able to have him admit that he did testify, I want to find out whether there were other executions at the rear of the High School.

MR. BONDA: You have already asked him that, and he has already answered it.

COLONEL PARTLEE: Well, the question seems proper, and I don't know whether it is exactly repetitious or not, but it seems proper on cross-examination, and will be permitted.

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INTERPRETER TACCAD: Will you read the question.

(Question read.)

A I don't know.

Q Was it possible for an execution to take place at the rear of the High School without you knowing it?

A Yes, there is a possibility that I wouldn't know about it. I think that an execution would be performed in a place where others would not see.

Q During the period from the 19th to the 25th of July, were there other units with headquarters at the Bacolod High School excepting yours?

A There were many units in the vicinity.

Q Did they have their headquarters at the Bacolod high School during the same period?

A There were many units in the vicinity, and there were headquarters of the Navy Air Force, Signal Corps, and other units at the Sugar Central. My unit had been garrisoned in that place for a long time, about three years, in fact, and that is why they all brought criminals, and people like them to my unit.

INTERPRETER TACCAD: May I make a correction. Instead of "all criminals were brought to my unit," it should be, "my unit had stayed in that place for a long time, about three years, in fact, and that is why their faces and their names were familiar to the people,so that crimes have been charged against them."

MAJOR FOJAS: I move, sir, to have the answer stricken as it is not responsive to the question.

MR. BONDA: I ask the answer stay in.

MAJOR FOJAS: We can read the question and we will see what the answer is, and I contend it is not responsive to the question, so I move that that answer be stricken.

MR. BONDA: You asked whether any other units had headquarters - - -

MAJOR FOJAS: We can read the record and find out if my contention is correct or not.

MR. BONDA: Okeh, but I remember the question verbatim. Go ahead.

(Record read.)

MAJOR FOJAS: I contend the answer is not responsive.

COLONEL PARMELEE: Any comment by the defense on the motion?

MR. BONDA: I submit the objection to the question because the question was to show that anything that was done there was done by the accused's unit and no other unit. Now, there can't be any doubt as to the purpose of the question. Now, the answer is, they were there so long that if anything was charged to anybody there they immediately named one of the members of his unit. Now, in view of the only object for which that question could be asked, I think that answer is responsive.

MAJOR FOJAS: I would like to say that the object of the prosecution asking that question is to establish the fact that during the period from the 19th to the 25th of July there was no other unit with headquarters at the Bacolod High School.

MR. BONDA: And he answers that by saying they were in the immediate vicinity and therefore crimes that were charged there they charged to his men because they had been there so long everybody knew them.

MAJOR FOJAS: I submit the answer is not responsive.

COLONEL PARTELEE: The answer is ruled not responsive, and it will be stricken. That is, the original answer given and the corrected interpretation of the answer.

Q Now, I will ask you again, besides your unit was there any other unit who had its headquarters at the Bacolod High School during the period from the 19th to the 25th of July, 1944?

A No, there was none, but --

MAJOR FOJAS: Before that answer is translated and placed in the record I would like to find out from the interpreter if it is responsive to the question. So far as I am concerned he has already given a responsive answer. He said there were no other units having headquarters in the Bacolod High School.

MR. BONDA: I don't know under what theory you can ask the interpreter if it is responsive.

MAJOR FOJAS: I want to find out without putting it in the record.

COLONEL PARTELEE: We will withdraw while the interpreter gives the answer to the prosecution and the defense.

(Short recess.)

MR. BONDA: Reading it back, the answer that the accused started to give, was along the same line as the previous answer, that there were other units within the vicinity,

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and he named the units. Now, I say that it is my contention that that is responsive because of the object of the question. I will say it was similar to the answer that the Court has ruled as not being responsive, but I would like to have it go in, and then have the Court rule that that is not responsive, if the Court thinks it isn't.

COLONEL PARMELEE: Well, the basis of the ruling is this, that the question specifically asked whether there were any units at or in the Bacolod High School, and the response was "In the vicinity." Now, that is the unresponsive part of it.

MR. BONDA: Well, I am basing my claim it is responsive on the only possible theory under which the question could be admitted at all.

COLONEL PARMELEE: Well, does the defense want the answer in as a matter of record?

MR. BONDA: I would like it in as a matter of record, and the Court can rule again whether the answer is responsive. I say I am not quarreling with the Court's ruling on the answer he has given so far, but I want the record to show this answer, which is similar I will admit, as not responsive.

COLONEL PARMELEE: Defense requests it go in the record, and then if the prosecution believes it is not responsive and apparently that is the case, inasmuch as you did not agree when the Commission withdrew, then a motion to strike will be in order.

INTERPRETER ISHITA: I have forgotten the answer.

COLONEL PARMELEE: The answer has been forgotten by the interpreter, is that correct?

MAJOR POJAS: That is what he said.

MR. BONDAR: I will agree with the prosecution, then, that both answers were not responsive.

COLONEL PARTELEE: Very well.

Q Were you commander of the troops that went to Barrio Santa Cruz, Murcia, on the 26th of December, 1944?

A Yes.

Q What time did you arrive in Barrio Santa Cruz on that day?

A Barrio Santa Cruz is a big barrio, and I cannot say definitely what time we arrived, but I can say it was approximately 4:30.

Q You mean 4:30 in the morning, is that correct?

A In the morning.

Q Was it about that time when you heard music in a house nearby?

A Yes, I heard the music from afar.

Q Did you not say that you were about a hundred meters away from this house when you heard music?

A Yes, I said that.

Q And that immediately after you heard music you heard firing, is that correct?

A I heard music for a long time.

Q About how long had you heard music before there was any firing heard?

A I cannot say the time I heard music from afar.

Q The fact is after having heard music you heard shots, is that correct?

A The music stopped when there was firing.

Q All right. And three or four minutes after you heard the firing start you arrived at a house, is that correct?

A Yes.

Q And upon arrival at this house you saw the corpse of a man lying outside, is that correct?

A Yes, I saw one outside the house.

Q And you also saw the corpse of a woman inside the house, is that also correct?

A Yes, I saw it.

Q Did you enter the house?

A Yes.

Q Besides the corpse of this woman, did you see any other person inside the house?

A No, there were none.

Q How long did you stay inside the house?

A Two or three minutes, or maybe one or two.

Q How long did you stay outside the house?

A About five minutes.

Q When you came to this house, did you not notice people running away?

A No.

MR. BONDA: Objection. The witness testified he didn't see anybody running away.

MAJOR FOJAS: I don't care. There is an answer already; he said "no."

MR. BONDA: Of course that is the correct answer, "no," but I don't want the impression to get out that he previously testified he had seen many, because that is what is inferred by the question. "No" would be the correct answer if his other story is true.

COLONEL PARMELEE: Well, the testimony would seem to be consistent.

MR. BONDA: Well, the question was based on something that was not in evidence.

MAJOR FOJAS: That is not true, sir.

MR. BONDA: He testified he did not see anybody running out.

MAJOR FOJAS: Defense counsel, I suppose, wants the prosecution to accept whatever this witness says. That is why I am on cross-examination. He testified on direct examination he did not see anybody running, and I think on cross-examination I am entitled to ask him as to the truth or falsity of that statement, and I don't see why defense counsel should object to that question.

MR. BONDA: Let's understand each other. I have no objection to you asking this witness, "Did you see anybody running out," but I don't want you to base the question on something that is not in evidence when you ask him, "Did you know any of the people who ran out," when he said he didn't see anybody run out. Don't base your question on something he hasn't said, which would make it assume he had said he saw somebody run out.

MAJOR FOJAS: No wonder we are having a misunderstanding, because he did not get my question.

MR. BONDA: Will you please read the question. I thought the question was, "Did you know anybody running out."

MAJOR FOJAS: I said, "Did you notice anybody running out."

MR. BONDA: If it is "notice" I am wrong. I heard it as "know."

(Record read.)

MR. BONDA: I withdraw my objection.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

MAJOR FOJAS: I believe, sir, the answer to the last question has not been ---

COLONEL PARMELEE: The question was not put, is that correct?

MAJOR FOJAS: It has been put and the witness gave an answer, but the answer has not been placed in the record.

COLONEL PARMELEE: The defense, after the question was read from the record, withdrew the objection to it.

MR. BONDA: That is correct.

COLONEL PARMELEE: We better read the question then.

MAJOR FOJAS: I'll ask it all over again.

Q When you arrived near the house did you not notice people running away from the house?

A It was dark, so I could not see.

Q Did you examine the body of the dead man you saw outside the house?

A No, I did not.

Q Did you look at that body long enough to see any feature which would enable you to distinguish it from any other body?

A There was a light and I looked at the body for about two or three minutes. The light was from a coconut oil lamp. That was a good coconut oil lamp.

Q All right, did you notice anything on that body which would enable you to distinguish it from any other body?

A The only thing I could distinguish was that the body was that of a male.

Q Other than being a male person, you did not notice anything else which would enable you to distinguish it from anybody else?

A The only thing I can recall now is I think the man had the rifle.

Q Where were you when you received the report that there were three guerrillas and seven women in that place?

A It was about 4:30 when I heard the music that I heard reports from the vanguard that I heard the report.

MAJOR STEVENS: Could that be interpreted as the advance guard?

COLONEL PARMELEE: He said vanguard, which could be taken to mean that.

MR. BONDA: I don't remember in the testimony that he got a report there were three guerrillas and seven women.

A I did not hear the report about the number of persons.

MR. BONDA: Will the Commission check me on that?

MAJOR FOJAS: I have it right here in front of me, sir.

MR. BONDA: That seven women were there?

COLONEL PARMELEE: All I recall is that he received the report, but I don't remember the number.

MR. BONDA: Do you have it there?

MAJOR FOJAS: Yes, sir.

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COLONEL PARMELEE: That is in the record, is it?

MR. BONDA: Yes.

Q Was it before you heard any firing that you received this report?

A Yes, long before I heard the shot.

Q And after the shooting, did you receive any other report concerning those persons?

A I received the report that three guerrillas were shot and one woman was killed.

Q Did the report state that the three guerrillas ---

A (Continuing) and they were killed at the observation house.

Q Did the report state that the three guerrillas were killed?

A The report was that they were shot.

Q Did the report state whether those three guerrillas were shot inside the house, or outside the house?

A That, I don't know.

Q When you arrived at the house you saw only two bodies, is that correct?

A Yes, just two in the morning.

Q Now, at that particular time did your soldiers conduct any search in the surroundings of the house to find out where the rest of the people gathered there were?

A No, they did not, they did not have time to do that because they were pursuing the guerrillas.

Q Were not those people also guerrillas, those who were gathered near the house, or inside the house?

MR. BONDA: Objection, he testified he didn't know who was in the house at that time. The report was that there were three guerrillas and seven women, I still don't think that is clear however. Nothing to show any other people were gathered in the house from his testimony.

MAJOR FOJAS: I will rephrase that question.

Q Were not those people mentioned in the report also guerrillas?

A Yes, the report said they were guerrillas because they were mentioned in the observation report.

Q Did you not consider it then necessary to pursue those who were not killed?

A No, I don't know.

Q Did you testify when you returned to this house five hours later, you found a new body of a dead man?

A Yes, I said that.

Q How did you distinguish this body from the first body you saw earlier in the morning?

A The one I found when I returned was far from the house.

Q And was this new body that you found later nearer the house than the other one?

MR. BONDA: He just said the one he came back and found the second time was farther from the house. Haven't you got that reversed, or have I?

(Record read.)

MAJOR FOJAS: I will withdraw the question.

Q Was it not possible that it was the same body which you saw earlier in the morning?

A No, I don't think not.

COLONEL PARMELEE: That answer has a double negative.

A No, I don't think so.

Q Did you talk to the three women you saw sitting in that place near the body?

A No, I did not. The three women were between the house and a bamboo grove.

Q Why did you not talk to those women?

A There is no reason; I just did not talk to them.

Q Did it not occur to you to talk to those women to find out where the other guerrillas were?

MR. BONDA: Objection. That question, I think, is just put in there for the purpose -- well, I can't say embarrassing the witness. I object on the ground it is irrelevant and immaterial.

MAJOR FOJAS: No, sir, it is not embarrassing the witness. It is a question of credibility of this witness. If it is true they saw guerrillas there, and they shot guerrillas there, upon finding people they

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could investigate, common sense would prove that they would investigate people they would find there.

MR. BONDA: Do you have any evidence they accosted every person they found and asked them where the guerrillas were?

MAJOR FOJAS: I don't have to answer that question.

MR. BONDA: On the ground of that statement it is irrelevant and immaterial. I think the Court can take judicial notice of the fact the commanding officer does not stop everybody he sees and asks them about guerrillas.

MAJOR FOJAS: I think the question is proper for the purpose of testing the credibility of the witness.

COLONEL PARMELEE: The objection is not sustained.

A There was no need to talk to these women because we went to the place where the guerrillas were and investigated thoroughly.

Q To what place did you go to investigate the guerrillas thoroughly?

A We went to a place east of Santa Rosa where there was a valley, and where the base of the Pineda Battalion was located.

Q When did you go to this place; was it after you passed that house or before?

MR. BONDA: Do you mean after he passed the house the first time or second time?

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MAJOR FOJAS: The first time.

MR. BONDA: Will you change that question?

MAJOR FOJAS: Yes.

A Yes, that was after the first time we passed the house, and then when we returned we took the same route back.

Q When you left this house for the first time, you went to this place east of Santa Rosa to investigate the guerrillas thoroughly, is that correct?

A Yes, that is right.

Q Did you not tell the defense counsel that after leaving this house you attacked the enemy position about 1000 meters behind this house?

A Yes, I said that.

Q And was it during this time that you attacked the enemy position when you made a thorough investigation of the guerrillas?

A There was no investigation. There was an attack.

Q What did you mean when you told me that there was no necessity of investigating the three women you saw because you investigated the guerrillas thoroughly at the place east of Santa Rosa?

A It was not necessary; first, because the positions were destroyed; and second, before attacks were made, the enemy positions were well studied; and then the third, after the attack the enemy escaped, so it was not necessary to ask the women about the guerrillas.

Q Did you notice if among the three women you saw

between the house and the bushes the second time you returned to the house was a small girl about twelve years old?

A No, I don't remember.

Q Did you notice if one of those women was wounded?

A No, I did not.

Q Did you not testify that the reason why you went to Murcia was to rescue the members of the Hori Battalion?

A Yes, that is right, upon orders of the brigade.

Q Where was the headquarters of the Hori Battalion at that time?

A At the Bacolod High School.

Q And why did you have to rescue the Hori Battalion at Murcia?

A At that time Murcia was surrounded, and no liaison could be had between Murcia and Bacolod. My battalion was to be transferred to Leyte and at that time was waiting for transportation, so upon orders of the brigade commander, we were told to rescue the battalion at Murcia.

Q Was the Hori Battalion then assigned to Murcia?

A In October 24th to the 26th, there was a general reorganization, and the Hori Battalion was ordered to garrison the whole territory north of the Bago River. The Hori Battalion took over the duties of my battalion. Then my battalion had no garrison duty up to the latter part of December, December 5th.

MR. BONDA: Are you changing that "latter part of December" to "December 5th?" I want to get the correct answer that he gave.

INTERPRETER TACCAD: Yes, that is a correction to December 5th.

MR. BONDA: The correct answer was up to December 5th, is that correct?

INTERPRETER TACCAD: Yes.

COLONEL PARKLEE: Will the reporter read the answer as she has it?

(Answer read.)

Q Is it not a fact that you were responsible for the security of the whole of Negros Island at least up to the 5th of December, 1944?

A No, it was Lieutenant General Kono.

Q When was the Hori Battalion given the responsibility for the area north of the Bago River?

A Lieutenant General Kono came to Negros in August of 1944, and became the commanding officer for Western Negros. The Hori Battalion came in August or September of 1944. The Bacolod area was taken over by the Hori Battalion in October, either the 24th or the 26th.

Q Now, when were you given the responsibility for the security of the area south of the Bago River?

A I received the order on November 5th when I was ordered to take charge of the defense of Bago and the whole territory south of the Bago River.

MR. BONDA: Will you read that answer?

(Answer read.)

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Q Is it not a fact that up to December 8, 1944, the Hori Battalion was under your command?

A No, he was under Lieutenant General Kono.

Q Did you not tell defense counsel that up to the time mentioned in Specification No. 21, that was December 8, 1944, the Hori Battalion was under your command?

MR. BONDA: I don't remember him saying any such thing.

MAJOR FOJAS: It is right here before me, sir.

MR. BONDA: I would like to have you read it to me.

(Defense counsel reading record.)

INTERPRETER ISHITA: What was the question, please?

(Question read.)

A No, I did not. Before Lieutenant General Kono came a part of the Hori Battalion was under my command, and when Lieutenant General Kono arrived he took over the command of the Hori Battalion.

MAJOR FOJAS: I will pursue these questions later.

COLONEL PARMELEE: The Commission will now adjourn and will reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1500 hours, to reconvene at 0830 hours, 16 January 1947.)

EGM(8)mm

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME XLVIII

PAGES 3250 TO 3308 INCL.

DATE 16 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

Court No 2
High Commissioner's Residence
Manila, P.I.
16 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member

MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA 2ND LIEUTENANT FRANK YAMAMOTO 2ND LIEUTENANT SAMUEL S. KOIDE PETRONILO VALLEJO CAESAR YO ALZONA ROMUALDO TACCAD CLARO ISHITA	Japanese
MACARIO E. BELAONG ROGELIO CATANJAL FILOMENA ZOSA	Ilongo (Visayan)

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COM.
Masakazu Yamaguchi	3251 (Cont'd)				

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, 16 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P.I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, the prosecution staff are also present.

MAJOR FOJAS: Yesterday afternoon I based a question upon previous testimony of this witness as appearing in Volume XLII, page 2943, where it was stated that the Hori Battalion was under his command on December 8, 1944. Apparently the answer "Yes," given to a question as to whether that unit was under his command was a mistake, and my attention was called to it this morning, and in view of this mistake, I therefore have to withdraw that question.

COLONEL PARMELEE: Yes, the reporter's notes have been checked and verified, and the answer recorded by the reporter at the time was "No," and the record did show "Yes."

MAJOR FOJAS: But before I propounded that question.

COLONEL PARMELEE: Yes.

MAJOR FOJAS: I had not been apprised of any error.

COLONEL PARMELEE: That is correct.

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MAJOR FOJAS: So I will therefore ask that that question be withdrawn and the answer given by the witness to that question be also withdrawn.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR FOJAS: Will you please remind the witness that he is still under oath.

(Translated to witness through Interpreter Taccad.)

CROSS-EXAMINATION (Cont'd)

BY MAJOR FOJAS:

Q Now, was the Hori Battalion or any part of it under your command at any time while you were in Negros Occidental?

A Lieutenant General Kono arrived in Negros in August of 1944. Before he arrived the Hori Battalion had been arriving in Negros in detachments, in small groups, and for a time I was in command of those groups as they arrived.

Q Do you mean to say by that answer that part of the Hori unit arrived in Negros before General Kono arrived in that place?

A Yes, that is right. That battalion did not arrive in one group. They came in small groups.

Q Now, from what date to what date were you in command of a portion of the Hori Battalion?

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Q Do you mean to say by that answer that part of the Hori unit arrived in Negros before General Kono arrived in that place?

A Yes, that is right. That battalion did not arrive in one group. They came in small groups.

Q Now, from what date to what date were you in command of a portion of the Hori Battalion?

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A I don't remember exactly the date, but I do know that the Hori Battalion started arriving, or part of the Hori Battalion started arriving about the end of July, 1944, and they still came in groups throughout August and September, and I know that I was in command of part of the Hori Battalion from the end of July until General Kono arrived in August.

Q Do you remember when in August General Kono arrived in Negros?

A I don't remember the exact date, but I think it might have been during the latter part of August. General Kono's headquarters did not come in one group. They started arriving about the middle of August, and I think that General Kono arrived about the end of August. I don't remember the exact date.

Q Did you assign the portions of the Hori Battalion to guard any particular area during the time that said portions were under your command?

A Yes.

Q To what particular area did you assign the portions of the Hori unit which were under your command?

A I remember that I put those units in the north, in the Fabrica and Manapla area which was the jurisdictional area of the Kawato unit. At that time the various units were moving from one place to another, and they were getting mixed up, so I don't remember the exact areas assigned to each unit.

Q Until what date did they remain responsible for the security of those places you mentioned?

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A They were responsible for their areas until the arrival of General Kono. After General Kono arrived they came under his command.

Q Did you not testify that there was no change in the area of responsiblity of your unit until December 5, 1944?

MR. BONDA: Objection. That is based on something that he did not testify to. He testified that they went to a certain area on December 5th. He didn't testify there was no change prior to December 5th.

MAJOR FOJAS: I submit, sir, that it is in evidence. He testified to that effect.

COLONEL PARMELEE: Have you found it there?

MAJOR FOJAS: Yes, sir, it is here.

MR. BONDA: I don't see what you mean. Where is that information?

MAJOR FOJAS: I submit, sir, the question is proper.

MR. BONDA: I submit there is no evidence that shows that there was no change prior to December 5th. There was evidence there was a change on December 5th. The question that was just propounded to the witness is whether he hadn't testified that there was no change took place until December 5th, and he never so testified. He testified there was a change took place on December 5th.

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MAJOR FOJAS: Will you please read the question?

(Question read.)

MAJOR FOJAS: I will rephrase the question.

Q Did you not testify that the area of responsibility assigned to you was changed on December 5th, 1944?

A Yes, I said that my area of responsibility changed.

Q And that was on December 5th, 1944, is that correct?

A The transfer of my unit -- the plan to transfer my unit to Leyte was changed, and I was given a new area south of Bago, including the town of Bago.

Q The question is, that was on December 5th, 1944?

A On December 5th the battalion therefore concentrated in Bago.

Q Before December 5, 1944, you still had your headquarters at the Bacolod High School, isn't that correct?

MR. BONDA: Wait a minute. Will you read that question?

(Question read.)

MR. BONDA: Object to that question. It is too indefinite. When before December 5th? There is no question that he had prior to December 5th, he had headquarters in Bacolod; he had headquarters there when he first came, and three or four months later, and unless the time is specified as to when it meant, I object to the question, sir.

MAJOR FOJAS: I think, sir, the question is very clear. He can qualify his answer if he says he was there on certain dates, or any particular date. What I want to find out is if before December 5, 1944, he had his head-

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quarters still in Bacolod.

MR. BONDA: I think it is worded poorly; it is ambiguous in its wording.

COLONEL PARMELEE: Well, of course the witness, as suggested by the prosecution, can qualify it. As a suggestion, will you ask him if he had his headquarters there on December 4th, and for how long before that time.

MR. BONDA: I would have no objection to that. I am afraid that will be misunderstood, and no matter what the answer is we won't know what he had in mind. Obviously the answer is "yes," before December 5th he had headquarters in Bacolod.

COLONEL PARMELEE: Well, for what period of time?

MR. BONDA: Yes, that is right. That is the basis for my objection.

MAJOR FOJAS: I will rephrase my question.

Q Until December 4th, 1944, you still had your headquarters in Bacolod, isn't that correct?

A The Kono headquarters came from Cebu, and in August, the latter part of August, 1944, I turned over the high school to them, and I transferred my headquarters to the Bacolod Sugar Central.

Q Do you mean to say now that in August, 1944, you were no longer at the Bacolod High School?

MR. BONDA: Wait a minute. That question, I think, can be misunderstood. He testified that he was there in August, but that the change took place during the latter part of August, so if the question is asked, "Do you mean that in August you were not there," obviously the answer is

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"yes," he was there in August. Unless the time is fixed as to when in August you mean, I object to the question.

MAJOR FOJAS: In August when General Kono came.

MR. BONDA: Fix the time as the latter part of August or the first part of August. Otherwise we are not going to get the response --

MAJOR FOJAS: His answer was, "When General Kono came." I am ammending it to read," When General Kono came in August."

COLONEL PARMELEE: Will you read the answer, please, as it is to be put?

(Record read.)

COLONEL PARMELEE: I believe the question should be withdrawn and restated.

MAJOR FOJAS: I will do that, sir.

COLONEL PARMELEE: For clarification.

Q Do you mean to say now that in August when General Kono came to Bacolod you did not have your headquarters at the Bacolod High School --

MR. BONDA: Now, I don't want to make it seem as though I am trying to find fault here, but when he came --

MAJOR FOJAS: I am not through with the question.

MR. BONDA: Oh, I am sorry. I thought you had completed it.

MAJOR FOJAS: Will you read it so far?

(Question read.)

Q -- because at the time General Kono came you turned over the high school to him?

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A Yes.

Q Do you remember the date when you actually vacated the Bacolod High School?

A I don't remember.

Q Now when you vacated the Bacolod High School, what was your area of responsibility?

A When the Hori Unit left their areas of responsibility in the north, that is at Fabrica and Manapla, troops under my command readily took over those areas but they were not under my direct command. It was only the Takahashi Unit that was under my direct command, and this Takahashi Unit was in charge of the area from Bago north to Bacolod. However, the overall command of Western Negros was in the hands of General Kono. And between the 24th and 26th of October the Takahashi Unit went over to replace the Hori Unit in their area of responsibility.

INTERPRETER TACCAD: I am sorry, the last part of that answer is just the opposite.

A The Takahashi Unit turned over its area of responsibility to the Hori Unit during the period between the 24th and 26th of October and it took over a new area of responsibility.

COLONEL PARMELEE: This is a correction to the first interpretation?

INTERPRETER TACCAD: Yes.

MR. BONDA: Can we have the answer read as it finally appears?

REPORTER SELZER: (Reading) "When the Hori Unit left their areas of responsibility in the north, that is at Fabrica and Manapla, troops under my command readily took over those areas but they were not under my direct command. It was only the Takahashi Unit that was under my direct command and this Takahashi Unit was in charge of the area from Bago north to Bacolod. The Takahashi Unit turned over its areas of responsibility to the Hori Unit during the period between

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the 24th and 26th of October and it took over a new area of responsibility."

Q That change took effect during the latter part of August when you moved your headquarters to the Sugar Central in Bacolod, is that correct?

A First my headquarters was transferred to the Sugar Central because of the arrival of General Kono. After the arrival of General Kono there was a gradual change in the defense jurisdiction of each unit.

Q At the time you transferred to the Sugar Central how many companies did you have under your battalion?

A Do you mean the whole, the number of companies I had in Negros?

Q Yes, that is at the time you transferred to the Sugar Central?

A Do you mean the company I had in Bacolod?

Q In your battalion?

A I had four companies and one artillery company, -- heavy weapons company.

Q At the time you transferred to the Sugar Central, who was the commander of the first company?

A First company?

Q Yes.

A Captain Takahashi.

Q Where was his headquarters at that time?

A At the Sugar Central, the same place we had the battalion.

Q In Bacolod?

A Yes.

Q Until what time did he remain there in Bacolod?

A He was there up until the latter part of October.

Q What year?

A 1944.

Q Are you sure of that now?

A Yes. That is how I remember it.

Q Now after October, where was his headquarters?

A He went to Victorias after relieving the Hori Battalion.

Q Until what time did he remain in Victorias?

A He was there up to December 5th when he went to Bago.

Q Now, how long did he stay in Bago?

A I think he was there up until the latter part of December.

Q What year?

A 1944.

Q Then where did he transfer his headquarters?

A I don't know because he came under the command of the Brigade Headquarters.

Q Can you recall if he ever returned to Bacolod and stayed there up to the end of the war?

A I think he returned to Bacolod after the surrender. Now in March 1945 he again came under my command.

Q Where was his headquarters in March 1945 when he came under your command?

A There was no permanent place because of the impending landing of the Americans and they were making defense positions in the mountains.

Q Where were your headquarters at that time when Takahashi returned to your unit in March 1945?

A Immediately before the American landing my headquarters was scattered at a place east of Bacolod. At that time it was

very disorderly so I don't remember much about it.

Q When did you start establishing headquarters east of Bacolod?

A Immediately before the American landing and after our unit was annihilated at Bago.

Q Can you give us an approximate date?

A I was wounded at the time so I have no clear recollection.

Q Could it be about the 21st or 22nd of March 1945?

A Maybe it was about that time.

COLONEL PARMELEE: The Commission will take approximately a forty-five minute recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Teccad interpreted to the witness.)

Q When did Takahashi actually cease to be under your command?

A Just what do you mean, do you mean when Takahashi came under the command of the brigade?

Q Yes.

A I think it was about the latter part of December 1944.

Q So that from the latter part of December, 1944 up to the latter part of March 1945, Takahashi was under your command, is that correct?

A Yes, I think he was under my command during that period.

Q Now, from the latter part of March 1945 up to the end of the war, do you know where the company headquarters of Takahashi was?

MR. BONDA: Objection, because it is immaterial and irrelevant, sir.

COLONEL PARMELEE: Will the reporter read the question please?

(Question was read as directed.)

COLONEL PARMELEE: Latter part of 1945?

MAJOR FOJAS: March, 1945.

COLONEL PARMELEE: Latter part of March, 1945?

MAJOR FOJAS: Yes, up to the end of the war. I am interested to find out the location of Captain Takahashi, sir.

MR. BONDA: On what specification?

MAJOR FOJAS: It doesn't have to be on any specification because I am testing the credibility of this witness.

MR. BONDA: You can't go beyond the range of the Charges and Specifications.

MAJOR FOJAS: To tell you the truth, I don't accept the testimony of this witness as to the different changes of headquarters of his company commanders and I will show he is not telling the truth in that respect. That is a preliminary question to bring that out.

MR. BONDA: I insist, sir, there is no materiality to where he was from the end of March 1945 until the end of the war. Now I have opened up the specifications and I have objected to no questions that were based on any of the specifications that appear. I have asked something on every specification. He is going into something that is not and was not asked in direct examination, and in addition to that it is immaterial and irrelevant.

MAJOR FOJAS: The Commission will remember that defense counsel has opened up various changes of command - -

MR. BONDA: During the time of the Charges and Specification and that is all we are concerned about.

MAJOR FOJAS: I submit the question is proper.

MR. BONDA: Don't know under what possible testimony or what possible theory you can ask the question you are now asking.

COLONEL PARMELEE: The question is not particularly directed toward an event but toward the credibility of the previous testimony of the witness, I believe is the purpose.

MR. BONDA: I don't know what previous testimony is referred to. Don't know any testimony that went beyond March, 1945.

COLONEL PARMELEE: Well, I have some notes where Takahashi as a witness testified as to where he was and what he commanded on the date of August 30th, 1945, that date appears on my notes two or three times.

MR. BONDA: That don't make any difference. This witness did not testify as to anything about any date that appears after that.

COLONEL PARMELEE: The prosecution is apparently directing his questions to test credibility.

MR. BONDA: It would permit him to question him up to the present time and say, now look, someone else said you had oatmeal for breakfast yesterday and now you say you had cornflakes. There is a limit to it.

COLONEL PARMELEE: No comparison has been made by the prosecution of the testimony of this witness with that of any other witness put in evidence, the Commission has some notes here to indicate that witnesses testified up to the end of the war or the time of the surrender.

MAJOR FOJAS: The witness testified that the latter part of March 1945 Takahashi returned under his command and I would like to find out where the company headquarters of Takahashi was at that time, or at the time he returned under the command of this witness and up to the end of the war.

MR. BONDA: What difference does it make where he was. You say that is another reason you want to ask that question. That is not credibility. What difference can that make. The prosecutor answers himself as to why it is not admissible.

MAJOR FOJAS: I am laying a foundation to impeach the testimony of this witness that there was various transfers

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of his company commanders, that is just laying the foundation.

COLONEL PARMEIFE: Objection overruled.

A During that period they received attacks from the American forces so they took up defense positions and later on had to move so if you do not specify the exact time I may not be able to say where they were.

Q Do you know if from the latter part of March 1945 Captain Takahashi had his company headquarters in Bacolod up to the end of the war?

MR. BONDA: Objection.

COLONEL PARMELEE: Reason?

MR. BONDA: Two reasons. One, I don't think it is in evidence, and the other reason is that it is irrelevant and immaterial.

MAJOR FOJAS: I have no comment to offer, sir. I am asking him if he knew.

COLONEL PARMELEE: Objection overruled.

A No, he was not in Bacolod.

Q Did you testify that when you moved your headquarters to the Sugar Central in Bacolod you did not have any other company under you except that of Takahashi?

A No I did not testify to that effect. When I left the high school in August, 1944, and I moved to the Sugar Central, the Takahashi company had already its headquarters at that Sugar Central and so we came to stay in the same place, the Takahashi unit and my headquarters. The Nakajima and Inoue companies which were part of my battalion were in Bacolod, had already been in Bacolod before that. The Inoue company was the heavy weapons company, and the Nakajima company was an infantry company. Takahashi's company was in charge of the security for the Bacolod area and the Nakajima and Inoue companies had no areas of responsibility. I held them as my battalion reserve.

Q So that when you moved your headquarters to the Sugar Central, the Nakajima company was under you, is that correct?

A If you mean August, 1944, yes, it was under my command.

Q And at that time it did not have any area of

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responsibility for purposes of security, is that correct?

A The Takahashi unit was in charge of the Bacolod area.

Q I am asking you about the Nakajima company. When you moved your headquarters to the Sugar Central in Bacolod, the Nakajima company was under you, but it did not have any area of responsibility, is that correct?

A Yes, that is right. It was my reserve. However, due to the fact that the Takahashi unit's garrison in the Bago area and one other place were rather weak, I had to withdraw some men from the reserve and reinforce the Takahashi Garrison.

Q And at that time Nakajima had his company headquarters in Bacolod, is that correct also?

A Yes, at the Bacolod North Elementary School.

Q Until what date did Nakajima maintain his company headquarters at the North Elementary School in Bacolod?

A That company was in Bacolod until the 5th of December when we concentrated at Bago. Until December 5, 1944.

Q Do you know if the company headquarters of Nakajima was ever returned to Bacolod after December 5, 1944?

A I think they returned to Bacolod the latter part of March, 1945.

Q And did it stay there until the end of the war?

MR. BONDA: Objection. It is immaterial and irrelevant. If the prosecutor wants to use that as a matter of the prosecution's case, let him now call this witness as his own witness. I had the same thing to contend with during the prosecution's case.

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COLONEL PARMELEE: The difference here is that the prosecution is testing credibility, not trying to elicit new information.

MR. BONDA: It is new information, and when I said that I wanted it for impeachment purposes, they said it is new matter, and it is supposed to be gotten from your witness so we can cross-examine. We are constantly running into things here where the prosecutor said it was wrong, and the Commission said it is right. Then when we have the shoe on the other foot, it is perfectly all right; however, I was not granted that right.

COLONEL PARMELEE: What possible harm could the question have here as to eliciting information for the Commission?

MR. BONDA: If it has no harm, it is immaterial and irrelevant, and the Court should so rule.

COLONEL PARMELEE: No, I say what possible harm could it have here as to eliciting information for the Commission?

MR. BONDA: It is immaterial and irrelevant, and the only way it can get in is as a matter of positive proof for the prosecution; in which case they said to me I should make him my own witness. There has been nothing asked of this witness on direct examination on anything that happened after the latter part of March, and if I had asked it, the prosecutor would have objected, I am sure because it has no place in this law suit.

MAJOR FOJAS: May I say a word, sir? There are at least two things to which this witness testified. First,

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after a certain time his security area was transferred south of the Bago River. That on a certain date he was divested of his command of certain companies. Those two statements the prosecution did not accept, and we are trying to show by cross-examination that those statements are not true, but are in error. One way of getting into that is finding out from this witness the various localities of his company headquarters, of the headquarters of the companies under him at various times.

MR. BONDA: I don't deny that, sir, but not after the date in question.

What does the date after that have to do with the things he doesn't accept? He doesn't accept the fact that they were in Bago on the 5th of December and they didn't go north again until the latter part of March. I haven't objected to any question whatsoever as to those times and not until the end of March; even that goes beyond the date of the last specification and certainly they can't claim they are going to impeach that portion of his testimony that has to do with the dates prior to the date of the last specification by showing movement of his troops after the end of March. I don't think that the prosecutor can claim that is for impeachment purposes and if it is, I say he is going beyond the range of cross-examination. It is not for impeachment, but a positive element of proof for his case.

MAJOR FOJAS: I submit the question is proper for testing the credibility of this witness and for impeachment.

MR. BONDA: If there were a contrary statement as to March, perhaps you would be right, but there is no contrary statement, so you can not impredicate impeachment as a basis for those questions.

COLONEL PARKER: Is there still any testimony by this witness on direct examination as to locations of commands after the date of the last specification?

MAJOR FOJAS: There is a general statement from this witness that after December 5, 1944, his companies were all south of the Bago River. He did not have anything to do with the area north of the Bago River until the 29th

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of March, 1945, when he said he resumed command of this unit and they went to the mountains because the Americans had landed in Negros. Those statements the prosecution does not accept to be true.

MR. BONDA: The 29th of March was the latest date that was brought out on direct examination. I am not trying to limit him on any elements brought out on direct examination, and anything referring to any specification whether it was mentioned by me on direct examination, I will not object to it, but questioning beyond that limit I will object to it. It can't do his case any good or harm either way, and it still has no place in this lawsuit.

MAJOR FOJAS: It will.

COLONEL PAPILLEE: The witness himself has mentioned the date as the date of the last specification.

MR. BONDA: He said the 29th of March. He was asked when he came back from Bacolod and he said, "29th of March."

MAJOR FOJAS: He said he left Bacolod --

MR. BONDA: All right. If he left Bacolod, it is a matter of one or two hours until he got there.

MAJOR FOJAS: I submit, sir, I can inquire into such matters.

MR. BONDA: They were not brought in issue. Nothing after the 29th was brought into issue in this case.

MAJOR FOJAS: I can show by previous statements of this witness the company headquarters of some of his company commanders were in Bacolod up to the end of the war.

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MR. BONDA: On direct examination?

MAJOR POJAS: I can show it by impeaching the testimony of this witness.

MR. BONDA: Oh, you mean that is what you are trying to show. I misunderstood. I submit, sir, my objection.

COLONEL PARMELEE: Objection not sustained.

A The U.S. Army landed in Bacolod, so naturally you could not have been there until the end of the war.

COLONEL PARMELEE: Will you read that answer back, please?

(Answer was read as directed.)

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Q Can you recall the date when the company headquarters of Nakajima was returned to Bacolod after December 5th, 1944?

A I was wounded, so Captain Inoue took over the command of the battalion. Then perhaps since the latter part of March they started to take up defense positions in the mountains. They could not have gone back to Bacolod because the American forces were there.

Q You said that after December 5th, 1944, Nakajima established his company headquarters in Bacolod again. Do you remember that?

A The Bacolod area is a big area. When the North Elementary School was bombed by Americans, they could not stay there, so the Nakajima company stayed somewhere in the eastern part of the Bacolod area and gradually they took up defense positions in the mountains.

Q And this took place after December 5th, 1944, is that correct?

A Yes, after 5th December, 1944, yes.

Q Can you recall the date when Nakajima established his company headquarters in Bacolod after December 5, 1944?

A I don't know. I was wounded. I believe they returned to Bacolod about the latter part of March, 1945. At that time I had been wounded, and I was not in direct command of the unit.

Q But he did not return to Bacolod during the period from the 5th of December, 1944, to the 5th of March, 1945?

MR. BONDA: Read that question.

(Question read.)

MR. BONDA: Does that "he" refer to Nakajima?

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MAJOR FOJAS: Yes.

A Do you mean March 5th? I don't know. I have no exact recollection of the dates.

Q Do you know if between the period from the 5th of December, 1944, to the 5th of March, 1945, if Nakajima established his headquarters in Bacolod?

A No, I don't know.

Q Now, when you transferred your battalion headquarters to the Sugar Central in Bacolod, Inoue was also under your command, is that correct?

A Yes, of course.

Q Now, where was his company headquarters at that time located?

A I believe his headquarters was in the Elementary School next to the Bacolod High School where I had my battalion headquarters.

Q I am now speaking of the time when you had already transferred to the Sugar Central in Bacolod. Where was the headquarters of Inoue at that time?

A At the Elementary School beside the high school which I mentioned.

Q Until what date did Inoue maintain his company headquarters in that Elementary School?

A Until the early part of December, 1944.

Q Where did he move his headquarters in the early part of December, 1944?

A He went to Bago where the whole battalion concentrated the forces.

Q Did he ever return to Bacolod from Bago?

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A When?

Q Any time after he had moved his headquarters to Bago?

A After the early part of December, 1944, he went to Bago, and I was in charge of the area south of Bago including the municipality of Bago. My battalion headquarters was in Bago, and we had defense positions there. That was our area of responsibility.

Q Now, after you established your headquarters in Bago do you know if Inoue re-established his company headquarters in Bacolod?

A In the latter part of March, 1945, we stopped all security activity for the Bago area and went to the eastern part of the Bacolod area, not to the City of Bacolod itself because that had been bombed, and we could not stay there, and from that time on it was a continuous separation for mountain defenses.

Q Do you mean to say now that after you had transferred your headquarters to Bago during the early part of December, 1944, none of your company commanders established headquarters within the City of Bacolod itself?

A Bacolod was bombed, and I don't think they had stayed within the City of Bacolod. That is what I believe.

MAJOR FOJAS. I am going to read, sir, certain statements made by this witness out of court, and it will take me some time before I can finish that, and it is now 11:25.

MR. BONDA: What kind of statement are you talking about?

MAJOR FOJAS: The same statement on which I have

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already examined the witness before.

MR. BONDA: Statements made in other trials?

MAJOR FOJAS: No, out of court.

MR. BONDA: To save time I would like to have them before the recess, so I can study them.

MAJOR FOJAS: You have seen these statements before.

MR. BONDA: You are not talking about statements, plural, you are talking about a statement?

MAJOR FOJAS: A statement.

MR. BONDA: And that is the same statement he has given before?

MAJOR FOJAS: Yes.

MR. BONDA: You didn't leave a copy with me.

MAJOR FOJAS: No.

MR. BONDA: I would like to see it and study it to save time.

MAJOR FOJAS: That is all right with me.

COLONEL PARMELEE: If you desire to do that it would probably save time, if the defense counsel gets it now and looks it over.

MR. BONDA: There are two copies you have, I think, and I would like to retain one during the examination.

MAJOR FOJAS: I will let you have this.

COLONEL PARMELEE: The Commission will now recess until 1300 hours this date.

(The Commission adjourned at 1125 hours to reconvene at 1300 hours.)

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AFTERNOON SESSION

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

MASAKAZU YAMAGUCHI,

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

CROSS-EXAMINATION (continued)

BY MAJOR FOJAS:

Q Is it not a fact that Captain Takahashi, Lieutenant Nakajima and Captain Inoue never left Bacolod from the time they established their headquarters in January 1943 to the end of the war?

A No, that is not true.

Q Do you remember when I asked you if you were investigated by officers of the War Crimes Investigating Detachment?

A Yes, I remember.

Q Do you remember having stated that during that interrogation which was on the 11th and 13th of April, 1946, you signed a statement which I have shown to you once before?

A Yes, I remember.

Q I am showing you once again that statement which you signed on that occasion and will you please tell me if the signature and initials appearing on this document are yours?

A Yes, I did.

Q And is this initial which appears on Pages 4 and 5 also your initials?

A Yes, I did.

Q Do you remember having made the following statement in answer to the following question:

MR. BONDA: I object to the use of this affidavit for the reason I did before, and that was similar affidavits were not made available to me, affidavits taken by the WCID which were not primarily for the use of the prosecution, but which are government documents and were not made available to me to cross-examine the prosecution witnesses. The prosecution stands in no better position in this court than the defense does. There is no reason in the world why the prosecution should be permitted to use those documents which were not made available to the defense. It is not conducive to a fair trial for the accused.

COLONEL PARMELEE: The views explained by defense counsel, I believe, were expressed previously in regard to the same document.

MR. BONDA: Yes, sir.

COLONEL PARMELEE: The document now offered by the prosecution appears to be accepted as evidence under prosecution's Exhibit No. 1 in this case.

MAJOR POJAS: May I say a word, sir - - -

MR. BONDA: May I ask the Commission why the documents were not made available to us under the same provisions of letter 5 December?

COLONEL PARMELEE: That is already covered in the record. The situation of those documents has been inquired into by the Commission and the answer being they were part of the

WCID files but primarily they were not considered evidentiary material inasmuch as the live witness was produced.

MR. BONDA: And the live witness is produced in this case. The WCID files is a government agency and letter 5 December has not been complied with insofar as defense is concerned.

MAJOR FOJAS: May I say a word, sir? I would like to correct the statement that I am offering the document in evidence. I am not. I am only going to read portions of the document which I believe are contradictory to what the witness has testified to in this case. Under the rules of evidence on cross-examination I have a right to impeach the testimony of this witness by showing inconsistent statements made out of court.

MR. BONDA: That is absolutely correct, sir. We had the same right but it was not granted to us.

MAJOR FOJAS: The only difference is that I am in possession of the document and I know inconsistent statements exist. While in the case of defense counsel they were not in possession of the document and they did not know that inconsistent statements existed, they were not sure, they did not know at all.

MR. BONDA: And the prosecutor - - -

MAJOR FOJAS: Wait a minute, I never interrupted you that way, Mr. Bonda - - -

MR. BONDA: I never know when you are finished.

MAJOR FOJAS: I will tell you when I am through. When defense counsel asked for affidavits from the prosecution they had no definite purpose for which they were to be used. They were just going on a fishing expedition, just trying to find out if inconsistent statements were made, while in our case, we know because we are in possession of the statements,

so that after the witness is here testifying we know that on previous statements they had made inconsistent statements, while in the case of defense, the witness was here and testified and they did not know for what purpose the statement was to be used except to find out if inconsistent statements were made.

MR. BONDA: I wish the Court would analyze the statements just made by the prosecutor. They can use the document because they have it in their possession, but we can't use it because we don't have it, but we asked for it and we didn't get it. They said things mentioned in the affidavit were not brought out in the testimony, and we couldn't ask for the affidavits because we didn't know what they were. The prosecutor was the judge and said that they have no evidentiary value and the Commission let the prosecutor decide as to what is evidentiary and what is not, but in the next breath they say those same documents we wanted to use are evidentiary. We wanted to find out what the truth was. Those documents they had and if they didn't have them in court that day, they had at other times and were available to them and could have gotten them. The Court will also notice where one of them was marked "13" and when asked why it was so numbered, they said because we have a whole series of affidavits and we numbered them. They had them and they were available to them. Being available to them, they should have been available to us and Letter 5 December says that those documents are available to us, and now they are going ahead and doing the same thing they would not permit us to do.

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They have a right to use a statement made out of court to impeach the witness. We had the same right, but we didn't get a chance to assert it. It was the prosecutor that stopped us by declaring it was not evidentiary, and I never heard of that before.

COLONEL PARMELEE: I think we have in the record the conflicting views of both sides. The President of the Commission would like to retract his anticipatory statement made before concerning the impression erroneously received of the documents being introduced in toto. It now appears that only portions of it are to be read. That is the statement of the prosecutor.

MR. BONDA: I would like to correct the Commission's use of the word "confession."

COLONEL PARMELEE: What was that?

MR. BONDA: I think the President of the Commission used the word "confession" -- will the reporter read the statement made by the President of the Commission now?

(The statement was read as directed.)

MR. BONDA: I beg your pardon; the word was "impression."

COLONEL PARMELEE: There is an objection to reading from the document?

MR. BONDA: There is for the reason that we were not given the same opportunity when the question arose before.

COLONEL PARMELEE: The views of both sides are in the record. The objection is not sustained.

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MAJOR FOJAS (Reading):

"Q Who were your company commanders?

"A The following are the company commanders, and their respective company:

"First Company, Commanding Officer Captain Tanasaki Takahashi. The company headquarters was in Bacolod from January, 1943, until the end of the war.

"Second Company, Commanding Officer, First Lieutenant Yoshiharu Ishizuka. The company headquarters was in La Carlota from August or September, 1944, until the end of the war. When company of Fukuda's battalion moved out, Ishizuka took over there.

"Third Company, Commanding Officer, First Lieutenant Shimamaura, who later returned to Japan and was succeeded in May or June, 1944, by First Lieutenant Tatco Akamoto. The company headquarters was in Binalbagan. When the company of Fukuda's battalion moved out, Akamoto took over there.

"Fourth Company, Commanding Officer, First Lieutenant Sou Nakajima. The company headquarters was in Bacolod from January, 1943, until the end of the war. Heavy artillery, Captain Teruo Inoue. The company headquarters was in Bacolod from January, 1943, until the end of the war."

A Yes, I remember that. So regarding the details, I have to explain it so everybody can understand it.

Q Will you please explain to the Commission why in this case you testified that Takahashi, Nakajima and Inoue moved their company headquarters from Bacolod one time or another before the end of the war, while in the statement there I have just read to you, you stated that they had their head-

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quarters in Bacolod from January, 1943, to the end of the war?

A How can we stay there in Bacolod after the Americans landed and occupied Bacolod?

Q Didn't you realize that also when you made that statement on April 11 and 13, 1946?

A The question was a general question, so I gave a general answer. Now as to the details, I have to explain it so everybody can understand it.

Q That is what I am asking you now. I am asking you to explain why you gave two different answers which I have already stated.

MR. BONDA: He has just explained them, hasn't he?

COLONEL PARMELEE: No, he stated he made a general statement to a general question, but he wanted to explain the details, is that correct?

MAJOR FOJAS: That is correct, sir. That is why I am telling him he is given an opportunity to explain. If the defense counsel objects to that question, I'll withdraw it.

MR. BONDA: I'll remove my objection.

A The Americans landed and entered Bacolod on March 29th. We went to the mountains in the northern part of Negros where we offered resistance, and there was a transfer of headquarters several times. On August 14, 1945, I received orders to surrender. On August 30th we assembled in Bacolod and formally surrendered. All the headquarters moved so that on August 30th, 1945, all my units were assembled and surrendered at Bacolod. Actually the Takahashi, Inoue and Nakajima headquarters, as I said before, transferred several times. All the shores of Negros Island were occupied by the Americans. When we returned to Bacolod the second time, that was during our surrender, we had transferred to different

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places. It is absolutely false that the Takahashi, Inoue and Nakajima company headquarters were never transferred from January, 1943, up to the surrender.

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places. It is absolutely false that the Takahashi, Inoue and Nakajima company headquarters were never transferred from January, 1943, up to the surrender.

Q Do you mean to say now that the statement you gave to the investigating officers of the "CID on the 11th and 13th of April, 1946, to the effect that Takahashi, Nakajima and Inoue had their company headquarters in Bacolod from January, 1943 to the end of the war, is not true?

A I think I did not say "transferred." Regarding the transfers I think I did not say anything. What I meant was the whole unit was present in Bacolod in January of 1943, and during the surrender. Now, common sense will tell that we cannot stay in Bacolod after the Americans landed.

Q Did your common sense tell you that when you made that statement?

MR. BONDA: Now, before any more questions are asked on that statement I would like to see the Japanese statement he made of which that is a translation.

MAJOR FOJAS: How can you see it? It was given orally and translated through an interpreter like what we have here.

MR. BONDA: Then, I would like to have the Japanese who translated that statement present. We have had too much experience in translations here of sentences that have different meanings. He has given an explanation of what he meant, and said they were present when he arrived, and were all in Bacolod when they left. I am not satisfied that it was given orally.

MAJOR FOJAS: I think, sir, that the burden to show that there was error in interpretation rests on defense counsel, and if he wants to prove there was error in interpretation of these statements it is upon him to produce evidence.

MR. BONDA: That is exactly right. I want the Japanese original, so I can do just what you ask. That is exactly right. Now, you have made it impossible for me to get the documents, because you stated they weren't evidentiary, and now you tell me where the original is.

MAJOR FOJAS: I refuse to argue with defense counsel.

MR. BONDA: It is not a matter of argument. I demand the prosecutor - - -

MAJOR FOJAS: I believe that is the procedure which should be followed.

MR. BONDA: I demand of the prosecutor the original of this translation.

COLONEL PARMELEE: Now, how was this statement obtained?

MAJOR FOJAS: All I can do, sir, is to read here the affidavit of the interpreter:

"T/3 Mitsura BABA, U. S. Army Serial No. 39931086, at present assigned to the Japanese-English Language Translator and Interpreter Section of the War Crimes Investigation Detachment, APO 75, after being duly sworn on oath state, I am a qualified Japanese Interpreter and that at the former residence of the American High Commissioner, in the city of Manila, on the 25th day of April, 1946, I carefully translated and read in Japanese language to the witness, MASAKAZU YAMAGUCHI, the foregoing transcription of his deposition, consisting of 13 pages, pages 1 to 5 of which deposition were made by the said Masakazu YAMAGUCHI, on April 11, 1946, through T/3 Albert HAYASHI, U. S. Army Serial No. 39865395, a qualified Japanese translator also on duty with the above section, and pages 6 to 13 of which deposition, were

made on April 11, 1946, through T/3 Noel TSUTTISHI, U. S. Army Serial No. 37365040; a qualified Japanese translator also on duty with the above section that the corrections appearing in the statement were made by 2d Lt. Felix L. FINLEY, Jr., QMC, at the request of the witness, Masakazu YAMAGUCHI, at the time of the reading to the witness and were made and initialed by Lt. Felix L. FINLEY, Jr., before the signing by the witness and that the initialed corrections were then read in Japanese language to the witness, and that the witness thereupon in my presence affixed his signature to the deposition and his initials to each of the pages thereof."

MR. BONDA: I submit this is a translation of a deposition, and I submit further this whole thing isn't worth the paper it is written on. That is not a deposition. I ask the prosecutor if that is a deposition. That affidavit refers to a deposition, and what he has read from is not a deposition. A deposition requires the accused be represented by his counsel, and that the witness be given an opportunity to examine it. This is a statement; it is not a deposition. The affidavit that the prosecutor has just read from refers to a deposition.

MAJOR FOJAS: Whatever we call it, sir, the fact is there was a statement taken. It was reduced to writing, and the witness has identified his signature as appearing in each and every page -- of the last page, and on each and every page the initial of the witness, and I don't think there could be any question as to the identity and genuineness of the statement.

MR. BONDA: Suddenly the prosecutor doesn't care about nomenclature; actually this is not a deposition. I want the Commission to understand that. A deposition has certain validity that a statement does not have. This says in the

affidavit he is reading it is a translation of a deposition, and I want to see what that is a translation of. Now, this witness has testified that he made the statement that their headquarters when they came there on the 6th of January were in Bacolod, and that at the end of the war everybody surrendered in Bacolod; that was his statement that he says he made, and I believe he did make that statement. It appears there slightly different, and the prosecutor is grasping at that as a last straw to break this witness down. Now, I want to show what he said now is what he said then, and the only way we can show it is to get the original Japanese statement that he made.

COLONEL PARMELEE: Well, is there any Japanese statement that he made? Did he write the basis of this out, or is this - -

MAJOR FOJAS: It does not say there was any Japanese statement made.

COLONEL PARMELEE: In other words, it was an interview?

MAJOR FOJAS: That is right.

MR. BONDA: It says it is a translation of a deposition.

COLONEL PARMELEE: Where is the deposition?

MR. BONDA: I don't know. That is what I am trying to find out.

MAJOR FOJAS: A deposition, sir, is a technical term, and the man who made this certificate is not a lawyer; he was a T/3, assigned as translator in that section of the War Crimes Investigation Detachment. Now, the fact he called this a deposition will not alter the fact this is a statement signed by the witness and made by the witness.

MR. BONDA: But where is the original of it?

MAJOR FOJAS: He is being too technical about it. The witness has made an explanation, that what he meant was they stayed in Bago until January, 1943, and when they surrendered they came to Bacolod again. The witness did not say it was exactly what he stated in the statement. That is his explanation of the statement. Now, defense counsel, because he is in a bad fix, is trying to cling to that statement of the witness, and would now twist the facts, and let it show that that was the statement which the witness gave on that occasion, which is not true, because the best evidence of what the statement was is what appears in the document. The name of the document isn't material, whether it is a deposition or just a document is not material. That is a technical term, "deposition."

MR. BONDA: Well, I am glad to know the prosecutor came around to my thinking again, that the best evidence is a document. What have I been screaming about all the time? He says the best evidence is a live witness, and therefore I can't have it, and finally he comes down and says that the best evidence is the document, and not the live witness, but I say that -- in the first place, I am not in a bad fix on this witness, because he has given an explanation that answers this.

I also want to point out he does not talk English, he does not read English; he talks Japanese, and he reads Japanese. There was a Japanese document of which that is a translation, according to that affidavit, and all I am asking is we be permitted to compare the Japanese document with the English translation.

COLONEL PARMELEE: Now, is there a Japanese document actually in existence? Is there such a thing from which this translation was made into English? Is there such a document?

MAJOR FOJAS: I am not in a position to say whether there is or there is not, but the only answer I can give is the statement of the person who acted as interpreter.

COLONEL PARMELEE: That is right.

MAJOR FOJAS: Apparently there is none.

COLONEL PARMELEE: This document is being used in English, and being interpreted, and now that is the basis of any impeachment, if there is any impeachment, the English document right there?

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: Now, we don't know whether there is a Japanese document or not. Now, where is Baba? Has he gone back to the States?

MAJOR FOJAS: I think so.

INTERPRETER YAMAMOTO: He has been discharged.

MAJOR FOJAS: But whatever it is, sir, if defense counsel is questioning the interpretation of this statement appearing in this document, it is not upon the prosecution to show that there was a mistake in the interpretation; it is incumbent upon the defense to prove that there was mistake or error.

MR. BONDA: We are now back in a circle. That is why I am asking for the original, so I can prove there was a mistake made. We agree on that point.

COLONEL PARMELEE: Well, the Commission will take a short recess.

(Short recess.)

COLONEL PARKELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

MR. BONDA: What is the question there?

COLONEL PARKELEE: The recess was taken at a time when there was a discussion regarding the Japanese, which was based on a translation of ---

MR. BONDA: I withdraw my request for the original of this. During the recess, according to the information which I obtained there was no Japanese original of the statement from which the prosecution is reading.

MAJOR FOJAS: What was the question?

(Reporter McNair read the question as directed.)

MAJOR FOJAS: I withdraw the last question.

Q Is the statement you made to the effect that Takahashi, Nakajima and Inoue had their company headquarters in January, 1943, until the end of the war, true or not true?

MR. BONDA: If the Court please, he already explained that by the statement he made which was that in January, 1943, the headquarters were there, and at the time of the surrender they were there.

MAJOR FOJAS: He did not say transfer in the statement which is not in answer to my question.

MR. BONDA: Nothing in the question about any transfer. He stated that too.

COLONEL PARKELEE: As I recall, he was asked as to the time, in the substance of that question he was asked, as it appeared in the statement he answered that the way it was read,

he went on and it was responsive to the effect that that was right, he did make that statement. Then he asked to make an explanation and that is where we are now. He was given that opportunity and now this question apparently is designed to give him an opportunity to say which is right and which is wrong, is that correct?

MAJOR FOJAS: That is correct.

COLONEL PARMELEE: Though I don't believe the question has been answered, the previous question.

A The statement is true; however, in order to get the facts I have to explain. In January, 1943, and also in August 30, 1945, when the battalion gathered at Bacolod to surrender, the headquarters were in Bacolod, however, between those two dates we had to operate, that is the operation of the troops, and we had to move from time to time. Our unit was an operational unit and movement is a natural thing for us. It all depends on what you consider a headquarters. My conception of a headquarters is like a human being taken in the abstract since if you think headquarters is a building, then it will not move, however, if you take the human being inside the building as headquarters, naturally it would move.

Q Did you have an officer under you by the name of Nanjo?

A Yes.

Q Was he ever commander of the Boroboro Garrison in Occidental Negros?

A Yes, he was at one time.

Q Do you know the Church of the Sacred Heart of Jesus in Bacolod?

A I don't know very much about religion, I know there are

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many churches.

Q Do you know who was in charge of the security of Silay, and its vicinity, on or about 8 March 1945?

A I don't know, it was not garrisoned by my unit.

Q When did you say you were wounded in the vicinity of Pontevedra, Negros Occidental?

A I was wounded on the 5th of March.

Q Wasn't it sometime from the middle of March to about the 22d of March, 1945, that you were wounded, as Takahashi testified here?

MR. BONDA: Objection, I don't recall Takahashi testifying as to that.

MAJOR FOJAS: He testified he received a report that Yamaguchi was wounded about the middle of March, and within five days from the middle of March could be the 19th, 21st or 22d.

COLONEL PARTELEE: One witness testified, I believe it was Takahashi, testified about the middle of March, and the question propounded was whether it could have been five days either way.

MAJOR FOJAS: No sir, the question can be found in Volume 7, page 2660, page 2661.

COLONEL PARTELEE: That could have been less than the middle of March down to the 10th, or up to the 20th, wasn't that the question? Now, on page 2652 of the record, according to the briefing of the testimony by a member of the Commission, it was stated to the effect from an intelligence report, that Yamaguchi was wounded the middle of March.

MAJOR FOJAS: I have it here, sir.

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"Q Do you have an idea as to when Colonel Yamaguchi was wounded in the vicinity of Pontevedra?

"A I don't remember the exact date, but as I remember it it was sometime the middle of March.

"Q And when you say it was in the middle of March it could be five days from the middle of March?

"A Yes, sir."

That is the testimony of Takahashi.

MR. BONDA: I don't recall that particular testimony, but the general purport of all his testimony was that he didn't know when he was wounded. Taking all his testimony together, he said he didn't know.

COLONEL PARMELEE: That is a deduction to be made by the Commission.

MR. BONDA: Well, that brings up the same point we have had a lot of times, that you can't pick out certain testimony of one witness and say that is the truth, but you have to take all the testimony together in order to get the general purport of the testimony. I withdraw my objection to the question, however.

COLONEL PARMELEE: Will the reporter please read the question?

(Question was read as directed.)

A No, it is not so. It was I who was wounded, so I ought to know. About the end of December Takahashi left my command and came under the command of the brigade. He wouldn't know the exact date. Because he was asked I think he gave only in general what he knew.

Q You say that when you were wounded you reported to General Kono, and that you were relieved of your command by Captain Inoue. Was it not Lieutenant Colonel Watanabe who relieved you, as Takahashi testified here?

MR. BONDA: I question that testimony, too, sir.

MAJOR FOJAS: Volume XXXVII, Page 2653.

COLONEL PARMELEE: 2653? There seems to be testimony to that effect. If you can take time out to get that volume for the defense --

MAJOR FOJAS: I have the volume here, sir.

What was the last question?

(Question read.)

A I was the battalion commander, so when I was wounded my subordinate, Captain Inoue, took over the command. Watanabe was a staff officer of the Kawano group. I think that Takahashi's statement to the effect that it was Watanabe who took over my battalion was a mistake on his part.

MR. BONDA: Wait a minute, before we go any further, in view of the statement that was made before that Takahashi testified that he was wounded on the 15th, or around the middle, it could have been from the 10th to the 20th, and I also want to read this into the record, because that was referred to as having been in the record.

MAJOR FOJAS: I beg your pardon. I think the

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reading of any portion of this record will have to be done by defense counsel at the time of redirect, and not at the time when I am cross-examining, when he will interrupt and insert what he wants to.

MR. BONDA: It is based on this, sir. There was a question asked, and I objected to it, and then there was a statement made that the witness testified thus and so, and I made the remark that we cannot read the record then and say he testified thus and so unless we read the whole part of it that pertains to that, and with that in mind I was stopped at that time from doing it, because I hadn't looked up the record. And with that in mind I want to point out that this must be read in connection with Takahashi's statement. I do not remember, but it may have been the 6th, referring also to the wounding of Colonel Yamaguchi, but if we are going to be fair let's read the whole thing.

COLONEL PARMELEE: Did the prosecutor read from the record?

Do you want to read the whole thing?

MAJOR FOJAS: That is entirely foreign.

COLONEL PARMELEE: Was the reading from the record done by the prosecutor, or did he merely refresh his memory in substance of what was said?

MR. BONDA: I think he read from the document, but if he didn't it doesn't make any difference, if he refreshes his memory from what was said, I have a right to refer to everything said on that subject.

COLONEL PARMELEE: If he did read from the record, I thought it would not be proper to read the rest now -- any-

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thing, of course, could be read in by the defense, but probably on redirect. . I don't know what the procedure would be, but what you are trying to do is establish as a basis of questioning there a correct foundation, is that correct?

MAJOR FOJAS: That is right, sir. I would like to say this: In the first place, I did not read from the record; I only gave him the volume and page when I was asked to point out where the testimony is, and in the second place, it is highly improper for defense counsel to interrupt right in the middle of cross-examination, and be allowed to read portions of the record which was never read here. The proper time is only on redirect.

MR. BONDA: If you will --

MAJOR FOJAS: Wait a minute, Mr. Bonda. And I think that is improper.

MR. BONDA: If the prosecution is using something to refresh his memory, and is using only half-truths, and that is what he is using, then I have a right to interrupt him.

COLONEL PARMELEE: I should say if you read from the record --

MR. BONDA: He did read from the record.

COLONEL PARMELEE: -- and did not read it completely, then the defense can supply the part which was not read.

MR. BONDA: The prosecutor did read from the record. He said, "I am basing that on the following answer that was made," and then he read the answer that was there.

MAJOR FOJAS: That is not true, sir.

MR. BONDA: We can search the record, and you will find that is true.

MAJOR FOJAS: What he is doing now is highly improper. And in the third place -- I have only given two

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reasons, and in the third place, it is entirely foreign to the question which I have propounded. My question refers to the question of who relieved Yamaguchi of command, and now he speaks about the 6th and so forth and so on --

MR. BONDA: I am going back to a question you asked that was highly improper because you based it on a half-truth, and the other half was "on the 6th."

MAJOR FOJAS: I deny it is half-truth because my question was specific, because the witness testified that he was relieved by Inoue, and I am asking him if it wasn't Lieutenant Colonel Watanabe, as Takahashi testified, and I don't think that is a half-truth; that is the truth and that is the testimony.

COLONEL PARMELEE: I believe the defense counsel now is going back to previous questioning which had to do with the time Colonel Yamaguchi is alleged to have been wounded.

MAJOR FOJAS: Even if that is true, sir, that is not the proper time for him to interrupt and read and insist that he should be allowed to read.

COLONEL PARMELEE: Well, I should think so, inasmuch as you state, and we will have to accept that, that you were not reading from the record; that is, that you were referring to the record to be sure we are on a firm foundation, and that you were not reading from the record.

MAJOR FOJAS: I was not reading from the record.

MR. BONDA: He was reading from the record. The identical words from the record appeared in the question.

COLONEL PARMELEE: The reference to the record

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of course, was made because the defense, as he stated, did not believe the question was based upon something in evidence.

MR. BONDA: That is right, and then he read from the record. I don't care what the reason for it is.

COLONEL PARMELEE: It was just enough to show you the question had a firm foundation.

MR. BONDA: But he didn't ask that question with a firm foundation until he bases refreshing the memory on the rest of the questions pertaining to the record, one of which is the 6th.

COLONEL PARMELEE: Well, I believe the defense has every right to put everything in they want to, but now it is a question of timing again. Wouldn't redirect be the time to put it in?

MR. BONDA: Not if there is a question based on a false premise.

MAJOR FOJAS: There is nothing false in the premise. He is always putting in the record the fact that I am basing my questions on false premise. I referred to the record, and I gave him the page and the volume, and he cannot show me the thing I referred to there is false.

MR. BONDA: Sure, we had the same experience before where you read part of it, and wilfully left out part of it.

MAJOR FOJAS: If we can get back to the question, and have this decided once and for all I think we will not be interrupted so much by defense counsel.

COLONEL PARTELEE: I believe at this time it would be proper to proceed and let the prosecution proceed with cross-examination and any part of that, if defense believes pertains to the time of the alleged wounding, that that be put in by the defense afterwards.

MAJOR FOJAS: I think defense is now satisfied because he has read it anyway, by making his comments he read it, and it is in the record.

MR. BONDA: You don't object to getting it into the record, do you?

MAJOR FOJAS: I object to the improper manner of doing it.

What is the question now?

Q Now, did you say that you resumed command of your unit on the 29th of March, 1945?

A Yes, I resumed command on the 29th of March, 1945. My hand was still bandaged, and I was still receiving treatment, but because the American forces had already

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landed I had to take command.

Q Please answer this question "Yes" or "No" Was it not on the 22nd or 23rd of March, 1945, as testified to by Takahashi?

A No, I did not.

MR. BONDA: May I then point out that the prosecution is again misquoting the record when he says Takahashi says it was sometime between the 22nd and 23rd, and he said,"I think. it was when the battalion headquarters moved to the barrio, sometime between the 22nd and 23rd." It was not a positive statement.

MAJOR FOJAS: I have no comment, sir, because everybody can verify the record.

MR. BONDA: I have just read from the record, and I am not withholding the fact I am reading from the record.

MAJOR FOJAS: That is right. I have no comment to make.

COLONEL PARMELEE: Defense counsel, I believe,, was just making a comment by reading what actually was in the record.

MR. BONDA: I am pointing out the error in the prosecution's question.

MAJOR FOJAS: I submit I am not in error, but I don't like to make any comment because it is in the record.

Q Have you ever given a different version of the execution of Leonardo Bebit before you testified in this court?

A I have forgotten.

Q Will it refresh your memory if I read to you the

following questions and answers in the same statement which I have shown to you a while ago?

MR. BONDA: I object to reading from the record for the reason that I was not permitted to read from similar documents to impeach the witnesses the prosecution brought in here.

COLONEL PARMELEE: Objection overruled.

MR. BONDA: It is still unfair.

COLONEL PARMELEE: Objection overruled.

MAJOR POJAS (Reading):

"Q Were you present when Leonardo Bebit was beheaded in Silay?

"A I was there, but I do not know the name.

"Q Who ordered Bebit to be beheaded?

"A There was no order to killing him. They were taking them back to Bacolod, and he started to run away, and so he was killed when he tried to run away.

"Q Did you see Captain Takahashi cut him with a sword?

"A Yes.

"Q Was Bebit given any trial?

"A They were going to take him back to Bacolod, and he was talking with somebody and all of a sudden he ran away. One of the sentries aimed his rifle, but this sentry did not shoot because there were many people around, so Captain Takahashi took his sword and cut him. He started running away.

"The sentry was not free to shoot because of people around. They had no intention of killing him, and they were planning to take him back to Bacolod for training."

Q Do you remember having given that version of the killing of Leonardo Bebit?

A Yes, I gave that statement. I will explain it. This explanation might take some time.

MAJOR FOJAS: The prosecution, sir, is satisfied with that answer, and prosecution has no further questions to ask on cross-examination, but if he wants to explain I don't know if the Commission would want him to explain before I close, or he can make his explanation on redirect examination.

MR. BONDA: I don't know why the prosecutor has asked for explanations of everything else and suddenly decided he doesn't want an explanation.

MAJOR FOJAS: I didn't say I didn't want an explanation. I said I didn't have any further cross-examination -- please don't misquote me when you say something and you are quoting my words, please don't misquote me, because that is not fair.

MR. BONDA: Do you want an explanation or not?

MAJOR FOJAS: I am addressing the Commission.

MR. BONDA: I am addressing the prosecutor --

MAJOR FOJAS: I don't like that way of conducting a trial.

MR. BONDA: If the Court please, the defense counsel has a right to address a question to the prosecutor. He has made that statement before, that I couldn't address

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my questions to him, and that is improper procedure. I have a right to ask a question, and I have a right to get a respectful answer, sir.

COLONEL PARMELEE: As I understand it, the prosecution does not intend to ask the witness for an explanation --

MAJOR FOJAS: No, sir, that is not --

COLONEL PARMELEE: -- as a part of your case?

MAJOR FOJAS: It is 3:10 now, and I would like to announce we do not have any further questions on cross-examination, and now I would like to find out if the Commission, before I announce that, would like to have an explanation from the witness. I am willing to do so, and that would be tomorrow and not today.

MR. BONDA: I don't understand; this is the first time the prosecutor has asked the Commission what he should do.

COLONEL PARMELEE: Here is the situation: the prosecution is satisfied with the answer that has been given --

MAJOR FOJAS: That is correct.

COLONEL PARMELEE: -- and at the same time the request to give an explanation was made by the accused, and the prosecution does not want to deny him that right, but he wants to ask the Commission if they want to hear that explanation now or tomorrow, is that right?

MAJOR FOJAS: That is correct, sir.

COLONEL PARMELEE: Yes, the Commission does want to hear anything the accused wants to say in the matter, and we will give him that opportunity in the morning. Is that

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satisfactory?

MR. BONDA: I have no choice in the matter, sir.

MAJOR FOJAS: I don't want him to put in the record that I did not want an explanation because that is not true; it is misquoting me, which is unfair.

MR. BONDA: All I said is this is the first time you haven't asked for an explanation. That is all I said.

COLONEL PARMELEE: The Commission will now adjourn and reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1510 hours, to reconvene at 0830 hours, 17 January 1947.)

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Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME XLIX

PAGES 3309 TO 3351 INCL.

DATE 17 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
17 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	
2ND LIEUTENANT SAMUEL S. KOIDE	)	
PETRONILO VALLEJO	)	Japanese
CAESAR YO ALZONA	)	
ROMUALDO TACCAD	)	
CLARO ISHITA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MENAIR
THELMA SELZER

I N D E X

WITNESSES

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SS

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, 17 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P.I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

MASAKAZU YAMAGUCHI

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

CROSS-EXAMINATION (continued)

MAJOR FOJAS: I understand, sir, that the witness requested the Commission to allow him to explain his answer. I am now giving him the opportunity.

COLONEL PARMELEE: It is understood that the prosecution has no further questions on cross-examination?

MAJOR FOJAS: Yes, sir, I have no further questions to ask on cross-examination unless it becomes necessary for me to ask him questions based on his explanation.

COLONEL PARMELEE: In giving an answer to the last question propounded yesterday, the witness gave a responsive answer and then requested the opportunity to make an explanation, and that explanation can now be made if the witness

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so desires.

You may ascertain from the witness whether he now knows what the last question was and what explanation he wants to make.

(Interpreter Taccad interpreted to the witness.)

A Will you please translate to me in Japanese, once more, yesterday's statement?

COLONEL PARMELEE: That is the one that was read by the prosecutor?

A Yes.

COLONEL PARMELEE: (To Major Fojas) Yes, if you will read that statement so it can be translated to the witness.

(Interpreter Taccad then translated the statement to the witness in Japanese.)

A I was wrong about the place of execution. It was not on the way to Bacolod but at the garrison. If you read my whole statement, I think you will understand that. There were many people, and if it was on the way back to Bacolod, we would have been riding on trucks and naturally if he tried to have escaped he would have been shot. Takahashi would not have been able to cut him with a sword. That I stated that it was on the way to Bacolod was a mistake, I am now correcting that mistake here in court.

First of all, I did not consider the Filipinos as enemies. I wanted to be humane, so I put out circulars among my troops in the whole island, and I warned my troops about this.

Secondly, I do remember that Bebit was killed, but when

TS(1)mm

I was asked by the investigator I could not remember. I could not remember his name, so my answer was "I don't know."

Third, when I thought of what Bebit had done, that is, he killed Japanese soldiers and also planned to burn the Town of Silay, I believed then that he ought to be executed, so I told this to Captain Takahashi who had arrested him.

Fourth, just as I stated in number one, I did not consider the Filipinos as enemies, in fact, all prisoners were put in the training school, my policy being to give them spiritual training.

On the morning of March 7, I gathered the influential and prominent persons in Silay and the standing army at the garrison and together with Bebit in front of me, I delivered a speech. My speech was to this effect, if those influential persons were to remain frightened with those bad people and would not cooperate with me from the bottom of their hearts and also would not work for the restoration of peace and order, their hardships would never cease. I told them that they must cooperate with me. This speech was translated by a Visayan interpreter, but due to the fact that the interpretation was poorly done, the audience became very noisy. At that moment I suddenly looked at Bebit who was in front of me. He shook his head and moved, and I suddenly had the impression he was going to escape. At that moment I had no feeling of having him executed, instead I wanted to take him back to Bacolod, however, because he suddenly moved I got the impression he was going to escape, so I shouted he was going to escape or I may have shouted, "Cut him", I don't know, I have forgotten. The sentry was standing nearby. They didn't do

TS(1)mm

anything at once, so Captain Takahashi who was nearby took the initiative and cut Bebit himself. If I were to order Bebit executed, I would naturally let a soldier do it. I wouldn't let Captain Takahashi do it himself. I did not order Captain Takahashi to execute Bebit. I think that Captain Takahashi killed Bebit on his own initiative because the sentry was nearby and they did not move fast enough and was not able to take proper action. I stated that in my statement to the investigators. However, because Captain Takahashi said that he cut Bebit upon his orders, and he was my subordinate, I will not contradict him. My feeling though is the same as I have put down in my statement. I think that statement is true.

COLONEL PARMELEE: Is that the end of the statement?

INTERPRETER TACCAD: Yes.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

TS(1)mm

COLONEL FARRELL: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Ishita.)

MAJOR FOJAS: I have just two questions to ask, sir.

Q You heard Takahashi testify here that you ordered the killing of Bebit, is that correct?

A Yes, I heard.

Q And it was only here in this court that you heard him say so, is that right?

A I heard that before.

Q Where?

A Takahashi has been saying that before he appeared as a witness in this case. I told him also that he should be executed, but the instant Takahashi was about to cut the man with the sword I forgot whether I really said that or not.

Q But it was after Takahashi's trial that you heard from Takahashi that the killing of Bebit was through orders, is that correct?

A I don't know. I never saw him after he was tried.

Q And when you testified in the case of Takahashi you said that you ordered the killing of Bebit, is that correct?

A Yes, I did.

MAJOR FOJAS: I have no further questions, sir.

COLONEL FARRELL: Redirect examination?

REDIRECT EXAMINATION

BY MR. RODDAN:

Q During the period of your command from the 25th of January, 1943 to August, 1944, do you know approximately how many bandits

EGH(2)WO

or guerrillas were captured in Occidental Negros?

A. War that captured guerrillas?

Q Do you know how many guerrillas or bandits were captured in Occidental Negros?

A. I don't know the exact number, but I think it is between one thousand two hundred to thirteen hundred.

Q Do you know what types or classes of persons make up that twelve hundred?

A. They were guerrilla officers and enlisted men. The officers were Montelibano, who was either an adjutant or a staff officer, a Captain Castillo, a Captain Budan, or Bidan, who was an officer of the Signal Corps, and several others whom I don't know the names.

Q Aside from these officers that you have just mentioned do you know approximately how many of these guerrillas were used as soldiers to assist the Japanese?

A. Of the men who were captured about 250 joined the Standing Army, about 50 men joined the Philippine Constabulary, about 500 were employed in private companies such as sugar companies and mining companies, and the others were all released.

Q After these approximately twelve hundred guerrillas were captured, what was the disposition that was made of them immediately after their capture?

A After being confirmed that those captured were guerrillas they were put in Training School, and given the same treatment that the Japanese soldiers received. At about the latter part of the training period they were allowed to go out and go to theaters.

MR. RODDAN: That is all the redirect we have.

COLONEL PANTILLE: Recross-examination?

RECROSS-EXAMINATION

BY MAJOR FOJAS:

Q Of this one thousand three hundred guerrillas do you know how many were killed?

A This figure represents those who were placed in the Training Center and released.

Q The question is: Do you know how many of these guerrillas were killed?

A Those who were placed in the Training Center were not killed.

Q You mean to say now that this one thousand three hundred guerrillas were all placed in the Training School?

A Yes, they were.

Q Were there other guerrillas whom you captured but were not placed in the Training School?

A There were instances when the captured guerrillas were not placed in the Training School. That was when the captured guerrillas could not be placed in Training School because they could not be accommodated, and those who had inferior intellect. These men were placed under the Chief of Police and the Provincial Governors, and were detained in jails. The Provincial Governor gave them instructions and afterwards they were released.

Q The question is: How many of these guerrillas who were not placed in the Training School were killed; do you know?

A I don't know.

Q Were not Bebit, Gonzaga and Hisona guerrillas?

A Yes, I said they were.

Q And were they not killed?

A Don't ask me. You know that also.

MAJOR FOJAS: I have no further questions, sir.

COLONEL FARMELEE: Questions by the Commission? Major Stevens.

EXAMINATION BY THE COMMISSION

BY MAJOR STEVENS:

Q After graduation from the Imperial Military Academy, and during your military career as a commissioned officer in the Japanese Imperial Army, did you attend any military schools or pursue any courses of instruction of a specialized nature?

A I did not receive any special training after my graduation from the Imperial Academy.

Q Did you ever attend a course of instruction conducted by the Kempei Tai?

A When I was First Lieutenant I was ordered once to act as a judge, but I have never received any training from the Kempei Tai.

MAJOR STEVENS: No further questions.

COLONEL FARMELEE: No further questions by the Commission. Upon any new matter that may have been brought up through questioning by the Commission, has the defense any further questions?

MR. RODDAN: No further questions, sir.

COLONEL FARMELEE: Has the prosecution any further questions?

MAJOR FOJAS: No further questions.

COLONEL FARMELEE: The witness is excused.

(Witness excused.)

MR. RODDAN: Sir, at this time the defense would like to ask for a few minutes recess before we put on the next witness.

COLONEL FARTELEE: The Commission will take a short recess, the duration depending upon the readiness of the defense to proceed.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MR. BONDA: The defense calls as its next witness Koichi Tanaka.

KOICHI TANAKA

a witness for the defense, being first duly sworn, testifed as follows through Interpreters Taccad and Ishita:

DIRECT EXAMINATION

BY MR. BONDA:

Q What is your name?

A Tanaka Koichi.

Q What is your age?

A Twenty-nine.

Q Where do you now reside?

A Over there (witness pointing to his left).

MR. BONDA: Indicating the stockade at the High Commissioner's Residence in Manila.

Q Were you a member of the Imperial Japanese Army at any time prior to the surrender of the Japanese forces?

A Yes.

Q Have you ever heard of the Yamaguchi Battalion?

A No.

Q Were you ever a member of the Yamaguchi Battalion?

A No.

Q Were you stationed on the island any time during the year 1945?

A I was in the hospital.

Q In Negros?

A Yes.

TS(3)ss

Q What unit were you with in Negros?

A Masakazu's unit.

Q What branch of the service was that unit in, do you know?

A Transport.

Q Did you wear an armband as part of your uniform?

A No.

Q Do you recall being in this courtroom within the past six weeks?

A Yes, I came here.

Q Do you remember the man who sat in the chair you are now sitting in?

A Yes.

Q Did you ever see him before that day?

A No.

MR. BONDA: Will the M.P. please call Hifumi Tanaka in.

(The M.P. then left the courtroom and returned with a Japanese.)

MR. BONDA: Will the record indicate that a Japanese has entered the courtroom and is standing about three meters from the witness.

Q I want you to look at the man who just came into the courtroom, who is standing on your left, and I'll ask you if you know what his name is?

A Hifumi Tanaka.

Q When did you first see this man?

A When I came here I first met him at the stockade.

TS(3)ss

Q Have you ever seen him prior to the time you met him in the stockade at the High Commissioner's Residence in Manila during the latter part of the year 1946?

A No.

Q Were you ever a member of the Kempei Tai?

A No.

Q Were you ever known as "Kempei"?

A No.

Q Had you ever seen the man who was on the witness stand when you were in this courtroom prior to your coming to Manila after the Japanese surrender?

A You mean the person who just came here?

Q No, the person who was the witness when you were in the courtroom within the last week?

A No.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Cross-examination?

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q When did you first arrive in the Philippines?

A I think it was about June, 1944. I don't remember very well.

Q And when you came to the Philippines you were assigned to Negros, were you not?

A No.

Q Where in the Philippines were you assigned when you first came to the Philippines?

A I first landed in Manila.

TS(3)ee

Q Did you not say that you were assigned in Negros?

A I went to Negros on the 28th of August.

Q What year?

A 1944.

Q Where, in Negros, did you go on August 28th, 1944?

A Bacolod.

Q What date did you enter the hospital?

A 1944, 23rd of October.

Q Until what date did you stay in the hospital?

A Until the 27th or 23rd of March, 1945.

Q Where was this hospital located?

A At Bacelod.

Q What was the Masakazu unit to which you belonged?

A Transport Corps. It was a transport unit.

Q Who was the commanding officer of that unit?

A You mean the commander of the Masakado unit?

Q Yes.

INTERPRETER TACCAD: I am sorry, sir. We have been making a mistake all this time. He has been saying he was with the Masakado unit, not Masakazu's as previously interpreted.

TS(3)ss

Q Who was the officer in command of that unit?

A Takejiro Masakado.

Q Did you ever retreat to the mountains?

A After I left the hospital I went to the mountains.

Q With what unit did you go to the mountains?

A With my original unit.

Q What were your duties in that unit?

A Do you mean after we went to the mountains?

Q No, before you went to the mountains?

A I was a soldier in the transport corps.

Q As a soldier in the transport corps, what were your duties?

A We loaded stones and gravel from the river on trains and carried this gravel and stones to the airfield.

Q Did you ever go on patrol duty?

A No.

Q Do you know if that transportation unit was part of any battalion or outfit in Negros on August 28, 1944?

MR. BONDA: Will you read the question, please?

(Question was read as directed.)

MR. BONDA: That is rather confusing, I think it should be whether it was a unit of some other organization. Obviously it was a part of some organization, I think it is confusing, the witness isn't too bright any way, I think it could be simplified somewhat.

COLONEL PARMELEE: It might be rephrased to whether it was attached or assigned to any other military organization; that is a suggestion.

MAJOR FOJAS: Yes, sir.

Q Who was the officer in command of that unit?

A Takejiro Masakado.

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Q With what unit did you go to the mountains?

A With my original unit.

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COLONEL PARMELEE: It might be rephrased to whether it was attached or assigned to any other military organization; that is a suggestion.

MAJOR FOJAS: Yes, sir.

TS(3)LM

Q Do you know if that unit was assigned or attached to any other organization of Japanese troops in Negros, on August 28, 1944?

A No.

Q While you were in Bacolod from August 28, 1944, up to the time you retreated to the mountains, had you ever heard of the Yamaguchi Battalion?

A Yes, I heard.

Q Do you know the battalion headquarters of the Yamaguchi Battalion at the Bacolod High School?

MR. BONDA: On what date, sir?

MAJOR FOJAS: Any date during the time that he was there.

MR. BONDA: Object to the question unless there is a date specified.

MAJOR FOJAS: I don't have to specify the date of that occasion, I am only asking him if he knew the headquarters of the Yamaguchi Battalion.

MR. BONDA: In Bacolod?

MAJOR FOJAS: Yes.

MR. BONDA: It wasn't there then.

MAJOR FOJAS: I submit the question, sir.

COLONEL PARMELEE: Will the reporter read the question, please?

(The question was read as directed.)

COLONEL PARMELEE: The question emphasizes or implies it could be any time while the headquarters were at Bacolod High School, objection overruled.

A I don't know.

Q Who was your immediate commanding officer in the transport unit?

A It was Commander Masakado.

Q What was his rank?

A He was a major.

Q Do you know a Captain Shoichi Yoshida?

A Yes, I know him.

Q Who was he?

MR. BONDA: If the Court please, I object. Don't know what their object is. This man is about to go on trial, I don't know what the relevancy is. I have not asked him any questions about the man whom they have just mentioned. Unless they lay a foundation first, that that man whose name I never heard before, is a member of the Yamaguchi Battalion, I object to the question.

MAJOR FOJAS: He stated he was a member of a certain unit. We are not compelled to answer that statement. We are testing the validity of that statement.

MR. BONDA: It has been said here before, on any number of occasions, the Commission is bound to believe the words that come out of the witness's mouth. I have not limited the prosecution to this, but I am in this particular case, because I don't know who this man is. Unless they lay a foundation, I must object. I don't know who he is and this man is about to go on trial. As a matter of fact, the prosecutor is here ---

MAJOR FOJAS: So is his defense counsel.

MR. BONDA: That is right, but I must object to the question unless there is a proper foundation laid for it.

I don't know --- I withdraw my objection, I have been told the foundation in private.

A He was the company commander.

Q Do you know a certain man by the name of Dajiro Abed?

A Yes.

Q Who was he?

A He was the platoon commander.

Q Now, how do you remember that you entered the hospital on October 24, 1944?

A I remember the date because that was immediately after I received my salary.

Q What date did you receive your salary?

A About the 23d.

Q And how do you know it was on the 22d of March that you left the hospital?

A Because that was a day or two days before I was supposed to receive my salary.

TS(3)LM

Q Did you receive your salary in March, 1945?

A No, I did not.

Q Where was the headquarters of the Masakado Unit located?

A Do you mean when I left the hospital?

MR. BONDA: Object to the question, it is indefinite as to time, sir.

COLONEL PARMELEE: Objection sustained. Supply the time.

Q Where was the headquarters of the Masakado Unit located in Bacolod, during the period from August 28, 1944, to March 22, 1945?

MR. BONDA: Object to the question on the ground there is no evidence that it was in Bacolod.

Q Strike Bacolod, wherever it was?

MR. BONDA: What was that period of time?

REPORTER SELZER: (Reading) August 28, 1944, to March 22, 1945.

A I don't know.

Q Were you ever stationed at a place called Madabang, Talisay?

A Yes.

Q When?

A I landed in Bacolod on August 28th and on the same day we left for Talisay. We went to Madabang, Talisay, about the 1st of September.

Q Until when did you stay at Madabang, Talisay?

A I was there up to the time I entered the hospital, October 23d.

Q If you did not receive your salary in March, 1945, how did you remember that you left the hospital on the 22d of March, 1945?

MR. BONDA: He remembers the date because it was two days before he was supposed to receive his salary.

MAJOR FOJAS: He did not receive the salary.

MR. BONDA: That is what he testified to, that it was two days before he was supposed to receive his salary. Nothing in the testimony that says he remembers the date because he was supposed to receive his salary that date. It is based on something not in the evidence.

COLONEL PARIELEE: Will the reporter read the question, please?

(Question was read as directed.)

COLONEL PARIELEE: According to his testimony there is the fact that he apparently knew the date that he was to get his pay, and he would have associated this event two or three days before that.

MR. BONDA: It is merely a fishing expedition that is why I am raising the objection in that these apparently trivial matters, because this man is going to be tried,---

MAJOR FOJAS: It is not trivial, in the Specification it is alleged the date was 8 March 1945, and he claims he was in the hospital. If that is trivial to defense, it is important as to the prosecution.

MR. BONDA: The question is how he remembers when the testimony was --- withdraw that statement. You didn't know anything about these dates or places except from the prosecution in the trial of this man. Isn't it a fact that as far as these questions are concerned it is a fishing expedition?

MAJOR FOJAS: That is not a fact, where we get our information is entirely immaterial to the defense counsel.

TS(3)LM
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MR. BONDA: I still should have said; I have a right to find, or I should say I have a right to say, that I make no objection to questions asked on direct examination, but I will not be a party to a fishing expedition for the trial of a man in another case.

MAJOR FOJAS: I have no more remarks to offer, sir.

COLONEL PARMELEE: This question is how he happens to know the date he was to be paid.

MAJOR FOJAS: No, sir, how he remembers the date he left the hospital in March, 1945.

COLONEL PARMELEE: Will the reporter read the question, please?

(The question was read as directed.)

MR. BONDA: Objection, sir. I believe that objection was sustained, I am not sure.

COLONEL PARMELEE: It hasn't been ruled upon now because a part of the question has been answered already by the witness. That is, he already ---

Q What date of the month were you usually paid your salary?

A The 22d or 23d of the month.

MAJOR FOJAS: I have no further questions.

COLONEL PARMELEE: Any redirect examination?

MR. BONDA: No further questions by the defense.

COLONEL PARMELEE: Questions by the Commission? There appear to be none, the witness is excused.

(Witness excused.)

COLONEL PARMELEE: The Commission will now recess until 1300 hours, this date.

(The Commission recessed at 1130 hours, to reconvene at 1300 hours.)

AFTERNOON SESSION

(The Commission reconvened, pursuant to recess, at 1315 hours.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

MR. BONDA: Defense calls as its next witness Hifumi Tanaka.

HIFUMI TANAKA

a witness in behalf of the defense, having been first duly sworn, testified as follows through Interpreters Ishita and Taccad:

DIRECT EXAMINATION

BY MR. BONDA:

Q State your name, please.

A Tanaka, Hifumi.

Q Your age?

A Thirty-one.

Q Your present residence?

A Manila stockade.

Q Were you ever a member of the Imperial Japanese Army?

A Yes, I was.

Q What was the date of your separation from the service -- I will withdraw that.

Did you serve in the Japanese army until the date of surrender?

A Yes, I was.

Q What was the highest rank you obtained?

A A sergeant-major.

Q Were you ever a member of the Yamaguchi battalion?

A Yes.

Q What was your duty with the Yamaguchi battalion during the month of March, 1945?

A I was clerk at the battalion headquarters.

Q You were present, were you not, in court here in this room sometime during the last six weeks when you were called into the court room during the testimony of a man by the name of Jose Villa, is that correct?

A I don't know that name, "Jose Villa."

Q Well, do you remember on the occasion when you were here that there was a man testifying from the same seat in which you are now sitting?

A Yes, I saw him.

Q Had you ever seen that man prior to the time you arrived in Manila and entered the stockade at the High Commissioner's residence in Manila?

A No, I have not seen him.

Q You are sure of that now?

A Yes, I am sure.

Q At the time you were brought in here to face that witness, there was another man brought in to face that witness. Do you remember that?

A Yes, I remember.

Q Do you know that other man's name?

A I just know the family name; it was "Tanaka."

Q Had you ever seen that name -- withdraw that.

EGM(4)mm

When did you first see that man?

A I saw him at the Manila stockade about October of last year.

Q Had you ever seen him prior to that time?

A No, I have never seen him before.

Q Had you ever heard of the Cubay garrison?

A I don't know.

Q Had you ever heard of it prior to arriving in Manila during the year 1945?

A No, I have not heard of it.

Q Have you ever worked in an air field?

A No.

Q Did you ever guard Filipino workers in an air field?

A No.

Q Do you know the reputation that Colonel Yamaguchi had among the members of his command?

A The commanding officer was absolutely trusted by his subordinates.

Q Do you have the means of knowing the reputation of Colonel Yamaguchi, what the reputation of Colonel Yamaguchi was among the Filipinos with whom you came in contact?

A As we respected our commanding officer we found that the civilians also respected him.

MAJOR FOJAS: I move that the answer be stricken. It is not responsive to the question.

MR. BONDA: I don't see how it could be more responsive.

COLONEL PARMELEE: The question was, as I recall, "Did he have the means of knowing," is that correct?

EGM(4)mm

MAJOR FOJAS: Yes, sir, that is the question.

MR. BONDA: We suddenly require that it be a direct answer to a preliminary question. I don't know when that has been done before.

COLONEL PARMELEE: Well, it is a technical objection, in a sense, as to whether he had the means of knowing. One must conclude that he had certain civilian friends. I believe the answer should remain. It is not exactly responsive, but the same information can be gotten by question one point farther on, and I believe cross-examination on that matter would be in order. The motion is denied.

Q When you say that he was respected among the civilian population, how do you know that?

A Because I was almost always together with the commanding officer, and whenever the commanding officer got in contact with the civilians, I noticed that the civilians gave him due respect.

Q And did you know of your own knowledge of any bitter feeling towards Colonel Yamaguchi other than one accorded to any commander who is commanding an occupying force?

MAJOR FOJAS: May I have that question, please?

(Question read.)

A I don't think the civilians had any bitter feeling against him.

Q Do you know in your capacity as battalion clerk, or through any other means, what orders were issued by Colonel Yamaguchi respecting treatment of the Filipinos? Answer "yes" or "no."

EGM(4)mm

A Yes, I know.

Q And what was that?

A The policy was to love the civilians.

Q Now, what do you mean by the words," love the civilians?" Do you mean treat them kindly? Just what is the meaning of the word "love?"

MAJOR FOJAS: Wait a minute. May I hear the question, please?

(Question read.)

MAJOR FOJAS: I object to the latter part of the question, sir, as leading the witness.

MR. BONDA: The prosecution is correct.

Q What do you mean by the words, "love the civilians?"

A That means that we were all of the same race in East Asia, and that we should live in harmony.

Q Do you now know where the Cubay garrison is?

A I don't know.

MR. BONDA: The defense has no further questions.

COLONEL FARMFLEI: Cross-examination?

CROSS-EXAMINATION

BY MAJOR FOJAS.

Q From what date to what date were you clerk at the battalion headquarters of Colonel Yamaguchi?

A From November, 1942, up to the end of the war.

Q In November, 1942, where were the battalion headquarters of Colonel Yamaguchi?

MR. BONDA: Objection. We are getting into what I was afraid we were going to get into. I have no objection to asking him how long he was a clerk, because he testified

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he was a clerk, but I do object to bringing this witness into matters that he was not questioned about. Now, one of them, one of the things was that he was not questioned about was where he was in November, 1942.

MAJOR FOJAS: Was he not questioned about being the clerk of the battalion headquarters, and am I not entitled to question him as to that point?

MR. BONDA: I think not, no, sir, if for no other reason than I was not permitted to do it. I was limited strictly to what was brought out by the witness when the prosecutor objected.

MAJOR FOJAS: I don't know about it. I think he was given leeway in cross-examination much more than the prosecution was ever given.

MR. BONDA: I was given leeway only at the tolerance of the prosecutor.

MAJOR FOJAS: I submit the question, sir.

MR. BONDA: By sufferance I was given that leeway. The specification that I questioned him on was Specifications 22 and 23. I was limited to the specifications on which I questioned. One whole specification, in fact, that they ever opened up I was not permitted to cross-question on. I still remember it, and it still rankles.

MAJOR FOJAS: I don't know, were you?

COLONEL PARMELEE: Well, the Commission will take a short recess.

(Short recess)

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COLONEL PARKLEE: The Commission is in session. There was an objection to the last question.

MAJOR FOJAS: It was about where was the battalion headquarters in November, 1942?

COLONEL PARKLEE: The defense objected; the objection is not sustained.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

A The headquarters was in Saigon, Indo-China.

Q When the Yamaguchi Battalion arrived in Negros, were you then also a clerk in the battalion headquarters?

A Yes.

Q As clerk of the battalion headquarters, were you familiar with the different garrison units maintained by the Yamaguchi Battalion in Negros?

MR. BONDA: At what time?

MAJOR FOJAS: During the time he was clerk at the battalion headquarters.

A In general I knew about those things.

Q Are you familiar with the garrison units maintained by the Yamaguchi Battalion in the town of Silay?

MR. BONDA: Objection. Nothing in my direct examination that has anything to do with any garrison unit in Silay.

MAJOR FOJAS: He asked him about the Cubay Garrison which is in the locality of the town of Silay.

MR. BONDA: You asked him about Silay.

MAJOR FOJAS: Yes, and the Cubay Garrison is in the

Silay locality. That is the question, but the defense counsel wants me to ask questions in his own manner and form. That is something I will never agree with defense counsel on.

MR. BONDA: I want you to ask questions on the basis as I was restricted when asking your witnesses questions, I am asking for no more.

COLONEL PARMELEE: The matter of the location of the garrison of Cubay, Cubay Garrison, or something along that line, was brought out on direct examination, is that the contention?

MAJOR FOJAS: Yes.

COLONEL PARMELEE: And the statement now is that the Cubay Garrison is a part of the barrio of Silay?

MR. BONDA: That is the prosecutor's statement.

MAJOR FOJAS: That is my statement and also the fact that the Commission can take judicial notice of it.

MR. BONDA: I deny that, I haven't seen that on any map.

MAJOR FOJAS: It is not only what you saw on a map that you can take judicial notice of.

MR. BONDA: It must be established as being a geographical division first before they can take judicial notice of it.

COLONEL PARMELEE: Can the prosecution state where that is, whether it is legally a part of the limits of Silay?

MR. BONDA: We were talking of the Cubay Garrison and suddenly he talks about the Silay Garrison. It is the prosecutor's contention however, no evidence has been brought out by this witness.

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MAJOR FOJAS: We contend that Cubay is within the municipality of Silay. It is not only conventional, but in evidence. Our witness testified that Cubay is within the locality of Silay. That being the case, it is geographically in evidence.

COLONEL PARMELEE: Is that in evidence?

MAJOR FOJAS: Yes, Villa testified that it was in the municipality of Silay.

MR. BONDA: That does not make it a statement that the Court can take judicial notice of.

MAJOR FOJAS: Yes, but the fact that it is a geographical sub-division ---

MR. BONDA: Where do you get that idea, until it has been shown by a map or something of which the Court can take judicial notice that that is the fact. The Court can never take judicial notice of the fact of the truth of a statement made by the witness. It is merely the statement by a witness that it is there.

MAJOR FOJAS: Isn't it true, Mr. Defense Counsel, that a matter which can be taken judicial notice of, that no evidence need be introduced to prove it?

MR. BONDA: The Court can take judicial notice of common knowledge. I don't know it. Mr. Black doesn't know it, and the interpreters don't know it, and the Commission doesn't, as indicated by the fact they are looking it up now.

MAJOR FOJAS: That is where I disagree with you. It does not need to be within the personal knowledge of the Commission.

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MR. BONDA: It must become common knowledge, it must be by document, public document, and a few other things.

COLONEL PARTELEE: The Commission could take judicial notice of that as a fact if we had the legislative authority for it.

Now, we might ask the witness -- I don't know if that would get by or not -- but if we could establish from the witness, he has testified he doesn't know where it is. Well, the Commission cannot take judicial notice of that fact because we have nothing on which to base that. We will accept the prosecution's statement that it is in evidence from the witness Villa, and I have forgotten it myself, but that doesn't make it a fact, nevertheless, though the witness Villa having lived in that vicinity, you could give that a certain amount of credence. However, it does not make it a fact, as I see it, which would justify the Commission to take judicial notice of it. The question is based on the assumption the Cubay garrison is within the limits of the town of Silay.

MAJOR FOJAS: Yes, and if I may interrupt, I can make that assumption because it is in evidence that Cubay is within the locality of Silay. Even if the Court doesn't take judicial notice of that, I can make that assumption because that fact is in evidence.

MR. BONDA: The mere fact that a fact is in evidence does not give you an opportunity to cross-examine on something that did not appear in his direct examination.

MAJOR FOJAS: I do not know for what reason, sir, but the fact is that the Cubay garrison is in issue. It was brought out on direct examination and on cross-examination I think I am entitled to cross-examine this witness on that matter.

MR. BONDA: I fail to see it on every map I have looked for it, and you still want the Commission to take

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judicial notice even though it is not on the map.

MAJOR FOJAS: Suppose it does refuse to take judicial notice of that fact, it is already in evidence.

MR. BONDA: The rule of evidence laid down by Major Fojas is the rule of evidence we are following and the statements made to the prosecution which I made throughout the prosecutor's case are based entirely on that fact.

MAJOR FOJAS: You misquote me again, as usual, Mr. Bonda.

COLONEL PARMELEE: The ruling is that the assumption will be accepted although open to proof to the contrary that it is not a fact. Objection not sustained.

A I am not familiar.

Q As clerk of the battalion headquarters unit of Colonel Yamaguchi, were you ever in charge of awards and decorations?

A Yes. I was in charge of announcements with regard to soldiers killed in action and also of the decorations.

Q When you said you were not familiar with the garrison unit at Silay, you mean to say you did not know the different barrios and sitios in that municipality where the Japanese maintained garrison units?

MR. BONDA: He has already been asked and already answered that question, sir. Objection.

COLONEL PARMELEE: Oh, pardon me, I didn't hear the objection.

MR. BONDA: He already has been asked and already

answered. It was asked over my objection, and it was permitted in and he already answered it.

MAJOR POJAS: The answer is too general. We do not know in what respect he is not familiar.

COLONEL PARMELEE: Will the reporter read the question, please?

(Question read as directed.)

COLONEL PARMELEE: Objection overruled.

A The only thing I know was that the First Company, that is the Takahashi company was garrisoned at Silay.

Q Now what signs of respect did you notice from the civilians which were accorded Colonel Yamaguchi, to enable you to form the conclusion you came to that the civilians respected Colonel Yamaguchi?

A When they met Colonel Yamaguchi, they showed signs of being happy.

Q What signs were those?

A I'll give another example. I saw at the headquarters when the civilians came to see the commander about requests, Yamaguchi always complied with their requests.

Q What was it that the civilians did to show that they respected Yamaguchi?

A The people of Bacolod were saying that Colonel Yamaguchi is a very good man.

Q Is that all that you know and by which you could say that the people respected Colonel Yamaguchi?

A Yes.

Q Is it not a fact that you said people respected Colonel Yamaguchi because they bowed to Colonel Yamaguchi

TS(5)ss

when they would see him on the street?

MR. BONDA: I don't remember any such testimony. I would like to have the Commission tell me whether that is in or not.

MAJOR FOJAS: I am asking him, if it is not a reason why he said people respected Colonel Yamaguchi. I am asking him.

MR. BONDA: Object to the question, sir.

COLONEL FARRELLEE: It isn't anything that has been testified to.

MR. BONDA: And I would like to have that question read to the prosecutor.

MAJOR FOJAS: I'll withdrew the question.

TS(5)ss

Q Is it not a fact that people bowed to Colonel Yamaguchi when they met him on the streets of Bacolod and because of that you say that the people respected him?

A I never used the word "bowed". I did not testify he was respected because the people bowed to him.

Q Did you see people bow to Colonel Yamaguchi when they met him on the streets?

A I think that the people bowed to him when they met him.

Q And is it not for that reason that you say that people in Bacolod respected Colonel Yamaguchi?

MR. BONDA: If the Court please, I object. He has been asked and told the reason and now the prosecutor is trying to show there are other reasons when he has fully answered the questions propounded to him by the prosecutor.

MAJOR FOJAS: Up to now I don't remember receiving an answer from this witness as to why he said people respected Colonel Yamaguchi. All he said was that the people were happy, because he acceded to their requests.

MR. BONDA: I withdraw my objection.

A It is not that they bowed to him but that they met him, and they seemed to be happy and gay when they would meet him.

Q Are you aware of the fact that during the Japanese occupation, throughout the Philiprines, Japanese commanders always said that the Filipinos and Japanese are of the same color, and they should work together?

A Yes.

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MAJOR FOJAS: The prosecution has no further questions.

COLONEL FAILLIEL: Redirect examination?

MR. BONDA: No redirect examination, sir.

COLONEL FAILLIEL: Questions by the Commission? Major Stevens.

EXAMINATION BY THE COMMISSION

BY MAJOR STEVENS:

Q In the performance of your duties as clerk in the headquarters of Colonel Yamaguchi, did you have access to the files or orders which were published by the command of Colonel Yamaguchi?

A Yes.

Q Do you recall seeing an order published on or shortly after 6 January 1943, announcing the assumption of command on the Island of Occidental Negros by Colonel Yamaguchi?

A Do you mean an order issued to the troops?

Q Yes, issued to the troops?

A I have no recollection of such an order.

MR. BONDA: Might it not be of assistence if you better identified the order the Commission has in mind. It is merely a suggestion.

Q Is it customary in the Japanese army when an officer takes over the command of the new area to publish a formal order announcing the fact that he is assuming command in that particular area?

A An order is supposed to be issued.

Q And you don't recall if such an order was published when the Yamaguchi battalion arrived in Bacolod, Occidental

Negros?

A I think such an order was issued. It should have been issued to the effect that Colonel Yamaguchi was taking over command of that area.

MAJOR STEVENS: No further questions.

COLONEL PARKLEE: There are no further questions by the Commission. Based upon the questioning of the Commission, has the defense any further questions to ask?

MR. BONDA: No questions by the defense.

COLONEL PARKLEE: Prosecution?

MAJOR FOJAS: No further questions, sir.

COLONEL PARKLEE: Before the witness is dismissed, I would like to verify the spelling of his first name. Is it H-i-f-u-m-i or H-i-z-u-m-i?

(Interpreter Taccad interpreted to the witness.)

A H-i-f-u-m-i.

COLONEL PARKLEE: It appeared as H-i-z-u-m-i, is that correct?

MAJOR FOJAS: No, in another record it was spelled H-i-f-u-m-e.

COLONEL PARKLEE: Will the defense and prosecutor stipulate that if the name Hifume Tanaka appears, that he and Hifumi Tanaka are one and the same person?

MR. BONDA: The defense will so stipulate.

MAJOR FOJAS: The prosecution will so stipulate.

COLONEL PARKLEE: The witness is excused.

(Witness excused.)

COLONEL PARKLEE: The Commission will take a short recess.

(Short recess.)

TE(5)mm
acm

COLONEL PARMELEE: The Commission is in session.

MR. BONDA: The defense calls as its next witness, Hidemi Watanabe.

HIDEMI WATANABE

a witness for the defense, being first duly sworn, testified as follows through Interpreters Tacoad and Ishita:

DIRECT EXAMINATION

BY MR. BONDA:

Q Will you state your name, please?

A Hidemi Watanabe.

(Witness answered without first having the question interpreted to him.)

Q Do you understand English?

A No I don't understand.

TS(9)mm

Q Well, you understand a little English, do you not?

A Yes, very little.

Q Well, will you wait until the question has been interpreted to you then before you reply to the question?

A Yes.

Q How old are you?

A 51.

Q Where do you now reside?

A I am at the Manila Stockade.

Q Is your home in Japan?

A Yes.

Q Where in Japan?

A My home address is Fukushimaken, Shinobugun, Okayama-Mura, Okabe Arayama #3.

Q Are you married?

A Yes, I am married.

Q Have any children?

A No, no children.

Q Were you a member of the Imperial Japanese Army during a period in the years 1943, 1944 and 1945?

A Yes, I was.

Q What was your rank during those years?

A A Lieutenant Colonel.

Q Where did you receive your training? Or your education and training?

A I have graduated from the Fukushimaken High School and I entered the Military Academy and graduated.

Q When did you graduate?

A I don't remember the exact date but I graduated in 1920.

Q How long have you known Colonel Yamaguchi, the accused in this case?

A I actually came to know Colonel Yamaguchi in June, 1943.

Q Did Colonel Yamaguchi come under your command or under the command of your immediate superior at any time prior to June 1943?

A He came under the command of my superior.

Q When?

A He became the subordinate of Lieutenant General Kono in May 1943.

Q In May 1943 who was your commanding officer?

A Lieutenant General Kono.

Q What was your position at that time?

A I was the staff officer.

Q And as a staff officer, what were your duties?

A I was in charge of operations and training.

Q How long after May 1943 did you remain as a staff officer under Lieutenant General Kono?

A I was the staff officer up to July 10th, 1944.

Q From May 1943 to July 10th, 1944, you were a staff officer, G-3, under Lieutenant General Kono, is that correct?

COLONEL PARMELEE: Did they have the G group in the Japanese Army; he called it operations and training officer.

MR. BONDA: I thought he might know it, but change that to operations and training officer.

Q When did you become staff officer under General Kono?

A I became the staff officer under General Kono upon orders of the war minister May 1st, 1943 and I actually went to his place on May 13, 1943.

Q Where was his place where you reported for duty as staff officer under General Kono?

A The headquarters was in Cebu City.

Q When you became a staff officer under General Kono and reported to Cebu City, at that time was Colonel Yamaguchi under the command of Lieutenant General Kono?

A Yes, he was.

Q Do you know when Colonel Yamaguchi came under the command of General Kono? If your answer is yes, tell us how you know.

A Yes. When I arrived in Cebu, I heard directly from Lieutenant General Kono that he arrived in the city May 7th, 1943, and Colonel Watanabe came under his command on that date. I mean Colonel Yamaguchi.

Q Colonel Yamaguchi came under General Kono's command on May 7, 1943, is that correct?

A Yes, that is right.

Q Do you know in whose command Colonel Yamaguchi was prior to the time he came under the command of Lieutenant General Kono?

A He was under Major General Inoue.

Q How do you know he was under the command of General Inoue?

A When I went to the war ministry I heard that.

Q Do you know of your own knowledge or through any other means when Colonel Yamaguchi went to Negros Island?

A I learned of his arrival in Negros through records and through information I received from Lieutenant General Kono regarding the position of his subordinate, when I arrived in Cebu City.

Q And what did you learn at that time as to the date Colonel Yamaguchi arrived in Negros Island?

A I heard that he arrived in Negros the early part of January, 1943.

Q As an officer in the Imperial Japanese Army since 1920 and a graduate of the military academy, can you tell us what procedure is followed when one commander supplants another commander in any particular area?

A Yes, I know.

Q Will you tell us please what the usual procedure is?

A When a new commander is appointed, the old commander goes to the new commander who will take his place and explain his duties and responsibilities. The superior officer who issues the order for the change of command to the new commander specifies the date when he is supposed to take over. Now, the orders are supposed to have fixed dates, but there are instances wherein the fixing of dates is impossible so that in the orders are provisions that state when the most convenient date to change command could be made upon mutual agreement between the old and the new commander. Now, stating it simply, the orders when received have a fixed date wherein the change of command would be made, but there are certain instances wherein the change of command

TS(5)ss

and the responsibility could not be determined where there are provisions in the order whereby the date can be fixed between the old and the new commander.

Q When does the actual change of command take place?

A The new commander actually receives the responsibility when he says that he received the command and the responsibility from the old commander.

COLONEL PARTELEE: The Commission will now adjourn and will reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1500 hours, to reconvene at 0830 hours, 18 January 1947.)

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME L

PAGES 3352 TO 3372 INC.

DATE 18 January 1947

MANILA, P.I.

COPY NO. /

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Pardee
A. L. PARDEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
18 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member

MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	
2ND LIEUTENANT SAMUEL S. KOIDE	)	
PETRONILO VALLEJO	)	Japanese
CAESAR YO ALZONA	)	
ROMUALDO TACCAD	)	
CLARO ISHITA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER

I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COM.
Hidemi Watanabe	3352 (Cont'd)				

P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0845 hours, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P.I., 18 January 1947.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the prosecution staff are also present.

HIDEMI WATANABE

a witness in behalf of the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR RAMIREZ: Will the interpreter please remind the witness that he is still under oath?

(Translated to witness through Interpreter Taccad.)

DIRECT-EXAMINATION (continued)

BY MR. BONDA:

Q I believe at the end of yesterday's session you testified that the change of command did not take place until the actual troops were taken over, is that correct?

MAJOR FOJAS: I beg your pardon. That is not the testimony.

MR. BONDA: I think it was. The substance of it was the new commanding officer receives responsibility when he says he receives command responsibility from the old commander.

MAJOR FOJAS: It is not when he takes over the

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troops, but when he says he receives the responsibility from the old commander.

Q Is that correct, the last question?

MAJOR FOJAS: May we hear the last question?

Q You testified yesterday that a new commander receives the command when the old commander -- withdraw that.

The new commander receives the responsibility when he receives the command and responsibility from the old commanding officer?

A Yes, that is right.

Q As an officer since 1920 and a graduate of the military academy, will you tell us whether there is any command responsibility on a commanding officer or on any person prior to the time he receives the command from his predecessor? Or change that to prior to the time the predecessor turns over his command to him.

MAJOR FOJAS: I will object to that question, sir, because this witness has already testified that in cases of change of command the usual thing is to put in the order the date when the change of command will become effective, and there are only exceptions to that rule when a date cannot be fixed, and in such cases there are conditions stated in the order, so the question which defense counsel now propounds has already been answered by the witness.

MR. BONDA: If the Court please, the evidence in this case shows that that order was issued on the 4th, and they landed on the 6th, and that the order said that he will take command of the troops at such time as the change of command can be effected. That is what is in the evidence,

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sir.

MAJOR FOJAS: That is true, sir, and the question has been answered, and that is when the old commander informs the new commander of the situation, and the new commander says "I assume responsibility."

MR. BONDA: That is what I am asking now. Is there any command responsibility prior to that time. I don't see what the objection is.

MAJOR FOJAS: It has been answered.

MR. BONDA: Oh, you have asked your witnesses the same question five or six times, and you have insisted you had a right to do it. What is the difference now?

MAJOR FOJAS: I submit, sir, the objection is there, and the ruling is in order.

MR. BONDA: How many times have I complained when you asked the same question when you put a comma in the question, and that was the only difference. This is an entirely different question.

COLONEL PARMELEE: Will you read that question?

(Question read.)

COLONEL PARMELEE: Objection not sustained.

A The moment of the change of command is specified so that before that change takes place the new commander has no responsibility.

Q Supposing no date of change of command is specified?

MAJOR FOJAS: I will object to the question, sir, as that question has already been answered by the witness. If no date is specified he testified here as to the procedure by which the change of command was carried out.

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COLONEL PARMELEE: The question has been answered, and now there is an objection, apparently, as to a supposition which is apparently not in accord with the testimony.

MR. BONDA: That is not correct, sir. It is not a supposition that is not in accord with the testimony. It is a fact that is in the testimony, that no date for the change of command was set; it is quite the contrary. I hope the Commission isn't under the misapprehension --

COLONEL PARMELEE: The specific date may not be set, that is true, but he has already answered that he -- either it is a specific date or the conditions are stated, and the change of command is when it is -- I forget the phrase used -- mutual agreement or understanding -- what is the question again?

MR. BONDA: From the statement of the Commission, I hope the President of the Commission is not under the misapprehension there was a definite date set in the order.

COLONEL PARMELEE: No, the question here is merely questioning -- or it is understood by the Commission -- to determine what was the practice in the Japanese army, and the witness is being used as an expert in that line, but no reference or no consideration is given to any specific order.

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MR. BONDA: I will withdraw that question.

Q Assuming, Colonel Watanabe, that a commanding officer is assigned to an island and prior to coming to that island, or at the time of coming to that island, there are two commands, a northern command, we will assume, and a southern command, and assuming that a state of war exists, that there are active guerrilla activities taking place in the island; assuming that there are five companies in the command of the person having orders to take command of the island that are not full Japanese strength, assuming that one of those companies does not proceed to the island with the man designated as the new commander; assuming that he arrives at the island, and he learns that in one section--we will assume it is the northern section--there is very active guerrilla activity; assuming that the northern part of the island is considered by him to be the most important portion of the island; assuming that communications between the place of his arrival and the commander whom he is to succeed in the southern position had been disrupted or uncertain; that the only certain means of communication is by ship; assuming that he determines that it is necessary to go on a punitive expedition in the northern part. Under those circumstances would you say that the commanding officer properly did not assume command of the southern portion until twenty-four days after his arrival, at which time he goes by ship from the extreme northern portion of the island; he goes by boat and ship from the extreme northern portion of the island to the place where the commander of the southern portion is situated and then assumes the command.

COLONEL PARKER: That question perhaps had better be read back for checking before it is put, unless the interpreters have it definitely. Do you prefer to have it read and checked?

INTERPRETER TACCAD: I had rather have it read back, sir.

(Question read.)

MAJOR FOJAS: I would object to that question, sir, as that is a conclusion which the witness is not called upon to make for the Commission. Those are the set of facts which defense counsel would like to establish in this case, and it is the Commission which should decide those facts.

MR. BONDA: If the Commission please, that is a hypothetical question put to a military expert. Every portion is a hypothetical question, and it is perfectly proper.

MAJOR FOJAS: If that is a hypothetical question, sir, I would say that the witness has already answered the question because he has stated when command responsibility takes effect under similar circumstances, and the inclusion of the words in the question, "Would it be proper not to take command under those circumstances," is a conclusion of fact which this witness should not give, but the Commission.

MR. BONDA: One of the exceptions to the conclusion of fact -- and if the prosecutor thinks it over he will realize that is a hypothetical question put to an expert for his opinion -- if the prosecutor denies that this man is a military expert, that is another thing, but assuming he

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is a military expert -- and I think we have evidence to the effect that he is -- it is a hypothetical question to an expert for his opinion, and it is one of the exceptions to the rule.

MAJOR POJAS: The point, sir, is under those sets of facts which the defense counsel has assumed, an answer has already been given by this witness, and it is for the Commission to determine whether assumption of command was made under the circumstances as stated by the witness as practiced by the Japanese Army.

MR. BONDA: I have no further comment, sir. The thing is so obvious.

COLONEL PARMELEE: The question is a hypothetical one, and it is based upon a situation, and the withess can be considered to be an expert, but there is one defect in the question, and that is you did not establish that the witness has seen the order which was given to this commander, and therefore, he does not know the terms.

MR. BONDA: He does not have to see the order. He need answer only that portion of that question that is hypothetical. I asked him -- I stated the question assuming certain facts to be true, and now, if any of those facts in my hypothetical question don't coincide with facts that are in evidence, then there is a proper complaint, and that is the only way there can be an objection.

COLONEL PARMELEE: Well, the point is that the witness has made clear what is the practice in the Imperial Japanese Army as to assumption of command, and it has not been established that he has seen -- it has not been

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established that he has seen the order. The question will be permitted. Objection overruled.

A With regards to that question, would you want me to give my opinion assuming that I were the new commander, or assuming that I were the superior commander of that new commander?

MR. BONDA: (To Interpreter Taccad) When you use the word "superior", do you mean that, or do you mean successor? I mean, what is the Japanese word for superior, could that be confused with successor?

INTERPRETER TACCAD: That is the superior commander.

Q I want your opinion as to whether under the circumstances I have enumerated to you it would be proper in the Japanese Army to consider that command was properly not assumed until the new commander had taken over the command from his predecessor. I want to know if it is proper by custom in the Japanese Army to so consider the action proper by the succeeding commander?

A I'll give you my opinion then.

First, I'll give you my opinion, as you mean that I was the superior commander who gave that order for the change and considering also the difficult circumstances under which the new commander had to act. As you mean I was the superior commander who gave the order for the change and you mean also that I was cognizant of the difficult and unsettled conditions in the island in which I would be sending the new commander, I would not give him an order to assume responsibility as soon as he landed as that would be unfavorable for his future action because of the unsettled conditions of the island. Taking into consideration the situation in his new area, I would give him an order to first meet the old commander and then properly take over the command. As the superior commander I would consider the difficult circumstances prevailing in the island and I would give in that order ample time for the new commander to take over his responsibility. I think the above procedure is one that should be followed by the superior commander when giving such orders to a subordinate in view of the situation.

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Now, I'll give you my opinion as the new commander. If I were the new commander and I had received an order like the one that I would have given, if I were the superior commander, this is how I would act. If I were the new commander and I had received such an order, I would do my best to comply with that order as soon as possible, that is, take over actually the command, however, in view of the situation I would first do my best to cope with, for example, communication difficulties, the enemy situation, and I would take over actually the command.

MAJOR FOJAS: Is there an additional answer?

INTERPRETER TACCAD: No, he wanted to ascertain if I translated that part saying that the superior commander should not give an order requiring the new commander to take over command soon after landing.

Q You stated that you were a staff officer of General Kono from May 1943 to 10 July 1944. Can you tell us why you were no longer staff officer of General Kono after 10 July 1944?

A On July 10th, 1944 there was a general reorganization and the Kono Unit came under the 102nd Division. I was transferred to be a staff officer of the 102nd Division because there was no staff officer in a brigade.

Q Now, prior to May 1943 do you know what the situation or what the status of the Yamaguchi Battalion was, was it an independent battalion or was it part of the brigade?

A The unit was under Major General Inouesin Negros Island.

Q Now from May until July 1943 it had the same status under General Kono, is that correct?

MR. BONDA: That is leading, I'll rephrase it, if you want it.

MAJOR FOJAS: You better rephrase it.

COLONEL MIRFIELD: Is that May to July 1943?

Q From May 1943 to July 1944?

MR. BONDA: I am merely trying to get the picture, it is all preliminary but of course it is a valid objection.

Q From May 1943 to July 1944, under whose command was Colonel Yamaguchi?

A He received orders from Lieutenant General Kono, at that time Major General.

Q Now what command was General Kono in from May 1943 until 10 July 1944?

A From May 1943 to about August of the same year, I am not sure of the month, he was under Lieutenant General Tanaka, and from August he came under the command of General Kuroda.

Q Now, during those periods was General Kono part of any division?

A He was not in a division, it was an independent division.

Q Now, on 10 July 1944 what change took place with regard to the change of status from an independent unit which was a part of an infantry division?

MAJOR FOJAS: I think it is leading. It assumes there was a change from one thing to another. The witness can be asked what change was made.

MR. BONDA: There were a lot of changes which took place, I am trying to pin it down to one place to show the chain of command. I think we can be permitted to lead him because it is based on documentary evidence that is a part of the United States Government. You object to leading preliminary questions, okeh. You want me to rephrase that?

COLONEL FARRELLE: Apparently he believes it is leading.

MR. BONDA: The prosecutor believes it is leading.

MAJOR FOJAS: It actually is, if you want me to withdraw - - -

MR. BONDA: There is even exceptions to leading - - - preliminary questions you may lead.

COLONEL FARRELLE: There is. an objection, is defense counsel going to rephrase the question?

MR. BONDA: I don't care, it doesn't make any difference at all, it is preliminary.

Q Will you read that question please?

(The question was read as directed by Interpreter Taccad.)

A Before July 1944 the independent unit was directly under the command of Lieutenant General Kuroda, and then after that date the 102nd Division was organized and Lieutenant General Kono came under the command of Lieutenant General Fukui.

Q Now what happened to you when that change took place?

A I was no longer under the command of Lieutenant General Kono, I became the staff officer to Lieutenant General Fukui.

Q Now did Colonel Yamaguchi's unit still remain as a subordinate unit to the unit in which you were a staff officer?

A He was under the command of Lieutenant General Kono also. I was not under Lieutenant General Kono. Colonel Yamaguchi was under the command of Lieutenant General Kono as before.

Q But you were, -- is it true you were in the echelon that was in command of Lieutenant General Kono?

MAJOR FOJAS: Let's fix the date.

MR. BONDA: We are talking now of 7 July 1944.

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MAJOR FOJAS: Yes, he said on that date he was transferred, that he was transferred to Fukui and Colonel Yamaguchi remained under General Kono.

MR. BONDA: Yes, but General Kono came under the command of General Fukui.

MAJOR FOJAS: When?

MR. BONDA: July 7, 1944 the reorganization took place.

COLONEL FARNELEE: I believe he has used a date in July.

MR. BONDA: All I am trying to - - -

MAJOR FOJAS: The witness came under General Fukui?

MR. BONDA: Yes, General Kono came under the command of General Fukui on that date too. There was a reorganization and the independent brigade was placed in the infantry division. All I am trying to bring out, to save time, is that he was still in the command in which the Colonel Yamaguchi battalion was a subordinate organization.

MAJOR FOJAS: Okey, I'll withdraw the objection.

COLONEL FARNELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARKER: The Commission is in session.

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath.

(Translated to witness through Interpreter Taccad.)

Q After you became staff officer of the division did you still have knowledge of the activities of the Yamaguchi Battalion?

A Yes.

Q Can you tell us when General Kono came to Negros?

A The middle of August, 1944.

Q And on whose orders did he go to Negros?

A That was upon orders from the division commander.

Q When he came to Negros did he assume command of all of Negros Island?

A Yes, that is right.

Q Now, what other battalions, if any, came to Negros about the time that General Kono did?

A Do you mean aside from the Yamaguchi unit?

Q Yes, sir.

A When Lieutenant General Kono arrived in Negros in the middle of August, 1944, aside from the Yamaguchi unit there were many other units. First, mentioning the big units, of those stationed in Negros at the time were the air force, the naval units, the merchant marine. Portions of units directly under the command of the division at the time was temporarily under the command of the commanding officer of the air force and the Kempei Tai. Now, I shall relate to you the small units that were present at the time: First, the air force, and in the air force was the second and fourth

EGM(3)ss

and they stayed there for a long time. Under these divisions were several units. The naval force, the munitions bureau, the airfield construction corps and the marine garrison. There was also the marine transportation unit. I forgot before that under the air force there were the airfield units, the airfield construction units, the ordnance supply unit and the maintenance unit. A portion of the 354th Independent Infantry Battalion was also present. Those were the big units stationed in Negros at the time Lieutenant General Kono came to the island.

Q Was Colonel Yamaguchi in command of any of the units whom you have just mentioned?

A Aside from the Hori unit that came under the command of Colonel Yamaguchi for a short time, all the other units never came under his command.

Q When did the Hori unit arrive in Negros?

A They did not come in one whole group. They started to arrive about August 1st and lasted up to the latter part of September.

Q When did they come under the command of General Kono?

A You mean the Hori unit?

Q I will withdraw that question. When did Colonel Yamaguchi lose control or lose command over all or any part of the Hori Battalion?

A Hori arrived in Negros about the middle of September, and Colonel Yamaguchi relinquished command after that.

Q Then after the middle of September did Colonel Yamaguchi have any command over the Hori Battalion?

A No, he didn't.

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Q When did you come to Negros -- I will withdraw that. Did you go to Negros?

A Yes, I did.

Q When?

A December, 1944.

Q Was that the first time you went to Negros?

A Before that I went to Negros and stayed for one day on temporary duty.

Q When you came on the 13th of December, 1944, did that become your headquarters at that time?

INTERPRETER ISHITA: He wants to add to his answer to the last question.

MR. BONDA: Withdraw my last question.

A I went several times before December 13th.

Q On the 13th did you come to Negros on a permanent status?

A Upon orders from the division I was temporarily stationed in Negros.

Q And how long did you remain in Negros after you arrived on the 13th of December, 1944?

A Because I could not return to division headquarters, I was told to stay there all the time.

Q And how long did you remain there after you arrived there on the 13th of December, 1944?

A Up to the time of surrender.

Q Were you familiar during the time when you were staff officer under General Kono, and later staff officer in the 102nd Division, with the movement of the Yamaguchi Battalion?

A Yes, I know.

Q When you became a staff officer under General Kono in

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May of 1943, what portion of Negros Island was garrisoned by Colonel Yamaguchi's Battalion?

A The Yamaguchi unit was in charge of the region from Manapla south in Occidental Negros.

Q Was that area of responsibility of Colonel Yamaguchi ever changed?

A Yes, it was changed.

Q When?

A Do you mean the area garrisoned by men directly under the command of Colonel Yamaguchi or the whole territory Colonel Yamaguchi is supposed to be responsible for?

Q I meant the whole territory that Colonel Yamaguchi is supposed to be responsible for.

A From May, 1943, to June, 1944, he was in charge of the whole island. From the latter part of June up to July, he had the command of the whole island of Negros except the region south of Manapla, and the whole Oriental Negros, and from August, 1944, up to the middle of September he again commanded the whole of Occidental Negros.

COLONEL PARMELEE: That is September, 1944, is that right?

INTERPRETER ISHITA: Yes.

A Then when the Hori Battalion arrived there was another change. He commanded the whole of Occidental Negros except the territory north of Manapla. There are several other changes that happened. Then from the latter part of October, 1944, to the early part of December he had no defense territory. Then from the early part of December, 1944, up to latter part of March, 1945, he was in command of the territory

EGH(3)ss

south of Bago River in Occidental Negros. Those were the changes that happened.

INTERPRETER ISHITA: He wants the answers to be read to him.

COLONEL PARTELEE: Do you want the reporter to read it?

INTERPRETER ISHITA: No, I have the notes, sir.

(Answer read by Interpreter Ishita to witness.)

A Those are the places. The Yamaguchi unit was stationed from May, 1943.

Q When you stated that Colonel Yamaguchi had everything except the area north of Manapla, will you please indicate on the map just what you meant?

(Witness complied.)

A I don't know the exact geographical boundary, but it is more or less this, (as indicated by the witness). When I mentioned Manapla, it meant the town of Manapla is not included, so just to make a distinction I mentioned the town of Manapla.

Q Why did he have control of everything except the area you have just pointed out, is there any reason for it?

A I don't know the reason. The reasons may be regarding his strength in the terrain, but I don't know the exact motive behind the fixing of the boundary.

Q Do you know either of your own personal knowledge, or from what you heard, whether Colonel Yamaguchi was ever wounded while he was in Negros Island?

A I know of my own knowledge.

Q How do you know?

A When he was wounded I saw his wound.

Q When was he wounded?

A I think he was wounded on March 5, 1945.

Q Where was he wounded?

A When he went to arrange for some troops at Pontevedra.

Q Do you know how soon after he was wounded that you personally saw him?

A He was wounded on the 5th of March, 1945, and I believe it was on the same, it was midnight of the same day that I saw him.

Q Where did you see him?

A At the brigade headquarters at Bacolod.

Q Who else was present at the brigade headquarters when you saw him on the night of the 5th of March?

A Lieutenant General Kono and another staff officer were present.

Q Was there any conversation at that time between General Kono and Colonel Yamaguchi?

A Yes.

Q Did you overhear the conversation?

A Yes.

Q What was the conversation?

A Colonel Yamaguchi reported about the emergency reinforcement sent to Pontevedra. After he reported about the operation, he then reported how he got wounded. There was still conversation from what I just mentioned, may I go on?

Q Yes, tell us the entire conversation.

A Lieutenant General Kono inspected the wounds of Colonel Yamaguchi and tried to encourage him. The wound of Colonel Yamaguchi was rather serious, so Lieutenant General Kono said, "with that condition you wouldn't be able to command your unit effectively, so turn over your command to your subordinate, Captain Inoue", but Colonel Yamaguchi insisted that the wound was nothing and that he would be able to go on as he was, commander of his unit. It was then that General Kono raised his voice and ordered Colonel Yamaguchi to turn over his command and first see to it that his wound became better.

Q Was there any more?

A Then Lieutenant General Kono ordered Colonel Yamaguchi

to go at once to the hospital to have his wound treated.

Q Did Colonel Yamaguchi then turn over his command to Captain Inoue?

A Yes.

Q Did he again, after that, to your knowledge, resume command of the Yamaguchi Battalion?

A On March 29, 1945, Colonel Yamaguchi resumed command of this unit. His wound was not yet completely healed, but due to the fact that American forces had already landed in Negros, he had to personally take command of his unit.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: The Commission will now adjourn to reconvene at 0830 hours next Monday.

(The Commission adjourned at 1100 hours, to reconvene at 0830 hours, 20 January, 1947.)

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME LI

PAGES 3373 TO 3428 INCL.

DATE 20 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA vs MASAKAZU YAMAGUCHI	PUBLIC TRIAL

Court No. 2
High Commissioner's Residence
Manila, P.I.
20 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

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MACARIO BELAONG ROGELIO CATANJAL FILOMENA ZOSA	Ilongo (Visayan)

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER

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P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, 20 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P. I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

HIDEMI WATANABE

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q You testified that ordinarily in the Japanese Army, orders to assume command of a new territory had fixed dates, did you not?

MR. BONDA: Objection, he did not so testify.

MAJOR FOJAS: He just did testify orders had fixed dates. There are some cases where there are no fixed dates.

COLONEL PARMELEE: He did testify that orders did have fixed dates, that isn't all he testified to in that respect, however, but he did testify to that fact.

MR. BONDA: There again you are getting into the half-truth business. He testified they did have ordinarily, but there

TS(1)LM

are cases ---

MAJOR FOJAS: Did I not say ordinarily?

MR. BONDA: No, you didn't.

COLONEL PARIELEE: No, but he did testify as to that, that some had fixed dates and some didn't.

MR. BONDA: The question doesn't say ordinarily; read that question.

(The question was read as directed.)

MR. BONDA: I withdraw my objection, I missed the word "ordinarily".

A I did not say that the date would be fixed, but the moment.

Q You don't recall that you so testified before?

A I testified that the exact moment of the change of command is indicated, and I also later on explained that there were usually two ways of carrying out such change of command.

Q All right, when you said the exact moment of change of command is indicated, don't you mean by that, that the date is fixed when the change is to take effect?

A I testified that in an order for a change of command, the exact moment of change of responsibility is always indicated, but I also added in my explanation that there are several ways of indicating the exact moment of the change of command.

Q What do you mean by "the exact moment the change of command is indicated"?

A The exact moment of change of command is for the purpose of fixing clearly the responsibilities.

Q When the exact moment of change of command is indicated,

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is it not stated in the order the date when that change would take place?

A The term "moment" implies a very wide meaning, you cannot just fix it at a certain date or time, certain conditions give a wide range of meaning to the term "moment."

Q Will you please inform the Commission exactly what you meant by "moment"?

A I meant moment in the abstract sense.

Q Will you please elucidate to us as to what you meant by moment in the abstract sense?

A For example, instead of saying on this date and at this time take over command, the order would be when certain conditions, like after taking over command securely, responsibilities would change.

Q Was there no instance in the Japanese Army where an order would fix a certain date in which a change of command would take place?

A Yes, there was.

Q Is that not what you meant when you said that ordinarily an order of a change of command in the Japanese Army has the date fixed?

A I did not say that ordinarily the date would be fixed, I meant that in general the moment at which the change of command of responsibility would take place is indicated.

Q Now, will you please tell us again the two kinds of orders in the Japanese Army with respect to change of command?

A You want me to explain about moments when change of command would take place?

Q No, the two kinds of orders which you testified when you

were being questioned by defense counsel regarding change of command?

A If possible, the exact date of change of command is stated. If that can be done, that is the best method and it is preferred. However, when, depending upon the situation, the fixing of such date for the change of command cannot be done, the order would give the moment in its abstract sense,

that would give the commanders performing the change a little, some latitude in changing the exact moment. For example, the order may state that change of command would take place when the two commanders have actually and formally changed command.

Q All right. Let's get this straight. In other words, there are two kinds of orders; first, an order in which a fixed date for the change of command is stated, if that is possible, is that correct?

A Yes, that is right.

Q And second, when a fixed date cannot be stated the exact moment of change is then stated, is that correct, in the abstract sense; the exact moment in the abstract sense is then stated, is that correct?

A Yes, when the date cannot be fixed, the second method would give the two commanders latitude in determining the exact time at which they would perform the change of command. That would depend upon the ability or convenience in doing so.

Q All right. Now, will you give us some illustration in the Japanese Army where a date certain could be fixed in the order for the change of command?

A When the fixing of the date for the change of command would not cause inconvenience or if it would be possible to state exactly such dates, then it would appear on the order.

Q Assuming that the conditions of a certain territory is known, in a certain month, let's say for the month of December, and assuming that in January you are appointed

to take command of that territory and you are informed of the conditions existing in that territory in the month of December. In January then, would it be proper to state in the orders the date on which the change of command would take place?

MR. BONDA: Objection to the question unless you tell in the hypothetical question what those conditions are. Just informed of the conditions doesn't mean a thing.

MAJOR FOJAS: The tactical situation in the territory.

MR. BONDA: What is it, good, bad -- it makes a difference.

MAJOR FOJAS: It could be bad or good.

MR. BONDA: That is what we want to know. We object unless you tell what the conditions are.

MAJOR FOJAS: This witness is an expert in the Japanese Army and I don't think it is necessary to state those conditions. When I state the conditions are known, it is up to the witness to qualify his answer if he wants to.

MR. BONDA: When you ask the opinion of an expert, when you put a hypothetical question to him, you should set or state the facts in the case about which you want him to testify. You must include all elements of the situation so he can intelligently answer the question. If he is apprised of the situation and if there is no activity, I suppose you can't fix the date?

MAJOR FOJAS: I would like to interrupt defense

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counsel and say that this witness understands English. I have given a certain set of facts and if they are not adequate he may so state.

MR. BONDA: It is for the Commission --

MAJOR FOJAS: No, it is for the witness to understand the facts.

MR. BONDA: It is for the Commission to determine whether the facts are adequately stated.

MAJOR FOJAS: Those are the facts upon which I want the opinion of this witness.

MR. BONDA: It is the facts of the case that should be adequately stated.

COLONEL PARMELEE: Will the reporter read the question, please?

(Question read as directed.)

COLONEL PARMELEE: The witness is an intelligent man and he can give an answer to that question. He can state that there are certain things not stated in this general question that he might have to have to consider. The question is believed proper and the objection is overruled, if there was an objection.

MR. BONDA: There was an objection, and it was based on the fact that to this witness, as an expert witness, it is not a proper question. The prosecutor should know how to put a question to an expert. You have a different set of rules for that. One of the rules is that the hypothetical question must include all the facts in the case in which you wanted him to give an opinion, the exact facts just as I put it to him when I questioned him with any

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hypothetical question.

MAJOR FOJAS: Those are the facts on which I want the opinion from this witness.

MR. BONDA: You can't say it is all the facts when you haven't told him what the conditions are you are referring to. The Court has ruled and let's go on.

MAJOR FOJAS: There is already a ruling. The objection is overruled, and I don't see why defense counsel should state those things again unless it is for the witness to understand what he has in mind.

A What do you mean by "conditions?" I couldn't give any opinion unless you qualify such abstract meanings for "conditions." And also, if you are going to connect my present testimony with an incident to which you may refer to in the future, I wish that you would state the conditions of the incident you may bring out in the question you are going to give now. If there are going to be different conditions, I believe I would not be able to answer your question.

TS(1)ss

Q As a military expert in the Japanese Army, can you answer this: Assuming that there is a report on the bad situation of the guerrillas in a certain island in the month of December, and assuming that that commander is to be appointed to take command over that region in the month of January, and assuming that that new commander is informed of the bad situation of the guerrillas in that island in the month of December, by virtue of which this new commander is assigned in that region, would it then be proper, if you were a superior officer, to include in the order the date when the change would take place?

MR. BONDA: Those are not the facts in this case. If you want the witness to step out I will argue it when he is not here, so you can't say that he heard what I said and was guided by what I said.

MAJOR FOJAS: I submit, sir, the question is proper.

MR. BONDA: I want to argue it, and if you want the witness here okeh.

MAJOR FOJAS: I am just stating my position. It includes a set of facts upon which a military expert in the Japanese Army may be able to make an opinion. Now, if you are going to argue the question I would request the witness be withdrawn.

COLONEL FARRELEE: Will you instruct the witness to please withdraw out of the hearing of the Commission?

(Witness withdrawn.)

MR. BONDA: As I stated before, sir, to put a hypothetical question to a witness as an expert, it must contain all the elements, all the facts in the instant case, and the purpose of that is so that the Court, or the Commission, can be

guided by his answer. Now, here are a set of facts, and here is his answer, and it fits this case, and therefore his answer has some validity. Apparently the prosecution has come around to my way of thinking; however, he did not state conditions as they existed; he did not state that there were two commands that he was supposed to replace, one in the northern part and one in the southern part. He didn't state whether he knew as to where the conditions were bad, or where they weren't bad or which was an important position and which was not. Now, a hypothetical question can be submitted to an expert, but it must contain all those factors, sir, and if the Court wants me to make a memorandum on that, there is plenty of law that will sustain me on that point, and I submit, sir, that his question was not proper; that it did not contain the facts as they are in the instant case.

COLONEL PARKELEE: Well, I should think any intelligent man to whom that question was propounded, even though he were not a military expert, could answer that question.

MR. BONDA: But the answer to that question would have no validity in this court. Now, the question put to him was as follows: Supposing in December you knew of the conditions, and you in January were told to come down there, and the conditions are that the guerrilla activities are bad; would you fix a date -- and he will say -- I don't know what his answer will be, but assuming that his answer is "yes, I would fix a date."

COLONEL PARKELEE: I know what it would be.

MR. BONDA: Well, we have the same set of rules, whether it is a military commission --

COLONEL FARMELEE: He is not required to answer "yes" or "no," to a thing like that, but I know what his answer will be; it is an easy question to answer.

MR. BONDA: All right, but supposing it is an easy question, and supposing we know what his answer would be, it still would have no validity in this case, because those were not the facts, and we can't say, "Well, he will ask us what other facts were there." Those were not the facts.

COLONEL FARMELEE: Well, I will make a ruling so we can get on with the case. The prosecution has propounded the question, and it is considered a proper question, and the prosecution apparently considers it necessary to ask the question in presenting his case, and the Commission's viewpoint is that it may lead to some trend of thought, or some information that may have some probative value. At any rate, the ruling is made legally that the question is considered proper.

(Witness returns to courtroom.)

A The question states that the guerrilla situation is bad, but to what extent -- it does not state specifically to what degree the guerrilla situation is bad.

Q Then suppose it is bad to the utmost degree, to the highest degree.

MR. BONDA: I object to that as being the description of what conditions are.

COLONEL FARMELEE: Well, the witness has asked for a clarification, and the prosecutor has given - -

MAJOR POJAS: Yes, sir.

MR. BONDA: I object to that as a clarification.

COLONEL FARMELEE: Well, it isn't clarification, but it is for more specific defining of the question.

MAJOR FOJAS: The worst situation that is conceivable, the worst situation that you, as a witness, could conceive. He is being philosophical, sir.

MR. BONDA: What was that?

MAJOR FOJAS: Never mind.

MR. BONDA: What does the record show?

(Record read.)

MR. BONDA: I have been called everything else.

A I would be willing to give my general opinion, or a general answer to that question, but if this line of questioning would lead to my being affected later on, I wish that the question would be made more specific; for example, the guerrilla situation was bad in this respect, and in this respect it was bad. Such specific conditions would aid me in answering the question also in a positive manner. It doesn't matter whether it would lead to the advantage of the prosecution or the defense, but what I mean is that the question ought to be more specific so I can give a positive answer. You asked me a tactical question, but you gave only the tactical situation of the enemy, and besides that you stated the enemy condition as being very bad. Your conception of the worst, and my conception of that might be different. I wouldn't be able to give an opinion or an answer to a tactical question in which only the tactical situation of the enemy is stated.

Q Do you mean to tell us that you cannot answer that question even if I tell you that the bad situation of the guerrillas may be the worst that you as a witness can conceive?

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A You might say that the guerrilla situation is very bad, but if the friendly force is strong, then the answer might be different.

Q All right, supposing I tell you that the guerrilla situation is bad, and that the Japanese forces were always on the defensive, would you now answer the question?

A You said on the defensive, but again with regards to defense there are different kinds of conducting defense, and to what extent would the defense be carried out?

Q All right, you give us an answer to that question, and make all the qualifications that you want to make. State all the situations that you want to make.

MR. BONDA: If the Court please, I don't think we have enough time for that --

MAJOR FOJAS: Oh.

MR. BONDA: -- if we were going to base that answer on all possible situations, we would probably be here for another month. The situations should be stated by you.

MAJOR FOJAS: I don't care. I want him to answer the question, and if it takes us one year to get the answer, I am willing to do that.

MR. BONDA: We are concerned here with the facts of one case only, and that is the reason for the rule. Now, if the Court wants a recess until I get the Court the rules on expert testimony, I will be glad to do it. The rule is that you must fit the facts to the instant case, and now we can avoid all this if the prosecutor would do that. It comes right back to my original objection.

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COLONEL PARMELEE: There is no doubt in the minds of the Commission that the ruling is sound enough. The question is hypothetical, and in general it fits a certain situation, and in the first place the witness has by some assumption been considered an expert, and that has never been brought out whether he would be an expert. He is an army officer of considerable experience, but he has not been questioned as to his particular knowledge of this particular specialty that he is being examined on.

MR. BONDA: Well, I do not object on the ground that he is not an expert. If they ask him a hypothetical question as an expert, it would be up to me to object that he has not been qualified as an expert. I do not object on that ground. I want the testimony to come in, and I want the Commission to get a picture of it, but I don't think the Commission can get the proper picture unless the facts are fitted to the facts in this case we are concerned with.

MAJOR FOJAS: May I say a word, sir? I think defense counsel is too far away from the point. This witness testified that one kind of order is where there is a fixed date, and I asked him to give instances where fixed dates should be stated in the order, and he didn't do so; he repeated his answer. Now, I am giving him this situation to find out whether that would be one of those cases where a fixed date could be made, and that is testing the validity of the statement of this witness.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

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COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

MAJOR FOJAS: I think I have a pending question, sir. We can ask the witness if he can answer the question.

COLONEL PARMELEE: Has the question been put yet?

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: Let's ask the witness if he has the question clearly in mind and can answer it.

A Will you please interpret the last question?

MAJOR FOJAS: I think I better restate the question.

COLONEL PARMELEE: Have you the question written out?

MAJOR FOJAS: No, sir, but I can remember it.

COLONEL PARMELEE: Very well.

Q Assuming that the guerrilla situation in a certain territory is bad to the extent that the Japanese forces were always on the defensive; assuming that such a situation existed in the month of December and is made known to a new commander who would be appointed to take command of that territory, and assuming that the assignment is made in January. If you were the superior officer and you were to draw an order assigning that new commander in that territory, would it be proper to fix a date in the order upon which the change was to take place?

MR. BONDA: Object on the same ground as stated in my objection to the previous question.

COLONEL PARMELEE: Objection not sustained.

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A I would like to have the conditions stated more clearly instead of just saying the conditions were bad.

Q The worst situation that you can conceive.

A Now in answering the question, I would like to ask the prosecutor several conditions as a foundation for basing my answer.

Q You better state the conditions and make the answer pursuant to those conditions which you have in mind.

A In that case there would be different conditions, so my answer would be indefinite. I would like the prosecutor to fix the conditions.

Q All right, you put the conditions which you have in mind and make the answer.

A I would like to have the basis, otherwise the answer would be indefinite and it would be too long, and I am afraid it would appear to be irrelevant.

MAJOR FOJAS: I don't care if it is long.

COLONEL PARMELEE: The prosecution is asking the question. Now the witness states that he does not have enough specific information in the hypothesis on which to base an answer; is that the situation? The prosecution wants him to enumerate all the specific conditions he must have before he can answer, is that correct?

MAJOR FOJAS. I really don't know what he wants.

COLONEL PARMELEE: I think that is what he wants. He doesn't feel he can answer the question in the form it is now. He has got to have more assumption which he can consider in answering the question. Now do you want him to state the information he wants?

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MAJOR FOJAS: I want him to make an answer to the question and make all the qualifications he needs to be made. And he can assume facts which he feels is not included in the question.

COLONEL PARMELEE: Very well, he is to make qualifications if he can, all the qualifications that he wants.

A Now, under these conditions, for instance, I want to ask the prosecutor about the transportation facilities available. If I just explain my opinion here under which the conditions told by the prosecutor is different from what I think, then I believe my testimony here would be useless.

Q You answer the question and state the necessary conditions you have in mind and make whatever answer you think you can make under such circumstances, and the question as a basis for your answer.

A Now, if I would answer that question in my own way, the answer would be too vague, so I would like to ask the prosecutor a few questions and base my answer according to those conditions.

Q You just answer the question, and we don't care if it would be too vague or not. Does he understand what I have just said in English?

COLONEL PARMELEE: He probably does. He admitted he understood some English, but he wants to testify in Japanese, is that right?

INTERPRETER TACCAD: Yes, he likes to testify in Japanese.

COLONEL PARMELEE: I think he understands English.

TS(3)mm

I think that is understood.

MR. BONDA: Yes, but not well enough to testify in English.

MAJOR FOJAS: But whenever I talk he makes some answer as if he understood what I said in English.

MR. BONDA: He is continuing his answer.

MAJOR FOJAS: Let's ask him to answer the question and make all the qualifications he would like.

COLONEL PARMELEE: Let's make it clear to the witness, that the hypothetical question can have an answer, but the answer, of course, perhaps, the witness feels must be a general answer, and he can state all the qualifications in his answer, the reason he can't give a specific answer, is that the point here?

TS(3)mm

MAJOR FOJAS: Yes.

COLONEL PARIELEE: Does the witness understand that; I think he does.

A Before making my answer, I would like to ask the prosecutor one question. First, I would like to ask the prosecutor whether all the men in the new company will take over the command of the men in the company which he is supposed to replace, or whether the new commander will just go in as a reinforcement?

Q The question is, in that particular territory, a new man is assigned to assume command over all troops in that territory, and be responsible for the security of that territory.

MR. BONDA: But you haven't answered his question.

MAJOR FOJAS: I know, I am asking him the question.

A About the men, are these men supposed to be the men of the company of the old commander, or his men?

Q He would be taking his men there and assume command over all the men already stationed in that place.

A So actually you mean the superior officer orders the new commanding officer to reinforce the men in the territory?

Q If you feel that you have to make that qualification in your answer, state it in your answer.

A I feel my testimony would be useless ---

MAJOR FOJAS: Never mind.

A (continuing) --- first, because I want to know the conditions at the time so that my testimony would be of use to this case, otherwise things would be irrelevant and I don't see any point that my testimony would be for any use.

MAJOR FOJAS: Please tell him I have given him a set of facts and he can make his answer in accordance with those facts.

(Interpreter Ishita interpreted to the witness.)

A . You have been saying December, by December, what do you mean?

Q Previous month to the date of the new assignment.

A As qualifying conditions I will give five of them. For instance, the new commanding officer would take over the territory wherein there were three separate units under one echelon, and the new commander will take along with him his men; second, difficult communication facilities; third, difficulties in transportation and the enemy situation, and the terrain in the territory; fourth, the three units are located in places that are far from each other, and the fifth, the new commander has no knowledge of the conditions existing prior to his arrival.

INTERPRETER TACCAD: We are having a little difficulty in taking down the exact organization, and exact chain of command of the three units and the witness suggested he be allowed to draw a diagram so it would facilitate translation.

COLONEL PARMELEE: Very well.

A Under these conditions the superior officer issuing such an order will not specify the date in the change of command. The order would be so worded that ample time shall be given the new commander to actually take over the command of the territory.

Q Now, will you give a concrete instance where a superior officer will make an order and specify the date when change of command will take effect?

A Please give me time to think of the conditions. Under the following conditions I think it would be possible to fix the date. First, as regards the enemy situation, the condition is such that we could make adequate movements. The second, as regard to terrain, the terrain is such that no difficulties would be encountered in the transportation; third, the communication facilities excellent; fourth, the new commanding officer is informed by the officer issuing the order regarding the conditions in the island, and understands them, and fifth, all the company commanders for the three companies are assembled in one place; and sixth, marine transportation goes on as scheduled.

Q Is there any formal procedure in the Japanese Army by which a new commander absorbs,under his command, units which were not originally within his command?

A Yes, if there is an order from a superior officer, that is possible.

Q What is the formal procedure?

A The officer is supposed to receive orders from his superior in order to absorb them.

Q You mean that the officers of the units to be absorbed under the command of the new commander will receive orders from the new commander, is that what you mean?

A The superior officer will issue the order to all parties considered, to the new commanding officer and the

men whom he is supposed to be the commander.

Q And the superior officer will communicate this order to the new commander, as well as the commander to the unit to be absorbed, at about the same time, is that correct?

A Yes.

Q And the moment the commanders of the units to be absorbed are informed of this order from the superior officer, those units are supposed to have been under the command of the new commander, is that correct?

A No, that is different, ---

Q And when is the command supposed to take effect?

A (continuing) --- the wording of the order is such that the time is fixed regarding the shift in the command.

MAJOR FOJAS: I gave the question in English which has never been interpreted to the witness. I want to find out if he was apprised of that question before he gave an answer.

INTERPRETER ISHITA: Actually I did not translate it to him. You want me to translate the question to him?

MAJOR FOJAS: Yes, I want to find out.

INTERPRETER ISHITA: What is the question?

(Question was read as directed.)

A Now, if the date is fixed, then the command is supposed to take effect on that date, whereas if there are provisions in the order, then the change of command will take effect according to the provisions specified in the order.

Q Now, if the date of the taking effect of the absorption of those units into the command of the new commander is not fixed, is there any formal procedure by which those dates are fixed under the command of the new commander?

A That depends upon the wording in the order. If you can show me the order, then I might be able to determine when the command is supposed to take effect.

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Q But I am asking you if there is any formal procedure in the Japanese Army by which a unit is absorbed under the command of one commander if there is no fixed date in the order?

MR. BONDA: If the Court please, again we come to the question that an expert is being asked about something that is not in the evidence. I don't want the impression to get out that I am not objecting because it isn't in evidence the fact the unit was absorbed; on the contrary the evidence is clearly that the Fukuda and Yoshiyama Battalions were never absorbed by Colonel Yamaguchi; they were put under his command and remained the Yoshiyama Battalion, and remained the Fukuda Battalion. It was merely those battalions who were commanded by majors who were put in the command for some short time of Colonel Yamaguchi. They never were absorbed. There is nothing in the evidence to show they ever were absorbed.

COLONEL FARRELLE: Is this question designed to bring out the formality that takes place?

MAJOR FOJAS: Yes, sir.

MR. BONDA: Of absorption, sir.

COLONEL FARRELLE: You object to the word "absorption?"

MR. BONDA: That is what the prosecutor has in mind. He previously asked about one unit going under the command of another unit, and now he is asking about one unit being absorbed by another unit, and there is nothing in the evidence that any absorption took place.

COLONEL FARRELLE: That is correct. I think the situation has been portrayed by the testimony so far, that is, that Colonel Yamaguchi really had command over several units which retained their identity, but, in other words, it was kind of a grouping of what were formerly independent units, is that

correct?

MAJOR FOJAS: That is correct.

COLONEL FARMELEE: Then the question is about the use of the word "absorption," is that correct?

MR. BONDA: Yes sir, absorption means that they became part of the Yamaguchi Battalion. They didn't. They retained their same unit designation throughout - - I don't know whether it was the 82nd, or what it was, but throughout they retained their unit designation, and Colonel Yamaguchi's Battalion retained his unit designation.

COLONEL FARMELEE: Will the reporter read the last question?

(Question read.)

MAJOR FOJAS: I will rephrase the question to read: When a unit is placed under the command of one commander.

COLONEL FARMELEE: Then you want to get at the formal mechanics?

MAJOR FOJAS: Yes sir.

COLONEL FARMELEE: When the command of the new commander is assumed, is that it?

MAJOR FOJAS: That is correct, sir.

COLONEL FARMELEE: Let's take a brief recess.

(Short recess.)

COLONEL FARMELEE: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness through Interpreter Taccad.)

MAJOR FOJAS: I think I have a pending question.

COLONEL FARMELEE: The question was to be rephrased, I believe.

Q Is there any formal procedure by which a unit is placed under the command of a new commander?

A The issuing of an order to that effect is a formal procedure, but just what do you mean by "formal procedure?"

Q Is there any formality by which a unit is placed under the command of a new commander after the order has been issued?

A There is no special formality in the carrying out of such an order. The procedure would depend on such things as the situation prevailing in the territory of the unit, the enemy situation, and other factors.

Q Where were you assigned in the Philippines when you first came on 13 May 1943?

A I answered that in my previous testimony.

Q I want you to answer it now.

A Cebu.

Q How long did you stay in Cebu?

A The base of the division was in Cebu, and until the division left Cebu I was there.

Q When did the division leave Cebu?

A The division left during the latter part of August, 1944.

Q And from Cebu where were you assigned after the latter part of August, 1944?

A I was assigned to division headquarters.

Q Where?

A At Iloilo.

Q Until what date did you stay in Iloilo?

A Until December 13, 1944.

Q Before December 13, 1944, you were never assigned to Negros, were you?

INTERPRETER TACCAD: I ascertained whether he meant 1944, and the witness in turn corrected himself and said "December 12."

COLONEL FARMELEE: Let's get the record straight.

MAJOR STEVENS: What year?

INTERPRETER TACCAD: 1944.

Q Before December 12, 1944, were you ever assigned to Negros?

A No.

Q How were you able to know the movement of the Yamaguchi battalion in Negros during the period from May 13, 1943, to 12 December 1944?

A As a staff officer it was but natural being in charge of operations I would know about the activity of the different units.

Q Are you as familiar with the movement of the other units in Negros during the period from 13 May 1943, to 12 December 1944, as you were familiar with the movement of the Yamaguchi battalion?

A Yes, in general I knew.

Q Did you testify that during the months of August and September, 1944, Colonel Yamaguchi was responsible for the security of Negros Island excepting the territory east of Manapla?

MR. BONDA: I think he said, "north of Manapla."

MAJOR FOJAS: North of Manapla.

MR. BONDA: And then he pointed out the northeast on the map.

A Will you please point out exactly on the map the way I testified, so I will be able to recall?

Q You mentioned in your testimony the town of Manapla, did you not?

A I did not.

Q And did you not testify in the case of the United States of America vs Masao Nanjo on 12 November 1945, that in

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August and September, 1944, Colonel Yamaguchi was responsible for the security of Negros Island excepting Fabrica and La Carlota?

MR. BONDA: What volume is that in?

MAJOR FOJAS: Instead of "La Carlota," that is "San Carlos." Volume XXII.

MR. BONDA: Volume XXII of the Nanjo case?

MAJOR FOJAS: Yes.

A Did you say 1945?

Q The date you testified, December 12, 1945.

A I did not testify in 1945.

Q 1946.

A I remember that I testified in the Nanjo case, but I did not testify to that thing.

Q Will it refresh your memory if I read to you the following questions and answers which you gave in that case? I am now reading from Volume XXII, Page 1274 and 1275 of the case of the United States of America vs Masao Nanjo.

"Q Do you have occasion to know what the Yamaguchi responsibility covered during the months of July and August and September in 1944 on Occidental Negros?

"A Yes, I know them in general.

"Q What was the responsibility at that time?

"A They were responsible for the security of Occidental Negros; however, this excludes the areas about Fabrica and San Carlos."

Would that refresh your memory?

A Without any interpretation I understand the question. However, your last question was very different from what you

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just read.

Q Do you know any reason why --

MR. BONDA: What was the last thing he said? We didn't get an interpretation of it, did we? He said "something hasn't been interpreted."

MAJOR FOJAS: He said he understood the question without the interpretation.

MR. BONDA: Yes, but he said something else.

A Will you please give me once more the question?

Q If you want the question you wait and the question will be interpreted to you.

A Yes, I think I was asked that question (referring to the record.)

Q And do you remember now having given that answer also?

A Right now I don't remember.

Q Now, how do you remember the date, 5 March 1945, when you said that was the date of the wounding of Colonel Yamaguchi?

A I have two reasons for remembering that date.

Q What are those reasons?

A The war started on the 8th of December, and it was on the 8th of the month that we read the imperial rescript which declared the start of the war. In the Japanese army we read that on the 8th, and so we had a ceremony on the 8th. Three days before that was the date when Colonel Yamaguchi was wounded, so I remember it.

My second reason is that two days before the ceremony, I went to visit Colonel Yamaguchi. It was night

time, and there had been an air raid, and after the air raid we rode in an automobile, and in a place where guerrillas were frequently seen, the car broke down. It was an isolated spot, and we had a bad time pushing the car for about one hour. Together with me were one staff officer and two soldiers. That was two days before the ceremony, and one day after Colonel Yamaguchi was hurt, so I remember it.

MAJOR FOJAS: I have no further questions, sir.

COLONEL PARMELEE: The Commission will now recess until 1300 hours this date.

(The Commission recessed at 1130 hours, to reconvene at 1300 hours.)

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AFTERNOON SESSION

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL FARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

HIDEMI WATANABE,

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

REDIRECT EXAMINATION

BY MR. BONDA:

Q You stated at the end of the cross-examination this morning that you remembered the date that Colonel Yamaguchi was wounded because it was three days before the Imperial Rescript which was made at the beginning of the war. Now the Imperial Rescript was the 8th day of December, will you account to us how you fixed that date with reference to the 5th day of March, 1945?

A The Imperial Rescript or Declaration of War was issued on the 8th of December and the Japanese Army observed this Imperial Rescript Day on the 8th of every month. We had a ceremony on the 8th of every month, that is, the reading of the Imperial Rescript. Now on this March 8th, three days before that, was the date on which Colonel Yamaguchi was wounded

so I remember the date.

Q You remember the date as being the 5th day of March because it was three days before the reading of the Imperial Rescript on the 8th of March, now is there anything in particular that puts you in mind of the month?

A I remember the month and also the date because it was in March that the car broke down when we were riding in it and we were in a bad fix for about one hour.

MR. BONDA: The defense has no further questions.

COLONEL FARMILEE: Recross-examination?

MAJOR FOJAS: No questions by the prosecution.

COLONEL FARMILEE: Questions by the Commission? There appear to be none, the witness is excused.

(Witness excused.)

MR. BONDA: Defense calls as its next witness Chiaki Kanda.

CHIAKI KANDA,

a witness for the defense, being first duly sworn, testified as follows through Interpreters Tacoad and Ishita:

DIRECT EXAMINATION

BY MR. RODDAN:

Q What is your name?

A Chiaki Kanda.

Q How old are you?

A Twenty-eight.

Q Were you a member of the Imperial Japanese Army up to the time of the surrender?

A Yes.

Q What was your rank?

A Medical First Lieutenant.

Q What was your duty prior to the time of the surrender?

A Medical Officer of the Yamaguchi Unit.

Q In the month of December 1944, and January, February and March, 1945, were you assigned to the Yamaguchi Unit?

A Yes.

Q And were you stationed in Occidental Negros in those months?

A Yes.

Q Do you know a Japanese officer by the name of Lieutenant Nanjo?

A Yes.

Q And in the month of December 1944, did you see Lieutenant Nanjo at any time?

A Yes.

Q Now where did you see him the first time in December?

A At the hospital.

Q Where was the hospital?

A At Bacolod.

Q Do you remember the date when you first saw Lieutenant Nanjo at the hospital in Bacolod?

A I don't remember exactly, I think it was on the 10th.

Q 10th of December, is that correct?

A I am sorry, I made a mistake, it was before the 10th, not on the 10th.

Q What were the circumstances when you saw Lieutenant Nanjo at the hospital at that time?

A He had been shot in the leg accidentally with a revolver.

Q Was he in the hospital to receive treatment for the wound?

A Yes.

Q Did you see the wound?

A Yes.

Q Will you tell us when Lieutenant Nanjo was wounded, if you know, that is the date he was wounded?

A I don't remember.

Q You saw him on the 10th of December the first time, is that correct?

A I saw him in the hospital before the 10th.

Q Had he been wounded when you saw him; had he already been wounded at that time?

A Yes.

Q Do you know how many days he had been in the hospital when you first saw him?

A I am sure that I saw him the next day after he entered the hospital.

Q Do you know where he was wounded, that is, I don't mean where on his body, but what location he was in when he was wounded?

A I heard that he was wounded in Bago.

Q And do you know the circumstances as to how he was wounded?

A I don't know.

Q How did you happen to be at the hospital when you saw Lieutenant Nanjo?

A I just went to the hospital for a visit.

Q And at that time were you on duty as a medical officer?

MAJOR FOJAS: Object to the question unless it is specified where and when.

MR. RODDAN: At that time, it referred to the time he saw Lieutenant Nanjo in the hospital in Bacolod.

MAJOR FOJAS: You mean in the hospital?

MR. RODDAN: I'll withdraw the question and rephrase it.

Q The question is, at the time you saw Lieutenant Nanjo in the hospital in Bacolod, what was your duty there?

A I was medical officer of the Yamaguchi Unit.

Q How do you know the date that you have mentioned was the 10th of December?

A I saw him on the second time during the middle of December, and the first time I saw him was about one week before that, so I am sure it was before the 10th.

Q When you say you are sure it was before the 10th, you mean the first time you saw him was before the 10th of December, is that correct?

MAJOR FOJAS: It has been answered.

MR. RODDAN: I want to place it whether it was the first time he saw him, or before he was wounded.

MAJOR FOJAS: It has been answered.

MR. RODDAN: I don't think the question has been asked like that before. I want to pin the date down.

COLONEL PARMELEE: Will the reporter read the question, please?

(The question was read as directed.)

COLONEL PARMELEE: First time he saw him where?

MR. RODDAN: First time in the hospital.

COLONEL PARKER: That question has been answered.

Q Did you see Lieutenant Nanjo any time after the 10th of December?

A I saw him on or about the 15th.

Q And will you tell us what the condition of Nanjo's wound was at that time?

MAJOR FOJAS: When? First or second time?

MR. RODDAN: Second time.

A The wound was still bad. Nanjo couldn't walk yet, and there was still some pus in the wound.

Q At that time was Nanjo confined to his bed?

A Yes,

Q Do you know how long he remained in the hospital at Bacolod?

A I remember that he stayed in the hospital until the middle of March, 1945.

Q Did you have occasion to go to the hospital on any occasion between the middle of December and the middle of March?

A Yes.

Q And on these other occasions, did you see Nanjo present every time you visited the hospital?

A Yes.

Q Do you know whether Nanjo was able to leave the hospital any time prior to the middle of March?

A I don't know.

Q Now, when you were assigned to the Yamaguchi Unit during the months of December, 1944, January, February and March, 1945, who was your commanding officer?

A Colonel Yamaguchi.

Q Now, while you were a member of that unit, do you know whether or not Colonel Yamaguchi was ever wounded?

A Yes, he was wounded.

Q Do you know when he was wounded?

A I remember that it was either on the 5th or 6th of March, 1945.

Q Did you see Colonel Yamaguchi on either the 5th or 6th of March, 1945?

A Yes.

Q Where did you see him?

A At that time the whole unit had gone to Pontevedra.

Q Were you present when Colonel Yamaguchi was wounded?

A Yes.

Q Did you see him wounded?

A Yes.

Q Will you please tell the Commission how Colonel Yamaguchi was wounded, if you know?

A We had surrounded several guerrillas in the vicinity of the Pontevedra garrison, and near the garrison there was a coconut grove, and the guerrillas were hiding there. In the course of the fight, one Japanese soldier was hit, and he fell down. Colonel Yamaguchi seeing this wanted to save the man, so he exposed himself and went out to where he fell down. It was then that he was hit in the arm and in the shoulder.

Q Do you know whether or not Colonel Yamaguchi received any first aid at the time?

A I treated his wound about two or three minutes after he was wounded.

Q Now, when you say it was on the 5th or 6th of March, 1945, how do you know it was either one of those days?

A On the 9th of March I had dengue fever, so I returned to Bacolod, and on the next day, that is the 12th, I was promoted to First Lieutenant, so I remember the date.

Q After Colonel Yamaguchi was wounded, do you know whether or not he went anywhere?

A He returned to Bacolod.

Q Did he receive any further treatment, do you know?

A I know that he was treated at the hospital in Bacolod.

Q After that date when you saw him when he was wounded when was the next time you saw Colonel Yamaguchi?

A On or about the 20th of March, 1945.

Q Where was that that you saw him?

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A I met him at Barrio Lourdes near Bacolod proper.

Q What was Colonel Yamaguchi's condition at that time with regard to his wounds?

A The wound on the shoulder had almost healed, but his arm was still painful.

Q When you saw him then, this last time, was he in the hospital or was he at his home?

MAJOR FOJAS: I object to the question, sir, on the ground that --

COLONEL PARMELEE: Leading?

MAJOR FOJAS: It is not only leading, but the question has been answered before.

MR. RODDAN: I never asked him that question before.

MR. BONDA: I don't remember when it was asked.

MAJOR FOJAS: What is that, sir?

MR. BONDA: Can you tell us where it was asked?

MAJOR FOJAS: He just testified that he saw him in Barrio Lourdes.

MR. BONDA: He didn't say whether it was the hospital or his home.

MAJOR FOJAS: Then the question is leading.

COLONEL PARMELEE: The objection is sustained insofar as the question is leading.

Q Well, where was Colonel Yamaguchi when you saw him this last time?

A It was at the place about four kilometers north of Bacolod.

Q Was he in a hospital?

MAJOR FOJAS: I object to the same question.

MR. BONDA: That is a perfectly proper question. They have put words in their witnesses' mouth throughout, and now we ask one simple question, and he objects to it as leading.

MAJOR FOJAS: I can see why you are like that, you are insisting in putting the words into the mouth of this witness that Colonel Yamaguchi was in the hospital.

MR. BONDA: As a matter of fact, he was not.

MAJOR FOJAS: That will contradict your theory that Yamaguchi was in the hospital up to the 29th.

MR. BONDA: If you had been listening to the testimony you would have found out that he was not in the hospital, but that he reported to the hospital for treatment, and that he was confined to his home, and went to the hospital for treatment each day. It is in the record, so I am not putting words in his mouth that he was in the hospital. If you had been listening to the testimony, you would know that that is what the testimony has been.

MAJOR FOJAS: I have been listening to more than that. He was forced to leave the hospital in spite of his wounds.

MR. BONDA: Because the hospital was crowded.

MAJOR FOJAS: Nevertheless, I object to the question because it is leading.

MR. BONDA: To ask him was he in the hospital, sir, is not a leading question. They have asked throughout was he in that barrio or this barrio. The question is perfectly proper. All of a sudden they become sticklers for what is a

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leading question. Throughout their testimony they have been asking those questions, and I am not putting words in his mouth, because he was not in the hospital.

MAJOR FOJAS: I submit, sir, the question is leading.

COLONEL PARMELEE: Lawyers are trained in framing of questions, and I am sure we have good lawyers in this case. Can you not ask a question that will not be leading, but will find out within a restricted area of where he has testified he was, just where he was?

Q In the place where you saw Colonel Yamaguchi this last time that you are just referring to, will you tell us where he was when you saw him?

A That was at the place where they sought shelter from air raids.

Q As a member of Colonel Yamaguchi's unit, do you know what his reputation was with regard to his character?

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A Do you mean within his unit?

Q That is right.

A His reputation among the soldiers and enlisted men is that he was a man of character, and to the enlisted men he was especially kind at banquets and meetings. He usually admonished his men to be good to civilians.

Q Do you know what his reputation was among the civilian population?

A While I was in Bacolod I saw Colonel Yamaguchi clothed in civilian clothes, and during his walks I often saw him greet the civilians cordially and sometimes he raised his hand in greeting. As a result, I noticed that the civilians respected him.

Q While you were a member of the Yamaguchi unit did you ever hear whether or not the civilian population made any complaints against Colonel Yamaguchi; that is, against his conduct?

A No, I did not.

MR. RODDAN: No further questions.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

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COLONEL PARKELEE: The Commission is in session.

CROSS-EXAMINATION

BY MAJOR FOJAS:

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

Q Was it in the hospital when you first learned of the wounding of Lieutenant Nanjo?

A Yes.

Q As medical officer of the Yamaguchi Unit, to what were you attached, to the battalion headquarters or any company of the Yamaguchi Unit?

A I was attached to the battalion headquarters.

Q And on the date you went to the hospital, where was the battalion headquarters of Colonel Yamaguchi?

A It was in Bago.

Q Did you come from Bago when you went to the hospital?

A Yes.

Q Do you remember the date when you left Bago, before going to the hospital?

A About two days before I went to the hospital.

Q Two days before you went to the hospital you already left Bago, is that what you mean?

A Yes.

Q Before you left Bago did you ever hear of the wounding of Nanjo?

MR. BONDA: If the Court please, he answered that when he said he learned it when he went to the hospital.

MAJOR FOJAS: I'll withdraw the question.

Q Why did you go to the hospital?

A I had just come from Bago so I went to visit the doctor at that hospital.

Q Did you visit that doctor two days after you had left Bago?

A Yes, it was about two days I think.

Q Was that the main purpose why you left Bago?

A No, I went to get some medicine.

Q Your main purpose for leaving Bago for Bacolod was to bring some medicine back, is that true?

MR. BONDA: Objection, it might have been a medical depot, not a hospital. Objection to the question, sir.

COLONEL FARMELEE: On what grounds?

MR. BONDA: There is nothing in the evidence that he went to the hospital to get medicine.

MAJOR FOJAS: That is why I am asking him.

COLONEL FARMELEE: He testified he went to get medicine and he testified he went to the hospital and I assume the question is now asked to clarify it.

MR. BONDA: He said he went to the hospital to get some medicine. Now that is based on a fact that is not in evidence.

COLONEL FARMELEE: Is that correct, he added.

MR. BONDA: It makes no difference, he can ask him why he went to the hospital or why he went to get the medicine and why he went there, but there is always the danger the witness is going to be misinformed when he is asked, you went there to get the medicine, didn't you? And then as a matter of

fact there isn't anything in the evidence to that effect. It states as a positive fact something that is not in the evidence.

COLONEL FARMELEE: The witness, I presume, has an education of college level and when he is asked that question, is that correct, under the assumption the prosecution has the impression and he is trying to verify it.

MR. BONDA: The prosecutor is not supposed to base facts on any impression he has.

COLONEL FARMELEE: He has to make certain conclusions from the testimony and in order to go on on a formal question, he can ask if that is correct.

MAJOR FOJAS: I think I can base my questions on the impression I get from the answers of the witness.

MR. BONDA: That is not a correct statement.

COLONEL FARMELEE: When he says "is that correct", he gives him an opportunity to say yes or no.

MR. BONDA: The reason he asks, is that correct, is because it has to be in question form.

COLONEL FARMELEE: I don't think it is important enough to quibble over, do you want to adhere to the question or do you want to get the information by another question, where did he get the medicine?

MAJOR FOJAS: I think I will adhere to the question as it is.

COLONEL FARMELEE: Objection overruled.

A No, I went to get medicine at the battalion, at the former battalion headquarters, there was medicine there.

MAJOR FOJAS: Did he say former battalion headquarters?

A. There were medicines and other materials left at the place where the battalion headquarters used to be located.

MR. BONDA: I want the record to show that the prosecutor addressed a question to the official interpreter and asked him whether the word "former" was in there, assuming the interpreter had wilfully put in a word that was not in the evidence.

MAJOR FOJAS: I object to the assumption by defense counsel. I asked the official interpreter whether he used the words "former battalion headquarters." Unless there is a malicious mind, no such assumption could be made or taken from that remark.

COLONEL FARMELEE: Let's ask the official interpreter what the question was that was put and what the answer was which he obtained.

INTERPRETER TACCAD: I asked the witness whether it was correct if he went to the hospital to get medicine and the witness answered that that was not correct and he had gone then where the battalion headquarters was formerly located because there was medicine there.

COLONEL FARMELEE: That is the answer he gave?

INTERPRETER TACCAD: Yes, sir.

MAJOR FOJAS: I would like to have that clarified, when I asked that question, I was just after a verification of the answer and I don't like any implication or assumption of bad faith reputed to me as defense counsel is trying to do. When I asked the interpreter the question and he answered me, I took the answer with satisfaction, I took it to be the answer of the witness. I don't see why defense counsel should make any remark like that unless he is just being mean.

MR. BONDA: Inasmuch as the prosecutor does not understand Japanese, I merely wanted in the record the word " fornerly" was not his reply.

MAJOR FOJAS: I asked that after the interpretation was made, and I wanted to inquire whether it was in the answer.

COLONEL PARMELEE: I think it probably was a misunderstanding all the way around.

Q Now, can you recall the date when you arrived in Bacolod for the purpose of getting medicine?

A It was during the beginning of December and I don't recall the exact date.

Q Was it two days before the 10th of December?

A It might have been before that, but I don't recall.

Q Why did you particularly connect the date when you first saw Nanjo in the hospital, the 10th of December?

A I saw Nanjo in the hospital for the second time the middle of that month, and the first time that I had seen him was about one week before that so I merely said it might have been before the 10th.

Q Now, how do you remember that you visited Nanjo for the second time in the middle of December, 1944?

A On or about the middle of December I returned to Bacolod to see the patients who were left there.

Q During your first visit in the hospital, did you see other patients belonging to the Yamaguchi Unit besides Nanjo?

A No.

Q It was only Nanjo that you saw?

A I learned at the hospital when I went there that Nanjo was there, I met him by accident.

Q Now, you said that Colonel Yamaguchi was wounded either on the 5th or 6th of March, 1945, can you not be sure of any of those two days, as to which of those two days?

A I heard later on that it was on the 5th, but as far as my own recollection goes it was on the 5th or 6th.

Q From whom did you hear it was on the 5th?

A First Sergeant Tanaka.

Q How long after the 5th did you hear that?

A When we were in LUPOW I heard it from him.

Q When did you go to LUPOW?

A I went there on or about the middle of March, 1946.

Q So it was in 1946 that you heard for the first time that Colonel Yamaguchi was wounded on the 5th, is that correct?

A No, I remember the date because I was there myself.

Q You said that you heard later that Colonel Yamaguchi was wounded on the 5th, and you said you heard it from Sergeant Tanaka, and you said also you heard it while you were in LUPOW, now I am asking you, if that is the first time you heard it, and that was in 1946?

MR. BONDA: Objection, he is obviously answering the question when he said no it was not the first time he

heard it, he said ---

MAJOR FOJAS: You know your witness is not definite as to the date.

MR. BONDA: Well, ask him whether it was the 5th or 6th.

MAJOR FOJAS: First he told me he is not sure of those two dates, but said later on it was on the 5th, and that is from information that he heard in LUPOW.

MR. BONDA: Object to the form of the question because it is sure to confuse him.

COLONEL PARMELEE: Let's get down to the question. I don't think he can be easily confused, he has a high intelligence level.

MAJOR FOJAS: I am asking him when he first heard Colonel Yamaguchi was wounded on the 5th.

MR. BONDA: Is my objection overruled?

COLONEL PARMELEE: I don't believe you stated you were objecting to the question.

MR. BONDA: I said I was because he already answered the question.

COLONEL PARMELEE: The question is proper.

MR. BONDA: The question is supposed to be clear.

COLONEL PARMELEE: Will the reporter read the question? If I can understand it, I am sure it will be clear enough for the witness to answer.

(The question was read as directed.)

MR. BONDA: You can't tell what is referred to. He heard Colonel Yamaguchi was wounded at the time ---

MAJOR FOJAS: I think, sir, that he is following the trend of the questions, the point in question is of the wounding. He was questioned whether he could be sure which of the two dates he gave, as to the time of the wounding, and he said he could not be, but later on he heard the date was the 5th of March.

MR. BONDA: If the question would be cleared up as to what was meant as to the exact time of the wounding, I have no objection to it.

COLONEL PARMELEE: Will the reporter read back the last three or four questions and answers? Maybe we can clear it up.

(The questions and answers were read as directed.)

MAJOR FOJAS: There can be no doubt as to the point, I think.

COLONEL PARMELEE: The witness has testified that he saw the event, and he also testified that in Lupow, a year later roughly, he heard the date was the 5th, as he recalled it was the 5th or 6th. Well, that is about all there is to it. In other words, the event was discussed which he testified he saw, and Sergeant Tanaka remembers

TS(7)mm

the date and told him that at Lupow it was the 5th or 6th of March.

MAJOR FOJAS: Yes, sir, but he did not answer the last question. When I asked him the first time he heard that Colonel Yamaguchi was wounded on the 5th was while he was in Lupow, and his answer was he remembers when the date was because he heard it while he was there.

COLONEL PADELEE: Well, put the question. I didn't know the last question wasn't put.

A What I remember and know firmly is that it was either on the 5th or 6th, that was a few days before I was promoted.

TS(7)mm

Q So do you mean to say now that this matter about the 5th of March was stated by you because you know it of your own knowledge, and not because you were only informed by Sergeant Tanaka?

MR. BONDA: If the Court please, he has testified the 5th or 6th at all times as being what was within his knowledge.

MAJOR FOJAS: No, sir, it is not at all times because he testified a while ago that it was Sergeant Tanaka who told him that it was on the 5th.

MR. BONDA: That is right, but he himself testified that to his knowledge it was either the 5th or the 6th. That is what has been his testimony throughout.

MAJOR FOJAS: I submit, sir --

COLONEL PARTELEE: Well, let's ask the question. It is clearly a deduction of what he has testified, and it seems to be all right.

MR. BONDA: What is the question, please?

(Question read.)

MR. BONDA: I object to that question. It is not based on the evidence. He stated the 5th or 6th of March of his own knowledge.

MAJOR FOJAS: I have no comment to offer, sir. I submit the question is proper.

COLONEL PARTELEE: Well, technically he said the 5th or 6th.

MR. BONDA: Not technically, sir; actually he said the 5th or 6th.

COLONEL PARTELEE: Well, I believe the date that he testified to should be in the question; that is, if there

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is going to be a relationship between his testimony as to the date or dates that he saw the event, and when he heard about the date later on.

MAJOR FOJAS: I will withdraw that question and I will go over the whole thing again.

Q Can you not be sure now which of the two dates Colonel Yamaguchi was wounded, whether it was on the 5th or on the 6th?

A I cannot.

Q Now, why did you say it was on the 5th or the 6th?

A I became sick on the 8th, and when we went on the Pontevedra expedition about the day after we started, Colonel Yamaguchi was wounded.

MAJOR FOJAS: I have no further questions, sir.

A About a day after Colonel Yamaguchi was wounded, the unit went to the La Carlota Central. We always moved at night, and I find it hard to remember the exact dates.

MAJOR FOJAS: I have no further questions.

COLONEL PARMELEE: Redirect?

MR. RODDAN: We have no further questions.

COLONEL PARMELEE: Colonel Parmelee.

EXAMINATION BY THE COMMISSION

BY COLONEL PARMELEE:

Q You testified that you came to Bacolod from Bago a few days after December 5th. Is that correct? That is, to that effect?

A Yes.

Q And that was for the purpose of getting medical supplies,

EGM(8)ss

from the former battalion headquarters, is that correct?

A Yes.

Q Did those medical supplies that you got belong to the Yamaguchi Battalion?

A Yes.

Q Was there anyone guarding the supplies during the time between when the battalion left and the time you went to get them?

A There were some patients there ?

Q There were some what?

A Patients.

Q Who looked after the supplies, who looked after their security that they wouldn't be stolen?

A I don't remember any special security. However, those patients who were not seriously ill performed the light tasks around the place, and they also took care of security around the former headquarters.

Q Well, were the patients when you found them, were they in the former headquarters of the battalion?

A Yes.

Q Where was the hospital?

A The hospital was on Lacson Street.

Q And the former battalion headquarters was in the Bacolod High School?

A No, it was at the Central.

Q At the Central, Sugar Central?

A Sugar Central.

Q Then, the patients were at the Sugar Central, and the hospital was on Lacson Street, is that right?

A The hospital was on Lacson Street. Patients of the unit had nothing to do with the hospital.

COLONEL PARMELEE: No further questions by the Commission. Based upon any new matter brought up by the Commission, has the defense any questions?

MR. BONDA: No further questions, sir.

COLONEL PARMELEE: The prosecution?

MAJOR FOJAS: No further questions.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

COLONEL PARMELEE: The Commission will now adjourn and will reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1450 hours, 20 January 1947, to reconvene at 0830 hours, 21 January 1947.)

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Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME LII

PAGES 3429 TO 3488 INCL.

DATE 21 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA vs MASAKAZU YAMAGUCHI	PUBLIC TRIAL Court No. 2 High Commissioner's Residence Manila, P.I. 21 January 1947

Met, pursuant to adjournment, at 0840 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecuter
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA 2ND LIEUTENANT FRANK YAMAMOTO 2ND LIEUTENANT SAMUEL S. KOIDE PETRONILO VALLEJO CAESAR YO ALZONA ROMUALDO TACCAD CLARO ISHITA	Japanese
MACARIO E. BELAONG ROGELIO CATANJAL FILOMENA ZOSA	Ilongo (Visayan)

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER

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I N D E X

WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS	EXAM. BY COMM.
Yoshihara Ishizuka	3429	3438	3458		3458
Tansaku Takahashi	3463	3485			

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P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0840 hours, 21 January, 1947, in Court No. 2, High Commissioner's Residence, Manila, P.I.)

COLONEL PARKELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all the members of the Commission are present; the accused and his defense counsel and personal interpreter, and the prosecution staff are also present.

MR. BONDA: Defense calls as its next witness Yoshihara Ishizuka.

YOSHIHARA ISHIZUKA

a witness for the defense, having been first duly sworn, testified as follows through Interpreters Ishita and Koide:

DIRECT EXAMINATION

BY MR. BONDA:

Q Your name is Ishizuka Yoshihara, is that correct?

A Yes.

Q Do you understand English?

A A little.

Q Do you understand it well enough to testify in English?

A No.

Q When you testify in Japanese, you will wait until the question is translated to you. Do not answer any of the questions that you understand in English. Wait for the Japanese translation.

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Q How old are you?

A Thirty-eight.

Q Where do you now reside?

A In the stockade.

Q Where is your family residence?

A #15 Edo Machi, Nagasaki City, Nagasaki Ken.

Q Were you ammember of the Imperial Japanese Army?

A Yes.

Q When did you become a member of the Japanese Imperial Army?

A October 23rd, 1941.

Q Were you a member of the Japanese Imperial Army until the dateoof surrender?

A Yes.

Q Did you ever serve with the Yamaguchi Battalion?

A Yes, since the time the Yamaguchi unit was organized.

Q What was the date of that?

A October 31st, 1942.

Q Did you ever serve in Negros Island?

A Yes.

Q When did you arrive in Negros?

A I landed in Negros · January 6th, 1943.

Q What was your rank at that time?

A Second Lieutenant.

Q What was your position at that time?

A I was platoon leader of the mortar unit.

Q How long did you remain platoon leader of the mortar unit?

A Up to the end of the year 1943.

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Q Wh·t position did you occupy then?

A I became the company commander for the 2nd Company.

Q Did you see Colonel Yamaguchi when you arrived in Negros on the 6th of January, 1943?

A Yes, we came together.

Q Do you know of your own knowledge where Colonel Yamaguchi -- withdraw that.

When you arrived in Negros, you arrived in Bacolod, is that correct?

A Yes.

Q Do you know of your own knowledge the movements of Colonel Yamaguchi from the time you arrived in Bacolod on the 6th of January, 1943, until the 24th of January, 1943?

A Yes, I know.

Q Will you tell us what they were, please?

A The Yamaguchi unit landed in Bacolod. As scheduled, Colonel Yamaguchi conducted the expedition to Kolokabayon, which lasted for two days, that is on the 15th and 16th of the month. Some companies were stationed as garrisons. The 3rd Company was stationed in Talisay, Silay, Victorias and Manapla. The 1st Company was stationed in Bacolod, Boroboro and Murcia. The Yoshiyama unit went to Fabrica after the Kolokabayon expedition. On January 24th Colonel Yamaguchi went to Fabrica to inspect the new defense territory of the Yoshiyama unit.

Q Where are all these places --

MAJOR FOJAS: Wait a minute. I would like to hear the entire answer.

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(Answer read.)

MAJOR POJAS: Thank you.

Q Where are all of these places you have mentioned with relation to the Bago River?

A These places are about fourteen to fifteen kilometers from Bago River.

Q North or south?

A North of the Bago River.

Q Did you go with Colonel Yamaguchi to Fabrica on the 24th?

A No, I did not.

Q How do you know he went there?

A There was a written order for this trip, and I saw that order.

Q When did you next see Colonel Yamaguchi?

A Colonel Yamaguchi returned the afternoon of the 25th.

Q He returned where?

A In Bacelod.

Q Did you see him when he returned?

A Yes, I saw him.

Q Do you know what his movements were from then until about the 30th of January?

A Between the 25th and the 30th I remember nothing in particular, but on the 30th of January he went to the south to see the battalion.

Q Did that read, "he" or "we?"

INTERPRETER ISHITA: "To see the battalion."

MR. BONDA: Will you read that answer back, please?

(Answer read.)

EGM(1)ss

Q To see which battalion, do you know?

A That is the Fukude Battalion.

Q How do you know that?

A I saw that also in the written order.

Q Well, how did you have access to the written orders?

A There are duplicate copies of the order in my office, so I know that there were such orders because they were available to me.

Q Did you see Colonel Yamaguchi leave on the 30th of January?

A Yes, I saw him.

Q Did you hear him say where he was going?

A The battalion headquarters of the Fukuda Battalion is in Binalbagan, and it was clearly stated in the order that he would go there.

Q You stated that you became commanding officer of the 2nd Company on October 26, 1944. Did you and your company remain in Negros after that date?

MAJOR FOJAS: I will object to the question, sir. There is no evidence that this man became commander on October 26th, 1943. His testimony is the end of 1943.

MR. BONDA: Yes, you are right. I withdraw that question.

Q How long did you remain in Negros?

A About a year and eleven months.

Q You testified that about the end of 1943 you were no longer the mortar platoon commander. What position did you occupy after that date?

A I became the company commander for the 2nd Company.

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Q Now, can you tell us on what date you left the island of Negros?

A I left Bacolod on October 30, 1944.

Q Did your company leave with you?

A Yes.

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Q Where did you go?

A We went to Leyte.

Q Did you ever return to Negros after that?

A I returned because I was wounded.

Q When did you return?

A I think it was December 15th.

Q Did your company return?

A No, my men were left.

Q How long did you remain in the hospital -- withdraw that.

When you were wounded were you sent to the hospital?

A Yes, I entered the hospital at Iloilo in Panay Island.

Q I asked you when you returned to Negros, and you said you returned when you were wounded in December. Didn't you remain in Negros after that?

A When I was wounded in Leyte, I was sent to Iloilo and entered the hospital.

Q Was that a mistake then when you said you came back to Negros on December 12th because you were wounded -- or December 15th -- change that date.

A I shall state the dates chronologically. I landed in Palombong November 3rd. I was wounded November 6th. I left Leyte by ship on November 9, and arrived in the morning of the 12th in Iloilo and entered the hospital. On December 15th, I returned to Bacolod when I was recuperating.

Q And did you rejoin your unit on an active status with the Yamaguchi battalion thereafter?

A No, I returned to Bacolod as a patient with one of my orderlies.

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Q · How long did you remain in Bacolod thereafter?

A I was in Bacolod up to March 27th.

Q And then where did you go?

A Then I went to Lourdes, where Colonel Yamaguchi was.

Q What was the condition of Colonel Yamaguchi when you saw him on the 27th of March in Lourdes?

A When I saw him he had his arm still in a sling as a result of the wound he received on March 5th in Pontevedra.

Q How do you know he received a wound on March 5th in Pontevedra?

MAJOR FOJAS: Have you any testimony to that effect, that he received a wound on the 5th of March?

COLONEL PARMELEE: Will the reporter read the last answer, please?

(The answer was read as directed.)

MAJOR FOJAS: Okeh.

A While I was in Bacolod I received a telephone call directly from the Bago Garrison informing me about the incident, that is, the wound of Colonel Yamaguchi.

Q Why did you receive that telephone call? Was it a friendly call or an official call?

MAJOR FOJAS: I would object to that manner of suggesting the answer to the witness.

COLONEL PARMELEE: That was added on to the question after he started to answer.

MR. BONDA: I don't know whether he had started to answer or not.. There are only two possible ways you can call, I don't know what suggestion I am making.

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COLONEL PARMELEE: There has to be a reason for the call.

MAJOR FOJAS: And this witness understands English.

MR. BONDA: Well, in English or Japanese it means the same.

MAJOR FOJAS: That is suggesting the answer.

MR. BONDA: If he didn't understand English it would still be suggesting, if what you say is true, after it is interpreted to him. Is the objection sustained to the second half of that question?

COLONEL PARMELEE: I believe the question was half put when you added that on, is that right?

MR. BONDA: It was half put, but I think before he answered I inserted the rest.

COLONEL PARMELEE: I think we better give the interpreter the question again, we are going to put.

Q Why did you receive that telephone call?

A In the Bago Garrison was an enlisted man who was formerly in my company and an incident as big as that one, that is, the wounding of the commanding officer, was a big incident, so he found it necessary to inform his previous company commander.

MR. BONDA: (To the interpreter) Was that "necessary", are you sure that word is "necessary"?

(Interpreter Ishita interpreted to the witness.)

INTERPRETER ISHITA: Strike out the word "necessary" and insert the word "advisable".

MR. BONDA: Is there any more interpretation?

INTERPRETER ISHITA: No.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Cross-examination?

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q Between the 6th and 15th of January, 1943, have you ever seen Yoshiyama in Bacolod?

A Yes, I did.

Q Where did you see him?

A At the piers of Bacolod.

Q Did you see him in the headquarters of Colonel Yamaguchi?

A No, I did not see him at the headquarters.

Q Have you ever seen him during that period in conference with Colonel Yamaguchi?

A I do not know about that.

Q Where did Colonel Yamaguchi establish his headquarters when he arrived in Negros on the 6th of January, 1943?

A I believe that there wasn't a certain site for his headquarters at that time.

Q Was it in the Bacolod High School?

A I believe at that time the Yoshiyama Unit was still occupying that High School.

Q So that when Colonel Yamaguchi arrived in Bacolod on the 6th of January 1943, the Yoshiyama Battalion was quartered at the Bacolod High School, is that right?

MR. BONDA: He didn't say that, he said a Yoshiyama Unit.

COLONEL PARMELEE: Will the reporter read that answer please?

(The answer was read as directed.)

COLONEL PARMELEE: "The Yoshiyama Unit."

MR. BONDA: I don't know whether it was "the" or "a".

COLONEL PARMELEE: It says "the" there.

MR. BONDA: Will you ask him again?

MAJOR FOJAS: I think there should be no further comment as to that, sir.

MR. BONDA: Well now this witness I believe said his headquarters were in Fabrica, and ---

MAJOR FOJAS: I object to that kind of a statement, the witness is here and he can hear it, and he understands English.

MR. BONDA: Well, send him out. In view of the testimony which has been uncontradicted up until now, it is still uncontradicted, that the headquarters were in Fabrica, I suggest we get an exact interpretation of the word "the" or "a". I have that right if they are going to pin it down to a "the" or "a".

MAJOR FOJAS: When defense counsel made that remark, the witness was right here before him who understands English, and I know that is how the defense counsel would like the witness to answer the question.

MR. BONDA: I know what the truth is, and you know what the truth is, and you are trying to have one little adjective as being the difference. Sure he had that territory, everything north of Bago he had his unit there and all over there, it is the most ridiculous thing I ever have heard in my life.

MAJOR FOJAS: That is true, because it is going to harm you, that is why.

MR. BONDA: Working through an interpreter and trying to hang to a little adjective as "the" or "a".

COLONEL PARMELEE: The interpretation was given as "the". Now if that serves the purpose of the prosecution, to change it to "a" to serve the purpose of the defense, where would we be? We must accept what the interpretation was at the time, which apparently is "the".

MR. BONDA: All I did was to make a simple request to have the interpreter find out if it was "the" or "a" and I was denied that simple request.

MAJOR FOJAS: And besides that, if there is any doubt I am now asking him a second question to verify it and my last question is, "So the Yoshiyama Unit had its headquarters at the Bacolod High School."

MR. BONDA: You said Battalion, that is what my quarrel is.

MAJOR FOJAS: It is the same thing to me.

MR. BONDA: Well it isn't the same thing - -

COLONEL PARMELEE: Just a minute, who is going to talk?

MAJOR FOJAS: Well, he - -

MR. BONDA: I have no more comments to offer, sir.

COLONEL FARMELEE: Very well.

MR. BONDA: The prosecution made a statement that it makes no difference whether it was a unit or battalion. With that I have no further comments.

COLONEL FARMELEE: The record will have to remain as it is because the whole matter has been thrashed out now in front of a witness who understands English and primarily that is the interpretation we got from the official interpreter. I don't know whether "the" or "a" can be confused.

MR. BONDA: Throughout this entire trial we had the interpreter ask additional questions to clarify certain points, why, suddenly, should that be denied? We have done it throughout this entire trial.

COLONEL PARMELEE: Let me ask you what reason do you have to believe the word was not "the?"

MR. BONDA: Because of the evidence that is in this trial and because of the facts we all know, and the prosecutor gave his hand away when he said that is one little word I am going to pounce on. He made a mis-statement when asked the question about battalion instead of unit and then the prosecutor says it wasn't the same thing, and the prosecutor said --

MAJOR FOJAS: When we speak of the Yoshiyama unit, we mean the Yoshiyama battalion and nothing else, so it makes no difference to me whether it says Yoshiyama unit or battalion because they are the same thing to me.

I withdraw the last question, sir.

Q Now during the period from the 6th of January, 1943, to the 15th of January, 1943, have you ever seen Colonel Yamaguchi in conference with Yoshiyama at the headquarters of the latter in the Bacolod High School?

MR. BONDA: May I have that question read?

(Question was read as directed.)

MR. BONDA: He answered that question. He said he never saw them together.

MAJOR FOJAS: I have no comment, sir.

COLONEL PARMELEE: What was the question?

(Question was read as directed.)

MR. BONDA: Object to the question. There is no testimony to the effect that he had headquarters there.

MAJOR FOJAS: He just stated it in his last answer.

TS(2)mm

MR. BONDA: I quit.

COLONEL PARMELEE: Will the reporter read the question which was previously asked, similar to this one?

(Question was read as directed.)

COLONEL PARMELEE: The question is whether that last question hasn't been answered.

MAJOR FOJAS: I don't think so. I am specifying the place now.

COLONEL PARMELEE: I see.

MAJOR FOJAS: I have already eliminated the fact that there was a conference in the headquarters of Colonel Yamaguchi. I want to find out now if he had a conference there.

MR. BONDA: There was just a question and answer read saying he had.

MAJOR FOJAS: But that was just a general question.

MR. BONDA: Well, if the answer to the general question is no, the answer to the specific question will be no, too.

MAJOR FOJAS: Well, there will be no harm to that.

COLONEL PARMELEE: Objection not sustained.

MR. BONDA: May I have the basis for that, sir, for the record?

COLONEL PARMELEE: This is cross-examination. The prosecution is trying to establish certain facts or rather, yes, trying to establish certain facts, and while that sounds like a repetition of the question previously asked, there is a shade of distinction.

TS(2)mm

MR. BONDA: Those shades of distinction vary on the questions we asked yesterday, --- the prosecution were sustained on that.

MAJOR FOJAS: I don't remember.

MR. BONDA: I remember very distinctly. I can show two or three instances in the day before yesterday's volume.

A There is an error in the question. The headquarters of Yoshiyama were moved to Fabrica on the 11th.

COLONEL PARMELEE: What was the answer?

(Answer was read as directed.)

Q Were moved from the 11th of January, 1943? Is that correct?

A Yes.

COLONEL PARMELEE: (To Mr. Bonda) Did you get what preceded that?

MR. BONDA: Yes, sir.

Q So that from the 6th to the 11th, or to the 10th of January, 1943, the headquarters of Yoshiyama was the Bacolod High School, is that correct?

A I cannot clearly say that the headquarters was at the high school.

Q What did you mean when you said on the 6th of January when Colonel Yamaguchi landed in Negros, the Yoshiyama unit was still occupying the Bacolod High School?

A That Yoshiyama unit was at the high school, I am certain about that.

Q What did you mean when you said that the headquarters of the Yoshiyama unit was removed from the Bacolod High School

TS(2)mm

on the 11th of January, 1943?

MR. BONDA: Objection. I can't understand why he should have to explain what he means when the language is as clear as it was in his question. What is it he wants him to explain? Is there any ambiguity in his answer?

MAJOR FOJAS: There is plenty.

MR. BONDA: There is? Objection.

COLONEL PARMELEE: Overruled.

MR. BONDA: May I have the basis for that, sir?

COLONEL PARMELEE: This is cross-examination. The prosecution is not satisfied with the answer and is trying to reconcile statements made, as it seems to the Commission.

MR. BONDA: Do I understand the Commission to say that the prosecutor is the judge, like he has been throughout this entire trial?

COLONEL PARMELEE: No, the Commission is the judge.

MR. BONDA: And the Commission is putting --

MAJOR FOJAS: This witness in one breath will say that the headquarters was in Bacolod and in another breath I don't know exactly whether the headquarters -- he made a statement that the headquarters was removed on the 11th and also that the Yoshiyama unit was still occupying the high school.

TS(2)mm

MR. BONDA: Are they inconsistent?

MAJOR FOJAS: Why sure.

MR. BONDA: Where? Unless it can be explained where those statements are inconsistent, I renew my objection.

MAJOR FOJAS: I submit there is already a ruling on the question and I ask that the ruling stand.

MR. BONDA: The Commission has the right to change its ruling.

COLONEL FARMELEE: The ruling will stand.

MR. BONDA: In the absence of showing any inconsistencies, it still stands?

COLONEL FARMELEE: The ruling is not made that there are no inconsistencies, but that this is cross-examination, and there are lots of statements to be reconciled and the Commission must adjudicate this case, and the Commission wants to let the cross-examination go on so far as it is proper.

MR. BONDA: I was not allowed that latitude on cross-examination, and a close scrutiny of the record will show that, sir.

COLONEL FARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARKER: The Commission is in session.

MAJOR FOJAS: Will the interpreter please remind the witness that he is still under oath.

(Translated to the witness through Interpreter Koide.)

MAJOR FOJAS: I think, sir, there is a pending question.

(Question read.)

A On the 11th the Yamaguchi Unit took over the high school. The Yoshiyama Unit moved to Fabrica and reached there on the 20th, and on the 20th the Yoshiyama Battalion formed headquarters at Fabrica.

Q So it was on the 11th that Colonel Yamaguchi occupied the Bacolod High School, and made it his headquarters, is that correct, on the 11th of January, 1943?

A I believe that the Yamaguchi Unit took over the high school on the 20th.

Q Did you not just say that on the 11th the Yoshiyama unit moved from the Bacolod High School to Fabrica because the Yamaguchi Unit took over the high school?

A The Yoshiyama Unit left the high school on the 15th.

Q Now, between the 6th and the 15th of January, 1943, did you see Colonel Yamaguchi in conference with Yoshiyama in the Bacolod High School?

A I do not know anything about that.

Q All right. Are you sure that this expedition made by Colonel Yamaguchi took place on the 15th and 16th of January?

A Yes.

Q Was it not on the 14th and 15th and 16th, making a total of three days?

A What I remember is that it was on the 15th and 16th.

Q Did you go with Colonel Yamaguchi on this expedition?

A Yes.

Q Do you know if the members of the Yoshiyama Unit also went with Colonel Yamaguchi on this expedition?

A The activity of the units were different.

Q Now, I am asking you if you knew that on this expedition members of the Yoshiyama Unit went with Colonel Yamaguchi?

A The Yamaguchi Unit went in one direction and the Yoshiyama Unit went in the other direction.

Q But the two units which went in two directions were in the same expedition?

A Yes.

Q And it was Colonel Yamaguchi who was in personal command of this expedition, is that correct?

A In combat Colonel Yamaguchi was a commander.

Q Do you remember having engaged in any combat during this expedition?

A It was only a small incident at first, and after that nothing else occurred.

Q And in that small incident all these units participated, is that correct?

A No, only the combat units.

Q Was there any member of the Yoshiyama Unit in that combat unit?

A No, only those of the Yamaguchi Battalion.

Q Now, what did you mean when you said that in combat Colonel Yamaguchi was in command of all those units that participated in the expedition?

A I got the orders from Colonel Yamaguchi to be careful of the enveloping unit of Yoshiyama, since I was in command of the mortar platoon.

Q You have not answered the question. The question is: What did you mean to say when you testified that Colonel Yamaguchi was in command of all the units that participated in this expedition in combat?

A The activity of the Yoshiyama Unit were commanded by the unit commander, and therefore, I believe the unit commanders were in command of the units.

Q Do you know if the unit commanders of the Yoshiyama Unit took orders from Colonel Yamaguchi during that expedition?

A They did not receive direct command.

Q And who ordered the Yoshiyama Unit to take a different direction from yours?

A I believe the orders were issued by Colonel Yamaguchi.

Q So in that respect, at least, the Yoshiyama Unit took orders from Colonel Yamaguchi during that expedition, is that right?

A As far as the subordinates of the Yoshiyama Unit is concerned, they do not receive direct command from Yamaguchi.

Q Now, how about the commander of the Yoshiyama Unit himself, did he not take orders from Colonel Yamaguchi,at least in that expedition?

A I believe he received combat orders.

Q As a matter of fact, Colonel Yamaguchi was the commander of both the Yoshiyama Unit and his unit during that expedition, is that correct?

A In the expedition he was the commander.

Q During the month of January, 1943, did you ever see Fukuda in Bacolod?

A No.

Q Now, how do you remember the fact that it was on the 30th of January that Colonel Yamaguchi went to Binalbagan?

A Before the commander leaves for any place he issues orders. Since I was in command of a mortar platoon I believe that I will be assigned to the Yoshiyama or Fukuda Units, and therefore I took special attention to this matter.

COLONEL PARMELEE: Will you read that answer, please?

(Answer read.)

Q The question is: How did you remember that it was the 30th of January, 1943?

MR. BONDA: If the Court please, he has answered it. He said he took special notice of it because he thought he would be assigned to one unit or the other. I think the answer is responsive. I think he has explained why he remembers the date.

MAJOR FOJAS: I submit, sir.

COLONEL PARMELEE: He was looking, apparently, from his testimony, for something that would effect himself, but he hasn't followed that up by giving us the date. He has testified previously as to that date of the 30th.

MR. BONDA: Then this question is "How do you remember the date," and he tells the reason, how he remembered the date. It affected him very vitally, and I think that is responsive.

COLONEL PARMELEE: I suppose it is the test of

credibility, or something, here. I believe the question is proper.

A As I said previously, since there was a possibility that I might be assigned to the Fukuda Unit the matter at hand concerned me very much, so I took special attention of this matter, and remembered that date.

Q Could it not have been on the 24th of January, 1943, that Colonel Yamaguchi went to Binalbagan?

A No, it was not the 24th; it was the 30th.

Q Do you know if Colonel Yamaguchi ever attempted to get in touch with Fukuda before the 30th of January, 1943?

A I believe there were no matters of liaison with the Fukuda Unit.

Q But do you know if Colonel Yamaguchi took any steps to get in touch with Fukuda before the 30th of January, 1943?

A I believe at that time there was no measures possible for the liaison.

Q Was it not possible to send courier to Fukuda?

MR. BONDA: If the Court please, I object to that question. He is asking for a conclusion on the part of the witness as to what was possible, and as far as this man is concerned it is merely an opinion and a legal conclusion.

COLONEL PARMELEE: Well, I suppose under the rules of cross-examination that he can answer that he may know or he may not. He can state.

MR. BONDA: Well, the purpose of that rule is to lay the surrounding circumstances before the Commission, and have them determine whether it was possible.

MAJOR FOJAS: It is not a conclusion.

MR. BONDA: Not to have his opinion as to whether it was possible at that time. As to whether it was possible is simply a legal conclusion.

MAJOR FOJAS: That is not a conclusion, sir.

MR. BONDA: The Court can conclude as to what the conditions were, as to what the conditions were at the time to determine whether it was possible.

MAJOR FOJAS: That is asking for an answer which would give us the state of facts at the time.

COLONEL FARMELEE: That is quite right. Whether it was possible or not would probably lead to a statement as to the conditions.

MR. BONDA: Now, the prosecutor just made a statement that that question would tell us what the state of facts were, and that is my very argument, that that statement does not tell what the state of facts are. The state of facts would lead to the conclusion that the Court should arrive at, but his opinion is not a statement of a state of facts. That is the very thing that I say is the reason that he can't answer it, the very reason he assigns for permitting him to answer it is the very reason that he can't answer it, because it doesn't give the state of facts, and that is what he is supposed to give.

COLONEL FARMELEE: Of course the witness can say he didn't know, or he could give the conditions. Of course I suppose more properly you could ask him to describe the conditions ---

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3nos

MR. BONDY: That is right.

COLONEL FARMELEE:--which made him state that he couldn't get in touch with him, or something like that.

MR. BONDY: He never said he couldn't. He said there were no liaison at that time, and it is up to the prosecutor to find out what were the circumstances surrounding that that made it impossible for him to have communicated with them. Of course the thing isn't important.

COLONEL FARMELEE: I suppose there are several ways of getting at it. The Commission, of course, is sitting here, and we are getting little sketches here and there. We want any information we can get, and I suppose there is another way of approaching it, but it is a question on cross-examination, and is legal, that is, if it can be answered. Of course that must be the basis for the ruling.

MR. BONDY: My contention is it is not a proper question. It is not legal, because there is a very definite limitation on asking an opinion or legal conclusion. An opinion can be asked under certain circumstances, and this is not one of them. A legal conclusion can never be asked under those circumstances.

COLONEL FARMELEE: Will the reporter read the question, please.

(Question read.)

COLONEL FARMELEE: I believe the question can be so answered that it will give facts, and if he says, "no," the Commission is not going to accept that. Then we want to find out why.

MR. BONDY: Well, that is putting the cart before the horse --

EGM(3)WO

COLONEL FARMELEE: No.

MR. BONDA:--if you ask a man a legal conclusion and then ask him what he bases it on.

MAJOR FOJAS: That is not a legal conclusion.

COLONEL FARMELEE: We have to make the legal conclusion ourselves.

MR. BONDA: That is the exact point, sir. But he is being asked the legal conclusion.

MAJOR FOJAS: But I contend, sir, that is not a legal conclusion. At most it could be a conclusion of fact, and as I said, I am looking for an answer which will give us the state of facts.

MR. BONDA: But he can ask facts.

COLONEL FARMELEE: Let's get on with the case. Here is the point: If he says "no," the Commission is not going to make a legal conclusion from that, that it wasn't possible. We want to know, and in our minds any man will immediately ask, "Well, why wasn't it possible," or, "Why was it possible." We have got to get that information. In other words, we are not going to accept that as final; it has got to be developed.

MR. BONDA: I know, sir, but the legal conclusion is for the Commission to make.

COLONEL FARMELEE: That is right.

MR. BONDA: The Commission just made the statement if he says "yes," they will not accept it; in other words, the Commission won't accept the legal conclusion. It is the facts he gives that the Commission is supposed to make their legal conclusion from, and that is one of the reasons for the rule that the Court cannot accept his legal conclusion, but must make

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its own, based on the facts he gives.

COLONEL FARMLEE: That is true. Well, I will permit the question here, and if we don't get enough out of it so we can make a legal conclusion, we will ask questions then.

4 It was not possible to use couriers, and therefore Colonel Yamaguchi went by the way of the sea.

Q Was it not possible to send courier by way of the sea before January 30th, 1943?

MR. BONDA: Objection for the same reason, sir, and he has already answered the question, of course. Surrounding circumstances must be given and it is for the Commission to determine whether it is possible, not for this witness to determine, unless he is given the facts and called as an expert witness. The Commission must get the facts and from that determine whether it is possible. If he was an expert witness, he must be given the facts and --

COLONEL PARMELEE: Maybe the prosecution would want to inquire into the condition of the sea between that time and the 30th of January.

MAJOR FOJAS: There is already the fact that Colonel Yamaguchi went by way of the sea on January 30th. The point is whether --

COLONEL PARMELEE: But the objection now is a question why courier could not be sent before January 30th. In order that the Commission can then get the information to draw from facts the defense brings up, he should inquire into the condition of the sea, is that correct?

MAJOR FOJAS: I think that is what he wants.

MR. BONDA: All I want is that the Commission determine whether it is possible and that he be asked the facts. That is all I am asking.

COLONEL PARMELEE: The Commission would like to get the facts, but these questions very often bring out certain facts that we can make a deduction from. That type of

TS(4)ss
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question has been asked all through the trial on cross-examination, and been accepted, I think. How do we stand on the record now? The question is whether it was not possible to send a courier before January 30th? The defense made a remark or objection?

MR. BONDA: It was an objection.

COLONEL PARMELEE: Objection not sustained.

A I believe it was not possible to send a courier by way of the sea before the 30th of January.

Q Why not?

A It was due to the fact that boats were not available.

Q Where in Bacolod did you receive the telephone call informing you of the fact that Colonel Yamaguchi was wounded on the 5th of March?

A At the officers' club on Lacson Street.

Q At what time of the day did you receive that telephone call?

A I believe it was during the evening.

Q On the 5th of March?

A Yes.

MAJOR FOJAS: I have no further questions.

COLONEL PARMELEE: Redirect examination?

MR. BONDA: No redirect examination.

COLONEL PARMELEE: Questions by the Commission? Major Stevens.

TS(4)ss

EXAMINATION BY THE COMMISSION

BY MAJOR STEVENS:

Q You have testified that during the period of January, 1943, that you did not see Major Fukuda in Bacolod at any time, is that correct?

A Yes, I have not seen him then.

Q Now, during this same period, did you hear from any other person that Major Fukuda came to Bacolod to visit Colonel Yamaguchi?

A No, I have not heard of such.

MAJOR STEVENS: No further questions.

COLONEL PARMELEE: No further questions by the Commission. Has the defense any further questions?

MR. BONDA: No.

COLONEL PARMELEE: Prosecution?

MAJOR FOJAS: No, sir.

THE WITNESS: May I have the time to testify as to the character of the accused?

MR. BONDA: May I reopen my redirect examination?

COLONEL PARMELEE: Very well.

REDIRECT EXAMINATION

BY MR. BONDA:

Q How long have you known Colonel Yamaguchi?

A I have known him ever since the unit was organized.

Q During that time did you become familiar with Colonel Yamaguchi personally?

A Yes, he treated me like a son.

TS(4)ss

Q Did you have the means of knowing what his reputation amongst the other members of the Japanese Army was?

A They all looked up to him like a father, even during the hard life in the mountains he was the center of the unit and he was always respected.

Q Do you have the means of knowing what his reputation was amongst the Filipinos generally?

A The civilian population also looked up to Colonel Yamaguchi and he had their warm feeling and good will.

MAJOR FOJAS: I move that the answer be stricken, sir. It is not responsive to the question.

MR. BONDA: I don't know why not.

COLONEL PARMELEE: Will the reporter read the question and the answer, please?

(Last question and answer read as directed.)

MR. BONDA: Well, he left out things --

TS(4)ss

MAJOR FOJAS: The important point is to establish the means of knowing and here the witness already testified as to what the reputation is and unless the means of knowing is established, I will object to the question. Right now, I move the answer be stricken, as it is not responsive.

MR. BONDA: All he has got to do is to state the means of knowing. That is a matter of cross-examination. I will admit he did not answer he has the means of knowing, but that is all he need answer. He does or does not know. We need not establish what the means of knowing are, is that correct, Mr. Prosecutor?

MAJOR FOJAS: That is not correct. In all our questions when we asked if they know somebody, defense counsel then insisted as to how he knows, and thereby we were compelled to lay down that basis.

MR. BONDA: Well, that was on hearsay evidence, not reputation evidence. There is a difference; the other was hearsay.

MAJOR FOJAS: We do not know whether it will be hearsay or from personal knowledge.

COLONEL PARMELEE: The motion to strike because the answer is not responsive, of course, I believe should be granted.

I suppose this answer would come out later by another question?

MR. BONDA: Yes, sir.

COLONEL PARMELEE: Why don't you ask now how he knows that. How many civilians he knows?

MAJOR FOJAS: That will remove the objection, un-

TS(4)mm

less he does that I will insist upon my objection.

COLONEL PARMELEE: The answer is of little value unless the Commission knows the basis for that. That is the point. How wide was his acquaintance.

MR. BONDA: I disagree with that statement. It is of no value if he doesn't say he has the means of knowing. The only way that value can be diminished is for the prosecutor to show he couldn't have had the means of knowing.

MAJOR FOJAS: You have said repeatedly we are not compelled to cross-examine on such matters.

MR. BONDA: That happens to be the rule in reputation. If you want to quarrel with that rule, you can quarrel with the book, not with me.

Q Do you have the means of knowing what his reputation amongst the Filipino civilians was; just answer that "yes" or "no." Do you have the means of knowing?

A Yes.

Q Now what means did you have of knowing what his reputation was amongst the civilians?

A I heard it directly from the civilians.

Q Now what was that reputation?

A First, the colonel was kind. Second, the civilians said that whenever they approached the colonel for requests, he heartily accedes to whatever is possible. Third, at that time when I heard these conversations, the Philippines was independent, and he advised the civilians to be worthy of that independence.

Q Do you know what orders Colonel Yamaguchi issued to his men with reference to the treatment of civilians?

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A Yes, I know.

Q What were those orders?

A The civilians are not enemies towards them, treat them with love and sympathy.

Q Now except insofar as war itself is cruel, and acts in pursuance of war are cruel, do you know of any acts of inhumanity, cruelty or sadism that was performed by Colonel Yamaguchi or any of his troops?

A I do not know whether there were any cruelties, sadism or inhumanities by Colonel Yamaguchi or by any of his men.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: The Commission will take a brief recess.

(Short recess.)

TS(4)mm

COLONEL PARKLEE: The Commission is in session. Any cross-examination?

MAJOR POJAS: No cross-examination.

COLONEL PARKLEE: Questions by the Commission? There appear to be none. The witness is excused.

(Witness excused.)

MR. BONDA: Defense calls as its next witness, Tansaku Takahashi.

TANSAKU TAKAHASHI

a witness for the defense, having been first duly sworn, testified as follows through Interpreters Ishita, Koide, Faccad and Yamamoto.

DIRECT EXAMINATION

BY MR. BONDA:

Q State your name, please.

A Tansaku Takahashi.

Q You previously testified in this case, did you not?

A Yes.

Q When did you join the Yamaguchi Battalion?

A About December of 1942.

Q And you were connected with the Yamaguchi Battalion until when?

A Until August 30, 1945.

Q Thereafter were you familiar with the activities of the Yamaguchi Battalion -- withdraw that question.

Did you say until August of 1945?

INTERPRETER YAMAMOTO: Yes.

Q When you were a witness for the prosecution you testified that in December of 1944 you were detached from the Yamaguchi Battalion, is that correct?

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A Yes, that is correct.

Q When did you rejoin them, if you did?

A About the end of March, 1945.

Q Did you know Captain Nanjo?

A I knew a Second Lieutenant Nanjo.

Q Do you know, of your own knowledge, whether Lieutenant Nanjo was ever wounded?

A Yes.

Q How do you know?

A The company went to Bago, and the following day Nanjo was wounded during the training.

Q When did the company go to Bago?

A On December 5th, 1944, the company left from Victorias for Bago.

Q When did the company arrive at Bago?

A It was a little after 12 o'clock on the 12th.

INTERPRETER YAMAMOTO: Change that answer to "We arrived there on December 5th about 12 o'clock."

MR. BONDA: Is that the correct interpretation, Mr. Interpreter?

INTERPRETER YAMAMOTO: Yes, that is correct.

MR. BONDA: Will the Commission instruct the reporter to strike the first answer and change it to read as the interpreter corrected it?

COLONEL PARMELEE: Yes, the first answer will be stricken.

Q Was Lieutenant Nanjo a member of your company?

A Yes.

Q How soon after you arrived in Bago was Lieutenant Nanjo

wounded?

A We arrived there December 5th, and the following morning there was a tank maneuver, and by accidental shot by a subordinate Lieutenant Nanjo was wounded in the leg.

Q How did you know that?

A Right after the accident occurred a soldier called me, so I went to the spot about 30 minutes later.

Q Did you see Nanjo at that time?

A Yes.

Q Did you see his wounds?

A Yes.

Q Will you describe them to us, please?

A I do not know if it was the right or left knee, but there was a wound there.

Q Where was the wound -- I will withdraw that, and I will ask the interpreter did he say "the right,"or "left knee," or did he merely point to his leg at the time?

MAJOR FOJAS: We can appeal to the record and find out what he said.

MR. BONDA: I know what the record says, but he indicated at the time, and I want a clarification of his answer. I have reason to believe it was not his knee that he said.

COLONEL PARMELEE: Will you read the answer?

(Answer read.)

MR. BONDA: Did he say "wounds," Mr. Interpreter?

INTERPRETER YAMAMOTO: Yes, he did.

MR. BONDA: Did he say "knee?" He pointed, and I don't understand Japanese.

INTERPRETER YAMAMOTO: He didn't give the exact word;

however, he indicated that the wound was on the knee.

COLONEL PARKELEE: The record, to be complete, should describe just what the witness indicated.

MR. BONDA: Actually he didn't say the word "knee."

MAJOR FOJAS: Actually he indicated a portion below the right knee.

COLONEL PARKELEE: He was pointing when I looked at him, and working over it around the shin bone of the right leg. Now, whether he pointed to other places, I don't know, but I believe the record should describe what he meant.

MR. BONDA: What I am trying to clear up is whether he used the word "knee," or whether it was obtained by the interpreter by reason of the fact he pointed there. Did he use the work "knee?"

INTERPRETER YAMAMOTO: Just by motions.

Q Now, will you describe to us, please, where the wound was located, regardless of whether it was the right or left side, where was the wound located?

(Witness indicating.)

MR. BONDA: Indicating a diagonal -- What was his answer?

A I do not know the exact spot, however it was around there, (Indicating).

MR. BONDA: Indicating a point about six inches below the right knee on the inside calf.

MAJOR FOJAS: It is about the lower part.

MR. BONDA: He pointed about six inches below the right leg on the inside calf, and about four inches below the

knee on the outside calf. Now, is that correct?

MAJOR FOJAS: Well, I don't know.

COLONEL PARKLEE: Well, the witness had his hands over it, and his fingers were below, of course. The question is what he is indicating. Tell him to use an index finger and point to the top part of the wound, and the lower part of the wound.

A I do not remember. After the accident occurred the wound was bandaged.

Q Now, what happened to Lieutenant Nanjo after you saw him?

A After he was wounded he was accompanied by a guard and taken to a hospital in Bacolod.

Q Did he ever return to your unit after that ?

A Yes.

Q When?

A Around the end of March, 1945.

Q On December 5th or 6th, until the time he returned to your unit, was he carried on your record -- I'll withdraw that question.

What records do you have in the Japanese Army of the status of the members of your company?

A There are many records, those giving the names of officers and EM's and those giving names of officers and EM's separately.

Q Was Lieutenant Nanjo kept on your records as a member of your unit from the 5th or 6th of December until he returned in March?

A Yes, he was on the records.

Q And on what status was he on your records?

4 The records mentioned his rank as being a lieutenant, and also mentioned his name as having been wounded, and was in the hospital.

4 The records mentioned his rank as being a lieutenant, and also mentioned his name as having been wounded, and was in the hospital.

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Q Now, during the time from the time he left you on December 5th or 6th until he returned was he assigned to any other unit?

A Absolutely not.

Q Under your system of records would you, as commanding officer, have known if he had been assigned to any other unit?

A He was assigned to a unit, and there were times when they were taken to other units.

Q Was Nanjo ever sent to another unit between the 5th or 6th of December and the latter part of March?

A No.

Q Now, when you were called here by the prosecution as their witness you indicated at the end of your examination that there was something else you wanted to say. Will you tell us now what that was?

MAJOR FOJAS: I will object to that question, sir, because at that time we agreed that a conference would be made between defense counsel and this witness, and a conference was so made, and it was found out that what he was going to say was a matter of defense, and I would like that to be brought up by question and answer rather than the witness relating what he wanted to say.

MR. BONDA: I don't understand what the prosecutor is driving at. The record shows he indicated he wanted to say something.

MAJOR FOJAS: Yes, and the reason why it was not said then was because it was a matter of defense.

MR. BONDA: That is right.

MAJOR FOJAS: And if it is a matter of defense, I would like it to be brought up by question and answer so we can interpose our objections.

MR. BONDA: Let's first find out what he wanted to say.

MAJOR FOJAS: You found that out, and if you need time to confer with this witness as to that matter - -

MR. BONDA: I don't need time. I have conferred with this witness. He said he wanted to say something more, and you said he couldn't tell us because it was a matter of defense, and I want the record to show what it was he wanted to tell us.

MAJOR FOJAS: If it is a matter of defense, I would like it brought out by question and answer in the usual procedure so we will have an opportunity to object to an improper question, and I think the facts should be brought out in the proper manner.

MR. BONDA: I submit your objection is not well taken, and I want a ruling on that first.

COLONEL PARMELEE: I don't know legally just what the ruling should be on that. He is a defense witness and it is true he had indicated that he wanted to say something in behalf of the accused, I believe, was one thing, and the matters that have been covered by question and answer were another thing, and it was ruled, or decided, in this conference outside of court that it should be handled as a matter of defense.

MAJOR FOJAS: Yes sir, and anything as a matter of defense should be by question and answer, which is the usual procedure.

MR. BONDA: The prosecutor throughout this trial has said, "I want an explanation of this, and I want an explanation of that," and the record shows that he wanted to give something to the prosecutor, and the prosecutor said "no." Now, I want an

explanation of what that was, and that is a preliminary question, and I have a right to ask it, and I don't understand under what theory it is being objected to by the prosecutor. We want to clear up the record, if nothing else, that he is given an opportunity to tell the things he wanted to tell, and if for no other reason it would be admissible on that basis alone.

COLONEL FARMELEE: Will the defense at this time inquire as to in general what the explanation is to cover.

MR. BONDA: Will the reporter please read my question.

(Question read.)

MR. BONDA: All I am asking him is to tell whether it was as to his character, and then I will question him on that.

COLONEL FARMELEE: The point is the question is equivocal in that respect, and he can either say in general what subject matter he is going to cover, or he can launch into a voluntary statement.

MAJOR FOJAS: The point is this, we had that before, and we have agreed it would not be told then because it was a matter of defense. My understanding is it would be a part of the evidence of defense, and it should be by the proper manner, and that is my only point. I don't like to be here and listen to a long oration, and have a lot of things get into the record without giving the prosecution an opportunity to interpose its objections.

MR. BONDA: What does the prosecutor think is going to happen? I am asking him a simple question, and I want to find out what it was he wanted to tell us, and after we found out to clear the record that the witness has been given an

opportunity to tell us what he wanted to tell us, and I will then question him on that matter. All I want to do is find out what it was he wanted to tell us, what subject matter.

COLONEL FARMELLE: Very well. The objection is overruled provided that this question is answered by a general statement as to what he is going to talk about.

MR. BONDA: Will the interpreter put that question to the witness?

(Translated to witness through Interpreter Yamamoto.)

A. I would like to mention Colonel Yamaguchi's character and commands.

COLONEL FARMELLE: The Commission will now recess until 1300 hours this day.

(The Commission adjourned at 1130 hours.)

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AFTERNOON SESSION

(The Commission met, pursuant to recess, at 1300 hours.)

COLONEL FARMELEE: The Commission is in session.

MAJOR RAMIREZ: Let the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

TANEKU TAKAHASHI,

a witness for the defense, having been previously duly sworn, testified further as follows through Interpreters Taccad and Ishita:

MAJOR RAMIREZ: Will the interpreter please remind the witness he is still under oath?

(Interpreter Taccad interpreted to the witness.)

DIRECT EXAMINATION (continued)

BY MR. BONDA:

Q You testified that you were in Colonel Yamaguchi's battalion from October 1942 until sometime in 1945. During that time did you know Colonel Yamaguchi personally?

A Yes.

Q And through your personal contact with him during that period of time, can you tell us what you learned of his character?

A Yes, I can tell you about that.

Q Will you tell us about his character?

A I was an officer and as such I had served in China and also in the homeland and I have known many officers of the rank of battalion commander and above. Of the very many officers

that I know, it was Colonel Yamaguchi that I respected most. Also of these many officers there were many fine men, but Colonel Yamaguchi was the finest of them all. When I think of why I respected Colonel Yamaguchi as a fine man and officer, I first of all think of his discipline. He conducted himself with the very utmost discipline and military bearing although, like other officers, he was not too stiffly military in dealing with his men. Other officers, like those who were majors and colonels, and even generals, thought more of the regulations and rules rather than the welfare of their men. The others also always had in mind their own advancement, that is why they forgot about treating their men right. But Colonel Yamaguchi was different. He treated his men just like a father would treat his sons. I could give many examples of how he was kind to his men. Due to the lack of time, however, I believe I would rather not give examples, although they are many. However, I would like to say Colonel Yamaguchi is now about fifty years old or more, but why is he still a colonel; why did he remain only a battalion commander? I believe it was because he often quarreled with his superiors when he tried to defend his subordinates and his men. He sacrificed himself. Some of those who graduated with Colonel Yamaguchi at the same time, have become major generals, lieutenant generals, and even chiefs of staff, but Colonel Yamaguchi was more interested in presenting the side of his men and his subordinates, so he remained a colonel. Colonel Yamaguchi once served in Manchuria. Even when he was there he was already like that. That is what I heard and I learned it for myself when I came under him in Bucharest. As a company commander of his battalion I had comparatively much

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contact with Colonel Yamaguchi. I found out that he was always more interested in his men than he, himself. His interests came last. For example, when the company quartered themselves in different places he would first see to it that they were well established and many times I received advice and help from him; it was just as a father would treat his sons. Colonel Yamaguchi had about a thousand men under him, including officers, and not one of them has ever talked bad about him or has ever said bad things about him.

However, in his relations with his superiors, that is, the brigade commanders, division commanders and chiefs of staff, were not always so smooth. Often, when his opinions or policies differed from theirs, he would usually go against them, almost to the extent of quarreling with them. Towards the civilian population he was always kind and he treated them with benevolence and affection.

We landed on Negros Island on January 6, 1943. Before we landed there an officer of the unit that had been there before us, had slapped one of the influential persons in the locality, I will not reveal his name, but right now he is one of the high officials in the Philippine government. Colonel Yamaguchi told us of this incident and he warned us if we were to have the civilians on our side, we should love them and be good to them. Through the company commanders, Colonel Yamaguchi had instructions posted in all the garrisons and the instructions were to this effect: First, do not maltreat the civilians, love them, be good to them, treat them with kindness.

Second, a soldier is a soldier and should behave as such, he must not degrade the military profession. These instructions were written down and posted in all the garrisons so that they would be constant reminders to all the men. All the officers and men of the unit obeyed the above instructions. I'll give one example. There were churches everywhere where people went to pray. The Filipinos had a different religion from ours, because we were Buddhists; but because religion, we realized, is a very important thing, we never entered the churches and disturbed their religion.

About the middle part of 1944 the rice supply of the civilians became scarce, however, there was plenty of rice in the government and the companies Naric and Mitsubishi had rice. So Colonel Yamaguchi went to them and asked them for rice. He lowered himself so he could get rice, and he distributed it to the civilians. I could give many examples of Colonel Yamaguchi's kindness and benevolence towards the civilians; however, I shall limit myself to those two.

In return the civilians loved Colonel Yamaguchi, not only the civilians in Bacolod, but also those who were within the areas of his troops, his different garrisons looked up to him and respected him. That is what I saw with my own eyes, and I really think that the love and respect for him came from the very bottom of their hearts. Even the guerrillas learning from the civilians that Colonel Yamaguchi was a fine man, and a good officer, respected him. I learned that from some people. I have stated all these things, not because I am a subordinate of Colonel Yamaguchi, I am now a civilian, but I have said these

things because they are the truth.

Now, I will talk about orders and regulations. As a company commander I received many orders and instructions from Colonel Yamaguchi, but I shall talk only about orders which Colonel Yamaguchi, himself, issued regarding the guerrillas and punitive expeditions. I will talk about orders which came from the division headquarters under Lieutenant General Fukui down to brigade headquarters at Cebu, under General Kono, and which later on were sent down to Colonel Yamaguchi. The Yamaguchi Unit was not in favor by all the higher commanders. The brigade commanders, division commanders and higher staff officers disliked the Yamaguchi Unit. When orders pertaining to the guerrillas were handed down from higher headquarters and they reached Colonel Yamaguchi, he would read them and then considering them as not suited to the occasion, he would refuse to follow those orders and would return the orders to the issuing headquarters. Higher headquarters were always displeased and would demand that he obey the orders, however, Colonel Yamaguchi refused to have his men obey such orders. I will give one example. When I went to the brigade and battalion headquarters as a liaison officer, I was often insulted. "Why does the Yamaguchi Unit not conduct punitive expeditions; why are you soft toward the civilians; why don't you obey orders," I was always asked these questions. One superior officer even went as far as asking why we didn't kill the Standing Army and civilians when we went on expeditions, because our expeditions were usually fruitless in the sense that enemy casualties were very light.

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INTERPRETER TACCAD: Please strike the words "Standing Army" and make it "guerrilla suspects".

MAJOR FOJAS: He did not say Standing Army?

INTERPRETER TACCAD: Standing Army and guerrilla suspects in Japanese are very similar, so I thought he meant Standing Army when I interpreted it as such.

A (continuing) There was just one example, but at any rate it was apparent that higher headquarters and the officers there were always against the Yamaguchi Unit and would try to inconvenience it as much as possible.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess)

COLONEL P[illegible]: The Commission is in session.

MAJOR R[illegible]: Will the interpreter please remind the witness that he is still under oath.

(Translated to witness through Interpreter Koide.)

A When I went to the brigade or the division headquarters I was invariably reprimanded by them because the units usually did not obey the orders, but they could not directly speak or reprimand Colonel Yamaguchi because these superior officers, in spite of the superiority in rank, could not directly reprimand Colonel Yamaguchi. When I told Colonel Yamaguchi about the reprimand I received from the superior officers, he always got angry and he said that such illegal orders can never be followed. The order regarding the civilians and the guerrilla suspects should not be followed, but they should be treated justly. He asked me who the officer was who reprimanded me, because he wanted to go there and ask him the reason for issuing such kind of order. That is just one example.

I was a company commander attached to his battalion. There are other company commanders, adjutants and officers who know specific examples regarding these incidents. However, these orders, because they came from superior officers, must be followed, but as a policy Colonel Yamaguchi carried out these orders in its minimum effect. For an example I will cite the expeditions.

When the superior officer orders him to make an expedition, he will first determine whether the expedition is a real necessity before he follows the orders. If, after carrying out the order of the superior officer to the

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minimum, and Colonel Yamaguchi is still charged, I think the guilt should be imputed not to Colonel Yamaguchi but to the officers who issued the order. The incidents that happened during expeditions, within the expeditions that he conducted, was because he could not afford to refuse to follow the order of his superior. If there are men or civilians killed during these expeditions I firmly believe that they were killed during actual fighting; otherwise, I don't think Colonel Yamaguchi will conduct any expeditions just for fun.

Regarding the activity of Colonel Yamaguchi and his unit, I personally believe that the responsibility should be shouldered by the superior officer issuing the order. Personally I believe that the staff officers should shoulder all the responsibilities of the charges that may be imputed to the Yamaguchi unit that occurred during his stay. I said that the staff officers should shoulder the responsibility because although they do not have the authority to issue orders, the brigade commander or the division commander, before they issue the order, first consult and ask for the opinion of the staff officers, and it is true the opinion voiced by these staff officers that the brigade commander or the division commander obeys their orders. So, I say that the staff officers should shoulder the responsibility.

MAJOR FOJAS: I would move, sir, that all the testimony of this witness regarding as to who should be responsible be stricken off the record because that is a matter which the Commission should decide and not this witness, and I would object to his further testifying on such matters.

MR. BONDA: No comment by the defense, sir.

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COLONEL PARMELEE: That is a result of what was more or less tacitly understood as to what the witness would testify to, and it was volunteered due to a question by the defense counsel which would have given the prosecution an opportunity to object at the time. Now, it is true the Commission must make any such deductions itself. The motion is granted, but I would like the prosecution and defense counsel to get together with the reporter and let her know just what is to be stricken.

MAJOR FOJAS: From the time he started to speak about who should be responsible.

COLONEL PARMELEE: Well, How far back does that go, now? It has been touched upon for some time here.

MR. BONDA: I think the answer should stand that is in there, and the witness should be advised that he is not to give his opinion as to responsibility, and the reason I say that is because it is in there, and until this last sentence, there has been no objection.

MAJOR FOJAS: There is no validity to it.

MR. BONDA: There was prior to the last sentence. I would suggest if anything be stricken, it be the last sentence because that is when the prosecution objected, and in the absence of an objection, it is waived, and it is properly objected to, I believe, only to the last sentence. It seems to me it was waived as to the others. I will say this, that the prosecution is correct in saying that it is not responsive to the question I asked as to his character; it is giving opinions that are probably outside of the facts in this lawsuit, but I think it has been waived

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excepting to the last sentence.

COLONEL PARKELEE: Well, it hasn't been waived to this extent: The understanding, I believe, was by the question put just before we recessed for lunch that the witness had stated that he was going to testify as to the character of Colonel Yamaguchi, and it was understood then that the question would be asked to allow him to give his testimony on that particular subject, and now he has opened up a new line here which was not brought forth by any question of the defense counsel.

MR. BONDA: Well, the question that was asked of him was as to the reputation of Colonel Yamaguchi.

COLONEL PARKELEE: That is right.

MR. BONDA: Then I was going to ask him about orders, because that is another thing he wanted to say, but before I did, he himself said it, so the answer has been responsive. It has been in question and answer form, and the fact it is long doesn't mean it wasn't in question and answer form, but he did volunteer information. It is a question as to the striking of that information as to how far back the striking should go.

COLONEL PARKELEE: Well, we will settle that now.

MAJOR FOJAS: May I say a word now? We have precisely guarded against such a thing happening. At the beginning we offered an objection to him testifying without being asked a question, and then he was asked a general question, and until he discussed this matter about who should be responsible, I was of the impression that he was citing instances as to the good character of Colonel Yamaguchi, so we have suffered to listen to him, but even then I think it is about time -- and I think defense counsel will agree with me that he has gone far afield and is no longer within the subject.--

MR. BONDA: Just a minute, sir, I don't agree he has gone far afield.

MAJOR FOJAS: Eh, yes.

MR. BONDA: I am saying it is probably not admissible because it is opinion evidence.

MAJOR FOJAS: There is no "probably" there.

MR. BONDA: But the whole question now is to how far back we should go to strike.

COLONEL PARMELEE: All right, off-the-record.

(Off-the-record discussion.)

COLONEL PARMELEE: On the record. So much of the testimony of this witness as reads as follows:

"If after carrying out the order of the superior officer to the minimum, and Colonel Yamaguchi is still charged I think the guilt should be imputed not to Colonel Yamaguchi but to the officers who issued the order.

"Regarding the activity of Colonel Yamaguchi and his unit, I personally believe that the responsibility should

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be shouldered by the superior officer issuing the order. Personally, I believe that the staff officers should shoulder all the responsibilities and the charges that may be imputed to the Yamaguchi unit that occurred during his stay. I said that the staff officers should shoulder the responsibilities because although they do not have the authority to issue orders, the brigade commander of the division commander, before they issue any order, first consult and ask for the opinion of the staff officers, and it is true the opinion voiced by these staff officers that the brigade commander of the division commander obeys their orders, so I say that the staff officers should shoulder the responsibility," is ordered stricken.

Q What else can you tell us about the reputation and character of Colonel Yamaguchi, and about the orders that he operated under, and confine yourself to those things, his character and reputation and the orders under which he operated.

A That is all.

Q How long were you in the Army -- I will withdraw that question.

When did you enter the Army?

A As an officer I entered the Army in April of 1938.

Q Prior to the time you entered the Army what was your profession?

MAJOR FOJAS: I think, sir, that is entirely immaterial in this case. He is just a witness testifying here about Colonel Yamaguchi, and not about himself.

MR. BONDA: We have always been permitted to ask

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a witness his business or profession to go to the value of his testimony.

MAJOR FOJAS: But not back to 1938.

MR. BONDA: That has always been permitted.

MAJOR FOJAS: But not back to 1938.

MR. BONDA: We can go back to the day he was born.

COLONEL PARMELEE: The question will be permitted. It is all in the record, I imagine, of his own trial.

Q What was your profession prior to entering the Army in '38.

A I was a reporter for a newspaper.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Does the prosecution have any cross-examination?

MAJOR FOJAS: I will have very few questions to ask, sir.

COLONEL PARMELEE: Very well. Would you like to ask them now?

MAJOR FOJAS: Yes, sir.

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q Was Nanjo given any treatment when he was wounded in Bago?

A You mean at the scene of the accident?

Q I mean in Bago.

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A At the place of the accident, an enlisted man from the medical corps was treating him.

Q Before he was taken to the hospital, was he given any treatment after the first treatment that he received?

A No, he did not.

Q You have been convicted by a military commission for atrocities committed by you and members of your company in Negros, have you not?

MR. BONDA: Objection.

COLONEL PARMELEE: What grounds?

MR. BONDA: The word "atrocities" is used in that question.

MAJOR FOJAS: Yes.

MR. BONDA: There has been no return of the review on this case.

COLONEL PARMELEE: Will the prosecution reframe the question, or rather, does the prosecution desire to reframe the question to ask him if he has been convicted by a military commission --

MAJOR FOJAS: In Manila.

COLONEL PARMELEE: --in violation of the laws of war?

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: Very well, that would be fair, because the final result has not been made known.

Q By violation of rules of war committed in Negros Island while you were stationed there?

MR. BONDA: Objection unless it is also made clear, as the President of the Commission suggested, the

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final outcome of which has not yet been known.

MAJOR FOJAS: I am only concerned with the action of the military commission.

MR. BONDA: The review is part of that action.

COLONEL PARMELEE: Well, I don't believe there is any harm in putting it in.

MAJOR FOJAS: I will include it in the question.

COLONEL PARMELEE: In other words, if someone reads this later on, they might take it as a final action.

INTERPRETER ISHITA: What is the question?

(Question read.)

MAJOR FOJAS: I will rephrase the question.

COLONEL PARMELEE: That question is withdrawn.

Q You have been convicted by a military commission in Manila for violation of the laws of war committed by you and members of your company while you were stationed in Negros, and that conviction is still pending the action by the reviewing authority, is that correct?

A Yes.

Q And those violations of the laws of war were alleged to have taken place at a time when you were under the command of Colonel Yamaguchi, is that correct?

A Yes, that is right.

Q Now, can you cite an instance of an order which was returned by Colonel Yamaguchi to higher headquarters because he did not like to make such an order?

A As an example I will give one incident that happened regarding the order for an expedition. I forgot the place, but the order to conduct the expedition came from brigade

headquarters. I think the order was to conduct punitive expeditions to the south, and the Colonel returned the order with the comment that he wanted to conduct expeditions to the east near the mountains where there were supposed to be many guerrillas.

Q So he returned this order not because he did not like to carry out expeditions, but only he wanted to carry out an expedition to some other place, is that correct?

A I cited this example because the question was for me to cite an instance wherein the Colonel received an order from his superior, and he returned the order.

MAJOR FOJAS: I have no further questions.

COLONEL PARMELEE: Redirect?

MR. BONDA: No redirect, sir.

COLONEL PARMELEE: Questions by the commission? There appear to be none. The witness is excused.

(Witness excused.)

COLONEL PARMELEE: The Commission will now adjourn and will reconvene at 0830 hours tomorrow.

(The Commission adjourned at 1510 hours, 21 January 1947, to reconvene at 0830 hours, 22 January 1947.)

EGM(7)ss

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME LIII

PAGES ~~3488~~ 3489 TO 3527 INCL.

DATE 22 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
22 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. POJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	
2ND LIEUTENANT SAMUEL S. KOIDE	)	
PETRONILO VALLEJO	)	Japanese
CAESAR YO ALZONA	)	
ROMUALDO TACCAD	)	
CLARO ISHITA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER

I N D E X

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P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, 22 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P.I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

MR. BONDA: The defense calls as its next witness, Masao Nanjo.

MASAO NANJO,

a witness for the defense, being first duly sworn, testified as follows through Interpreters Taccad and Ishita:

DIRECT EXAMINATION

BY MR. BONDA:

Q State your name.

A Masao Nanjo.

Q You testified previously in this case, did you not, as a prosecution witness?

A Yes, I did.

Q While you were a member of the Imperial Japanese Army, were you ever wounded?

A Yes, I was wounded once.

Q In what geographical location were you wounded?

A In Bago, Occidental Negros.

Q What was the date of your wounding?

A December 6th, 1944.

Q What fixes that date in your mind?

A The date that I was wounded was one day after Captain Takahashi came over from Victorias. That was also the first time that I had ever been wounded so I remembered the date.

Q Where were you wounded?

A Below the right knee.

Q As a result of that wound, what happened?

A I went to the hospital at Bacolod.

Q How long did you remain in the hospital?

A About five months.

Q Were you bedridden or were you ambulatory?

A I was bedridden for about three months, that is, up to the end of February.

Q Now, during the period immediately before and after the 8th of December, 1944 -- I'll withdraw that question.

What was your position in the Army?

A I was the officer in charge of training in the Takahashi Company.

Q During the period immediately before, during and immediately after the 8th of December 1944, were any of the troops of your company, the Takahashi Company, in the vicinity of Bacolod other than those that were in the hospital or on other non-duty status positions?

A No.

Q How long have you known Colonel Yamaguchi?

A I have known Colonel Yamaguchi since about November, 1942.

Q During that time did you become familiar with his character?

A Yes.

Q Can you tell us what his character is?

A The date that I was wounded was one day after Captain Takahashi came over from Victorias. That was also the first time that I had ever been wounded so I remembered the date.

Q Where were you wounded?

A Below the right knee.

Q As a result of that wound, what happened?

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A No.

Q How long have you known Colonel Yamaguchi?

A I have known Colonel Yamaguchi since about November, 1942.

Q During that time did you become familiar with his character?

A Yes.

Q Can you tell us what his character is?

A Yes, I can.

Q Will you please tell us?

A First, as a commander in the Japanese Armed Forces, he was kind to his men and his men respected him. Second, as commanding officer of the Japanese Forces in Negros, he always had his officers and men treat the civilians with kindness, he always gave them instructions and warningsto that effect. Third, he gave work to those guerrillas who surrendered and he released them. Fourth, he was always helpful towards the civilians. The civilians therefore looked up to him and respected him as being a very kind Japanese commander. That is all.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Cross-examination?

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q You have been convicted by a military commission in Manila for violation of the laws of war, and you have been sentenced to death by hanging, which sentence is now pending action by the reviewing authorities, were you not?

A I have been convicted by a military court and sentenced to death by hanging, but I have no relation at all with the incidents of which I have been convicted. I have no guilt and I have not violated the laws of war.

Q And the violations of war for which you have been convicted were alleged to have taken place in Negros during the time you were under the command of Colonel Yamaguchi, was it not?

MR. BONDA: If the Court please, may I; I haven't asked this on direct examination. Now he does have a right to attempt to impeach the witness by showing a prior conviction, and I have not objected to that question. I do object to this question on the ground that it was not brought out on direct examination, however.

MAJOR FOJAS: Under all the rules of evidence, sir, a witness can always be asked when he was convicted of a crime before.

MR. BONDA: I did not object to that.

COLONEL PARMELEE: I don't believe that is the objection. The objection is to cross-examining him on his official relation with the accused in this case.

MAJOR FOJAS: I am entitled to cross-examine him on that because he testified about the character of this man. That would be in contradiction to what he testified here, he testified that he was a very good man.

MR. BONDA: Well if nothing else in this trial has prejudicedand has given grounds for mistrial, it is the statement just made by the prosecutor and I am saying that sincerely. That is the most prejudicial statement I have ever heard in the course of this trial yet. I renew my objection.

MAJOR FOJAS: I submit, sir, that the question is proper.

COLONEL PARMELEE: Well, if you had asked me what the prosecutor said, I would have to say I didn't remember.

MR. BONDA: I understand that, sir.

COLONEL PARMELEE: However, it is in the record and I will read it, that is true.

The matter of the character of the accused having been testified to by the witness is now a matter of cross-examination by the prosecution as I understand it.

MAJOR FOJAS: Yes sir.

MR. BONDA: Yes, that is right, I have no objection to that at all. He can testify as to what his character is. If the Court wants that read, you will find it is not a proper question. The fact this man was found guilty of a crime would have no value as to impugning the character of the accused, and to attempt to do so is highly prejudicial.

MAJOR FOJAS: I don't think, sir, it has no value, I submit the question, sir.

COLONEL PARMELEE: Will the reporter please read the question?

(The question was read as directed.)

COLONEL PARMELEE: That is the question objected to?

MR. BONDA: Yes sir, he doesn't have the right to show the facts that go into that conviction.

MAJOR FOJAS: Why not?

MR. BONDA: Well, read the law.

COLONEL PARMELEE: The law on that particular point I wouldn't know.

MAJOR FOJAS: I don't know of any law which would prohibit me from asking that question.

MR. BONDA: In civil trials, the only thing we can go on, you can ask a man if he were arrested and convicted, were you indicted and convicted of a felony and you can go no further than that. And you can give what the felony is.

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MAJOR FOJAS: I don't believe that, especially in this particular case where the witness was under the command of the accused in this case.

MR. BONDA: Now look, the record shows that he was in Yamaguchi's Battalion. The Court can take judicial notice of the times that appeared in the court, in his trial. What purpose can this question serve except not to impugn the character of the witness, not to impugn the character of Colonel Yamaguchi, but simply to prejudice the minds of the Commission, to inflame the minds of the Commission. They can't bring it out as an evidentiary fact because I didn't go into it on direct examination, they can go into it to impeach this witness. That does not impeach this witness as to whose command he was under. As to the character of the man, that doesn't impeach that because we have in the record the fact that these soldiers were in his command.

MAJOR FOJAS: There is nothing further from the truth than that. He testified he was a good man, good to the civilians and good to his soldiers. So by that we would understand no violations of war were committed. This man was serving under the accused in this case, wouldn't that prove that is not true, that he was not good to civilians as he wanted us to believe?

MR. BONDA: I have no further comments, sir, because if I do I am going to lose my temper and I don't want to wind this case up with losing my temper.

COLONEL PARMELEE: I'll say this, the official assignment, the violations of war for which this witness, Nanjo, had been convicted, and his official relations with respect to

the accused, Yamaguchi, is all in evidence, is that right?

MAJOR FOJAS: Yes sir, but that is not the point to my question. The point is the violation of the rules of war were alleged to have been committed also in Negros - - -

MR. BONDA: If the Court permits that, I am going to bring in the entire record of the Nanjo case and have the testimony of the witnesses who testified in the Nanjo case, because in the Nanjo case there was the greatest injustice and miscarriage of justice I have ever known. This man was no more guilty of the specifications charged in that case than I am. The record is clear in that case. If you are going to insist on that, I am going to bring the testimony by the witnesses in and prove to this Commission there was a miscarriage of justice which never should have been performed under our American system of fair play. The greatest miscarriage of justice I have ever seen was committed in that case.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess)

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: I will withdraw the last question.

Will the interpreter please remind the witness that he is still under oath?

(Translated to witness through Interpreter Tadcad.)

Q Is it not a fact that you were convicted for a violation of war alleged to have taken place in Negros on or about the 8th of December, 1944? - -

MR. BONDA: Which has not been - -

Q - - (continuing) which conviction is pending action by the reviewing authority? I would request, sir, the witness to answer that question "yes" or "no."

COLONEL PARMELEE: The witness is instructed to answer the question "yes" or "no."

A That decision was a mistake.

Q Will you please ask him to answer.

COLONEL PARMELEE: Ask him to answer the question, and put it so that he understands that he was convicted by a military commission for an alleged violation of the laws of war that happened on a certain date, and at a certain place, and that such conviction by the military commission has not been approved by the final authority. Does he understand that? He must answer that "yes" or "no."

A Yes, I received a conviction, but that decision was in absolute error.

Q When you were wounded in Bago, as you claim, were you treated by a medical officer of the Yamaguchi Battalion?

MR. BONDA: Objection. He was not wounded in Bago -- yes, he was. Withdraw my objection. I was thinking of the other.

MAJOR FOJAS: Where was he wounded?

MR. BONDA: That is all right.

A I was treated after I entered the hospital.

Q Before you went to the hospital you did not receive any treatment at all, is that what you mean?

A Before I entered the hospital my wound was merely bandaged by a soldier of the medical corps.

Q When did you enter the hospital?

A December 6th.

MAJOR FOJAS: I have no further questions, sir.

COLONEL PARMELEE: Redirect?

MR. BONDA: No redirect, sir.

COLONEL PARMELEE: Questions by the Commission? There appear to be none. The witness is excused.

(Witness excused)

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess)

COLONEL PARMELEE: The Commission is in session.

MR. BONDA: The defense calls as its next witness Mr. James J. Sousa.

JAMES J. SOUSA,

a witness for the defense, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BONDA:

Q State your name, please.

A James J. Sousa.

Q Your age?

A Thirty-three.

Q What is your home address?

A Hudson, Massachusetts.

Q What is your nationality?

A American.

Q What is your present occupation -- withdraw that.

What is your profession?

A Lawyer.

Q What is your present job?

A Defense counsel with War Crimes Trials.

Q Have you been to Negros Occidental?

A I have.

Q When, please?

A For five days just prior to Christmas of last year.

Q How long were you there?

A Five days.

Q While you were there did you have an opportunity to discuss Colonel Yamaguchi with anybody?

A I did.

Q Will you please tell us the occasion?

A I was invited to a dance on the Saturday night just previous to Christmas, and the occasion for the dance was a reunion of all the guerrillas at Negros. While there I met a Major Rojas who was major in the Philippine Regular Army who previously had been a colonel in the guerrilla forces around Negros.

Q Did you have any conversation with him regarding Colonel Yamaguchi?

A I did.

A Thirty-three.

Q What is your home address?

A Hudson, Massachusetts.

Q What is your nationality?

A American.

Q What is your present occupation -- withdraw that.

What is your profession?

A Lawyer.

Q What is your present job?

A Defense counsel with War Crimes Trials.

Q Have you been to Negros Occidental?

A I have.

Q When, please?

A For five days just prior to Christmas of last year.

Q How long were you there?

A Five days.

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Q Will you please tell us the occasion?

A I was invited to a dance on the Saturday night just previous to Christmas, and the occasion for the dance was a reunion of all the guerrillas at Negros. While there I met a Major Rojas who was major in the Philippine Regular Army who previously had been a colonel in the guerrilla forces around Negros.

Q Did you have any conversation with him regarding Colonel Yamaguchi?

A I did.

Q Will you tell us what that conversation was?

A I inquired of the major if he knew Colonel Yamaguchi, and he said he did, that his forces and Colonel Yamaguchi's forces were engaged in a battle around Pontevedra, I think it was around March of 1945, and I asked him about the colonel and he said the colonel was a fine soldier, that he was in the battle in active combat among his men, and he was seen up there by him and by a battalion commander in whose battalion a man attached to that battalion wounded the colonel, and I asked him if he would make me a statement to that effect, and the major said he wouldn't because Yamaguchi was a Japanese, but Yamaguchi nevertheless was a good man, a good soldier, wasn't afraid of action, and was up there with his men.

COLONEL PARMELEE: Will the reporter read the answer about the wounding of Colonel Yamaguchi?

(Answer read.)

MR. BONDA: The defense has no further questions.

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q Your purpose in going to Negros was to look for witnesses for the defense of these trials, is that right?

A No.

Q Why did you go to Negros?

A I went to Negros to marshal testimony in a case assigned to me.

Q And when you talked to this major was it you or the major who opened up the conversation about Colonel Yamaguchi?

A I attended the dance, and was presented to the major as the guest of honor at that dance.

Q Yes ?

A And during the course of our conversation I asked him if he knew the colonel. It was a result of my inquiry, if he knew the colonel, that the conversation took place.

Q But, in spite of -- withdraw that question.

Why did you ask the major if he would make a statement to that effect?

A I am a defense counsel, and I knew that a statement of that kind would be invaluable to the defense, because it came from a man who was actively engaged in combat with the colonel, and I asked him for that purpose.

Q Even if it was not your purpose to look for witnesses for the defense in this trial, when you met that major it occurred to you to ask for a statement from him regarding Yamaguchi?

A He didn't come to me.

Q You did ask him to make a statement?

A I asked him, nevertheless,to make the statement. It wasn't the purpose, but I asked him, nevertheless, that is right.

Q But he refused to give a statement?

A He refused because the colonel was a Japanese, and he wouldn't make it for that reason.

Q Did you ask him if he was willing to testify in this case?

A No, I didn't ask him that.

Q Do you know if anybody else asked him to testify in this case?

A I was present there with a Mr. Heller, an investigator of the Defense Section, and he heard the conversation, and I believe he didn't ask the major to testify, nor did I.

MAJOR FOJAS: I have no further questions.

COLONEL PARMELEE: Redirect?

MR. BONDA: No redirect, sir.

COLONEL PARMELEE: Questions by the Commission? Colonel Parmelee.

EXAMINATION BY THE COMMISSION

BY COLONEL PARMELEE:

Q To what unit did this man belong who this major told you had wounded Colonel Yamaguchi?

A He didn't designate the unit by name. He told me he was in charge of all the guerrilla forces at that time during the battle between the guerrillas and Colonel Yamaguchi's forces at Pontevedra.

Q And you concluded that the man was a guerrilla and not a Japanese, is that correct?

A That is right, sir.

COLONEL PARMELEE: No further questions by the Commission. Any further questions by the defense?

MR. BONDA: No, sir.

COLONEL PARMELEE: Prosecution?

MAJOR FOJAS: No, sir.

COLONEL PARMELEE: The witness is excused.

(Witness excused)

MR. BONDA: The defense calls as its next witness Mr. Leo Curry.

LEO B. CURRY, JR.

a witness for the defense, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BONDA:

Q State your name, please.

A Leo B. Curry, Jr.

Q Your age?

A Twenty-seven.

Q What is your home address?

A Washington, D.C.

Q What is your nationality?

A American.

Q What is your business or profession?

A Investigator.

Q What is your present job?

A Investigator with the War Crimes Trials.

Q Have you been in Negros Occidental?

A Yes, I have.

Q Will you give us the dates, please?

A I left here about the second week of September, and I was down there until about the first week of November.

Q What was your purpose in going there?

A Investigations of accused war criminals.

Q And was Colonel Yamaguchi one of the -- withdraw that.

Was the Yamaguchi case one of the cases upon which you went for investigation?

A Yes.

Q During your stay there did you have any conversations relative to Colonel Yamaguchi?

A Yes, I had many.

Q Will you tell us what they were?

A Well, I had an occasion to --

Q I will withdraw that. Will you tell us with whom you had conversations regarding Colonel Yamaguchi?

A With a considerable portion of the population of Bacolod.

Q Will you tell us what those conversations were, in general?

A Well, in general the town people there knew that I was an investigator from War Crimes Trials, and so I approached asking for information concerning Yamaguchi, and others voluntarily came to me and spoke to me, gave me their own impressions without being called upon, of Colonel Yamaguchi, and I would say that I spoke to well over a hundred persons concerning Yamaguchi, in particular, and with all the people that I spoke to not one bore any ill feelings towards him at all; on the other hand, they said that he was very much respected there, and liked by the populace, and was very fair and by far the best Japanese soldier or commander that they had knowledge of in Negros.

Q Did any of them bear any -- in your conversation, bear any ill will towards Colonel Yamaguchi?

A No, that was one of the things that struck me as being very unusual, and in the course of other investigations there were always people that had something bad to say about the Japanese, but in the case of Colonel Yamaguchi I can't remember one person that had a bad thing to say about him.

Q Did you attempt to get affidavits from these persons?

A From some I did, and from some I didn't. Those that knew him personally and had first hand information, I did get affidavits from, the others a good bit of it was hearsay; that is, they didn't know him personally, had no personal knowledge of him.

Q How many affidavits did you get from them?

A Well, I got four.

Q Did any refuse to give you an affidavit?

A Yes.

Q Will you tell us why they refused?

A Well, being Filipinos, they felt that the embarrassment of giving testimony for a Japanese would just be more than they could bear, and they wouldn't do it.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Cross-examination?

CROSS-EXAMINATION

BY MAJOR FOJAS:

Q Before you went to Negros, were you familiar with the Charges and Specifications filed against Colonel Yamaguchi in this case?

A Yes, I was.

Q Did you ever attempt to get in touch with any of the relatives of the victims specified in any of the specifications in this case?

A No, I didn't.

Q You did not. Did you know the witnesses for the prosecution who would testify against Colonel Yamaguchi in this case?

A No.

Q You have no idea as to who the witnesses were who were supposed to testify in this case?

MR. BONDA: How could he have -- wait a minute. I object to the question. How could he have when you didn't give me the list until the beginning of the trial, which was the end of October?

MAJOR FOJAS: That is not important. He may know it from other sources. You don't claim he could only know it from you or me?

MR. BONDA: I object on the grounds the Court can take judicial notice the defense does not get a list of the prosecution witnesses in advance of trial except for one day, as a matter of courtesy.

COLONEL PARMELEE: Can we establish in this trial when the defense did have a list of the witnesses?

MR. BONDA: Yes, sir, one day before the start of the trial, which was, I think, October 27th or 30th, I forget.

COLONEL PARMELEE: The trial started on the 31st of October.

MR. BONDA: Well, it was October 30th that I got the list of names.

MAJOR FOJAS: I suppose defense counsel does not say we violated any rule of evidence or any rule of procedure in not giving him the list?

MR. BONDA: I do not. As a matter of fact, it was mere courtesy. We are not entitled to a list of the witnesses.

COLONEL PARKER: The defense has made it clear they appreciated the prosecution turning over the list to them, and the defense counsel has asked the Commission to take judicial notice of a certain fact, and before we could do that, we wanted to establish when the list of witnesses was in the hands of defense counsel, so we can so take judicial notice.

MAJOR POJAS: Anyway, we have gotten the answer from the witness.

Q Did you get in touch with anybody in Negros who was either a victim of any Japanese atrocity, or related to any victim of Japanese atrocity?

A Yes, I did.

Q And who, can you remember who?

A Mr. Cosculluela, for one.

Q When you said Mr. Cosculluela, you are referring to the present Director-General of the PRRA of the Philippines?

A That is correct.

Q And Mr. Cosculluela is a very influential man in Negros, do you know?

A Yes, I know that.

Q From whom did you get these four affidavits?

A From the parish priest of Bacolod, from Mr. Gustilo, present congressman there.

Q Mr. Gustilo, who was the puppet provincial governor of Occidental Negros during the Japanese occupation?

A Yes.

Q Who else?

A From the bishop of Negros.

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Q Bishop of Negros?

A And from a Letty Alonso, one of the local residents there in Bacolod.

Q What was the last name, please?

A Miss Alonso.

Q Do you know what is her occupation?

A Yes, she has no occupation. She is a student.

Q She is a student, and she also belongs to one of the prominent families in Bacolod?

A Yes.

MAJOR FOJAS: I will withdraw that question.

Q Did you get any affidavit from any farmer, for instance, any fishermen there, or ordinary laborers concerning the character of Colonel Yamaguchi?

A No, I got no affidavits from any farmers.

Q Did you ever ask them to make any affidavit or statement as to the character of Colonel Yamaguchi, any of those belonging to the low class?

A No, I didn't because the farmers, for the most part, wouldn't be likely to know Yamaguchi personally, or have any personal information concerning him.

Q So that it was really your intention to approach only the influential men in Negros, and get statements from them, if possible, is that correct?

A People that I thought would be qualified to give information concerning him.

MAJOR FOJAS: I have no further questions.

COLONEL PARMELEE: Redirect?

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REDIRECT EXAMINATION

BY MR. BONDA:

Q Did you speak to the man on the street?

A Yes.

Q Did you ask -- withdraw that.

Was the group that you spoke to a cross-section, a representative group of the City of Bacolod?

MAJOR FOJAS: That is leading the witness, sir, and I think the witness has already testified that he only approached those influential people whom he thinks are qualified to give a statement or affidavit.

MR. BONDA: He didn't say he approached those influential people that made a statement. He said he did speak to influential people, and he said he got affidavits only from those to whom he named, and he said he spoke to many others. That is his testimony.

MAJOR FOJAS: I have my objection.

COLONEL PARMELEE: The question, please?

(Question read.)

COLONEL PARMELEE: The witness testified on direct examination he had talked to a considerable portion of the population, and I believe that this question would be proper. Objection not sustained.

Q Will you answer that question, please?

A Will you repeat the question?

(Question read.)

A Yes, they were.

Q This Gustilo that you mentioned, what is his present position?

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A He is a congressman from the fifth district of Negros Occidental.

Q And he is sitting now in the Philippine Congress?

A Yes, he is.

MR. BONDA: The defense has no further questions.

COLONEL PARMELEE: Recross?

MAJOR FOJAS: No recross.

COLONEL PARMELEE: Questions by the Commission? Colonel Parmelee.

EXAMINATION BY THE COMMISSION

BY COLONEL PARMELEE:

Q Where did you meet these persons you interviewed; was it at a social gathering or social affair?

A Yes, at dances and twice weekly they gathered in a cafe where I had a chance to meet lawyers, doctors and just the ordinary business class of people there. There weren't any farmers there to speak of.

Q Was it a place where they served food and refreshments and so forth, a social occasion?

A Yes, mostly.

Q When you speak about having talked to a considerable number of persons of the population of Bacolod, I believe that was what you stated?

A Yes.

Q The population of Bacolod City was about 25,000 persons in 1944 -- I don't know what it is now, perhaps a few thousand less; I don't know -- but is that statement literally true?

A I would say well over 100, and at the time I was down there I considered that a considerable number of people to meet and talk to.

Q You spoke to a man of the street as the question was worded, is that correct?

A Yes.

Q What did that man of the street do; do you know his his occupation?

A Well, the cafe owner down there is not a big man. I would consider him a cross-section or a man of the street.

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Q Just a small business man?

A Yes.

Q Did you talk to anyone who worked on plantations and sugar centrals and the small farmers with a carabao and that sort of thing on the outskirts, let us say?

A No, I didn't. That would be rather difficult to speak to those people because very few of the farmers speak any English at all.

Q Then your contact was merely with the English-speaking people, those who speak English?

A Yes.

COLONEL PARMELEE: There are no further questions by the Commission. On any new matter that may have been brought up by the Commission in its questions, has defense any further questions?

MR. BONDA: No further questions.

COLONEL PARMELEE: Prosecution?

MAJOR FOJAS: No questions, sir.

COLONEL PARMELEE: The witness is excused.

(Witness excused.)

MR. BONDA: That is the last of the testimony of the live witnesses in this case.

We now offer into evidence what has been marked Defense's Exhibit C which is a statement of Vicente E. Gustilo, referred to in the testimony of the last witness. The prosecution has a copy of it; I gave it to him yesterday.

COLONEL PARMELEE: Comments by the prosecution?

MAJOR FOJAS: We have no objection to the admission of this document into evidence as it is admissible

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under the rules although we would like to say that Vicente E. Gustilo, I believe, is available as a witness and I don't see any reason why his statement should be brought into evidence.

MR. BONDA: If the Court please, Gustilo was willing to come in as a witness. The Philippine Legislature has been in adjournment since sometime prior to Christmas until the 27th of January. If the prosecution insists, I'll have him here; he is available on the 27th, but I couldn't get him in until then. But if you do want him here to testify, I would like to have him come in.

MAJOR FOJAS: I said I don't object to the admission of this statement into evidence, but we made that remark for we would like to find out why he is not here.

MR. BONDA: I explained it and I am inclined to ask for a recess so we can get him in.

MAJOR FOJAS: The point is, he should have explained why he is not here before. But in view of his explanation, we don't insist.

COLONEL PARMELEE: The document offered is now received in evidence as Defense's Exhibit C.

(Defense's Exhibit C received in evidence.)

MR. BONDA: The defense offers into evidence what has been marked Defense's Exhibit D, which is an affidavit of Reverend Flaviano B. Ariola, a Filipino Parish Priest of the Cathedral of Bacolod City. This man is not available. He lives in Bacolod City, and has urgent

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duties there. The uncertainty as to when he would be used as well as the transportation problem being what it is makes it impractical for him to be here.

MAJOR FOJAS: We have no objection to the introduction of the document into evidence.

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COLONEL PARMELEE: The document offered is received in evidence as Defense's Exhibit D.

(Defense's Exhibit D is received in evidence.)

MR. BONDA: The defense offers the affidavit of one, Imanaka Isaburo, who is in Japan at the present time, whom we have been unable to bring down here for the reason as to the uncertainty as to when he can come and the fact he is in Japan, and there is a transportation problem. He was a friend of the accused in this case. Now this exhibit is not in affidavit form, it is in letter form, but I don't think that under the rules of Letter 5 December, I don't think that will matter.

COLONEL PARMELEE: Comments by the prosecution?

MAJOR FOJAS: We object having this exhibit admitted in evidence for the reason it has no bearing on the case at all. It is a personal letter to the President of the Commission, and I don't think a letter of this nature is permissible.

MR. BONDA: Will the Court permit me to read the first paragraph --

MAJOR FOJAS: I object to the reading of that into the record.

COLONEL PARMELEE: If it is objected to being in evidence and if you will read it --

MR. BONDA: I cannot answer the prosecution unless I am permitted to read the first paragraph to show where it is material in this case. I can't answer it in any other way.

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MAJOR FOJAS: It is up to the Commission to find out.

MR. BONDA: If that is true, I say, if it is not relevant, it should not be admitted, but if the Commission will remember in previous cases where I said it was not relevant, the Commission said they would admit it for whatever probative value it had. I want the rule to work both ways. I want to read the first paragraph to show the relevancy of it, but if the Commission will not permit me to read it, then I will offer it under Letter 5 December, as interpreted by the prosecution.

COLONEL PARMELEE: This is addressed to the President of the Commission?

MR. BONDA: Yes, sir, the form is not material.

COLONEL PARMELEE: And it is signed by the maker?

MR. BONDA: The copy, the original is signed, I am offering the copy only. I will get the original, -- I don't see it in here. It has been signed, and it is relevant. It is a statement of the character of Colonel Yamaguchi.

COLONEL PARMELEE: The Commission will accept the letter offered for any probative value that it may have as Defense's Exhibit E.

MR. BONDA: Defense's Exhibit E, yes, sir.

(Defense's Exhibit E received in evidence.)

MR. BONDA: Defense offers now into evidence what has been marked Defense's Exhibit F, which is a statement of Colonel Yamaguchi's father-in-law.

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COLONEL PARMELEE: It has been signed by him? That is a letter?

MR. BONDA: Well, it is the same statement, the heading is different. When it was brought down, it had a different heading. This one also says "statement of certification", and the other one says "petition". The wording is different, the form is the same.

COLONEL PARMELEE: In substance it is a character letter made by the father-in-law of the accused, is that correct?

MR. BONDA: Yes, sir, who is a retired army officer.

COLONEL PARMELEE: Comments by the prosecution?

MAJOR FOJAS: We object to the admission of this document in evidence because it is immaterial. It is about the personal characteristics of Colonel Yamaguchi. We have the man on trial here, and he is being tried for his command responsibilities as an officer. This document speaks of his family, the worries of his family, his children, and so forth, and it will not aid the Commission in any way in deciding the case, except perhaps, to cause prejudice; so we object to the admission of this document in evidence.

MR. BONDA: If the Commission please; first, let me correct my original statement. This statement is not by the father-in-law, but by the son-in-law. May I say this; it is a little late and a rather late stage in the proceedings for the prosecutor to say it has no value because it talks of his personal characteristics and that

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what we are concerned about, is his command responsibility. How are we to decide what kind of a man he is, whether he is the type of man that could do these things, unless we know what his personal characteristics are?

MAJOR FOJAS: That is not our evidence. That is yours.

COLONEL PARMELEE: Well, let's leave that for final argument. The Commission has certain issues before it, and is not easily sidetracked one way or the other. The Commission accepts for any probative value it may have, the letter of the son-in-law or father-in-law?

MR. BONDA: This is the father-in-law.

COLONEL PARMELEE: The statement or letter of the father-in-law of the accused is received into evidence as Defense's Exhibit F.

(Defense's Exhibit F received in evidence.)

MR. BONDA: We now offer into evidence what has been marked for identification as Defense's Exhibit G which is a statement of one, Hideya Oka, who was formerly in the army as a dental officer who was acquainted with Colonel Yamaguchi. This statement is a character statement.

COLONEL PARMELEE: Comments by the prosecutor?

MAJOR FOJAS: Are you referring to Exhibit G?

MR. BONDA: G.

MAJOR FOJAS: We object to the admission of this document because it is nothing but a piece of paper, not even signed. It is immaterial and irrelevant to this case.

MR. BONDA: I will admit it is not signed. It, however, was witnessed by Kenneth K. Simon, former defense

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counsel who is now back in the States.

COLONEL PARMELEE: In other words, the letter was not signed by the maker of the original letter, is that correct?

MR. BONDA: I have nothing to show that there has been a signature --

COLONEL PARMELEE: It can be anonymous then as to authenticity?

MR. BONDA: Well, there is a certification, "I certify that the above is a true and correct translation of the original document from Japanese into English", now whether, that by error, they omitted the signature on the original document, I can't tell.

MAJOR FOJAS: Well, that is just a certification as to the translation, not as to authenticity of the document itself.

MR. BONDA: All the originals of these are in Japanese, sir.

COLONEL PARMELEE: Before the Commission can accept the document, it must be satisfied that the original has been signed by the maker. As President of a Commission in another case, I might state, the President refused to accept an anonymous letter because it may have been made or it may not have been made by the maker.

MR. BONDA: That is correct. This was a translation of an original Japanese document, and it is just possible that the signature was omitted. I offer it; will the Court rule on my offer, so we can go on?

COLONEL PARMELEE: The document, that is the offer,

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is refused due to the facts stated, that it has not been proven to the satisfaction of the Commission that it is an authentic document, that is, that it has been signed by a purported maker.

MR. BONDA: Will the Court withhold its ruling until I call Frank Yamamoto, the chief translater. I understand now, that the name was also stated above, where they have a "name" and then it tells who made the statement, that is where it actually appears.

COLONEL PARMELEE: Yes, the Commission will revoke its ruling, and hold in abeyance --

MR. BONDA: Yes, I see the next document is the same way.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess.)

COLONEL PARMELEE: The Commission is in session.

MR. BONDA: Referring to Defense's Exhibit G, regarding which exhibit the Commission has withheld its ruling, during the recent recess I spoke to Lieutenant Yamamoto who is present in court now, and he advises me, and if the Court desires me to put him on as a witness, I will gladly do so. If I do so, he will testify that the Japanese custom is to put the name at the beginning of the document and then follow through with the contents of the document and the Japanese original does contain the signature of the man who purports to make the statement. If the Court desires that statement from Lieutenant Yamamoto, he is present in court at this time.

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COLONEL PARMELEE: Will the prosecution stipulate as to the statement made by defense counsel?

MAJOR FOJAS: I can stipulate that Lieutenant Yamamoto, said that to him and if placed on the stand, he would testify to that effect. I would like to say that in other statements there are signatures and not merely stating the name on the top of the document. I would like to find out if the original of that document was in the handwriting of the Japanese who is purported to be the maker. Because if it was not in his handwriting, it could not be his statement. It could not be claimed as his statement because we could not be bound by a document not made by that person.

MR. BONDA: How would it less likely be his signature if it appears at the beginning or end?

MAJOR FOJAS: I don't understand.

MR. BONDA: Why it would be less likely to be his signature if it appears at the beginning of the document or the end?

MAJOR FOJAS: You said it was the Japanese custom to state the name at the beginning.

MR. BONDA: Lieutenant Yamamoto said it is not merely the name but the signature that appears opposite the word "name", and the actual signature of the person who purports to make a statement. There is no difference in the signature whether it is at the beginning or at the end.

COLONEL PARMELEE: Who knows whether there is such a person who exists, the purported maker of the document?

MR. BONDA: Kenneth K. Simon is the name who appears thereon.

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COLONEL PARMELEE: Did he actually take the statement himself?

MR. BONDA: He appeared as a witness. He must have been there as a witness or he falsified.

COLONEL PARMELEE: Does the prosecution wish Lieutenant Yamamoto put on the stand?

MAJOR FOJAS: No, sir.

COLONEL PARMELEE: Then is the prosecution satisfied that the purported maker of the document made under Japanese custom indicates his signature at the top of the document rather than at the end?

MAJOR FOJAS: Yes, sir, but I still object to the admission of the document on the ground it is immaterial and irrelevant.

COLONEL PARMELEE: The Commission will accept the document for any probative value that it may have as Defense's Exhibit G.

(Defense's Exhibit G received in evidence.)

MR. BONDA: May I state that it is a statement of character and that appears in the document itself.

The defense offers into evidence what has been marked for identification as Defense's Exhibit H, which is a statement of one, Ex-Colonel Yasutsugi Okada, who also signed at the beginning of the document, Administrative Official of the Inquiry Section of Historical Facts, Tokyo Demobilization Station No. 1. It is a character statement, and I offer it into evidence at this time.

MAJOR FOJAS: We offer the same objection, as we

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don't think it is signed at the beginning or end. In other documents, as in G, it is clearly indicated in the translation.

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It does not appear in this statement of Defense's Exhibit H. It was not even witnessed by anybody. It is just a piece of paper upon which something is written by someone whose authenticity has not been established.

MR. BONDA: I don't think there is any requirement that it be witnessed. The only requirement is that it be a statement of the person whom it purports to be. It is up to the Commission to decide whether it is that person or not. Nothing on there to show by whom it was written. As to the signature, we can put Lieutenant Yamamoto on the stand and ask him when he saw the original. There was a signature, there was a name signed to it. I can say it makes no difference whether it was signed at the top or bottom. If the word "/s/" was left out, we can find out from Lieutenant Yamamoto, as this mark ordinarily indicates it was a copy of the signature which appears on the document.

MAJOR FOJAS: We can only ask Lieutenant Yamamoto whether there was a signature at the beginning or end of the statement.

MR. BONDA: Yes. Will you stipulate with me?

COLONEL PARMELEE: Let the record indicate that defense counsel and the prosecutor are now consulting with 2nd Lieutenant Yamameto, the official court interpreter, on the matter of whether there was or was not a signature on the document in question that he translated.

MR. BONDA: What are we going to stipulate?

MAJOR FOJAS: You can stipulate that Lieutenant Yamamoto said that there was a signature.

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MR. BONDA: We so stipulate as you have just said.

MAJOR FOJAS: Although I don't agree with what Lieutenant Yamamoto said to that effect because as I said in other documents introduced in evidence, for instance Defense's Exhibit G, when there is a signature, it is so translated, while in this document it is not.

COLONEL PARMELEE: The authenticity of the document is not certain. However, the stipulation has been made between defense and prosecution that there was a signature on there. Also, the statement of 2nd Lieutenant Frank Yamamoto -- the stipulation being understood to be an agreement only and not an admission as to the truth or falsity of the document.

MAJOR FOJAS: That is right.

COLONEL PARMELEE: The Commission will accept the document for any probative value it may have with the understanding that the authenticity has not been clearly established, as Defense's Exhibit H.

(Defense's Exhibit H received in evidence.)

MR. BONDA: Defense now offers into evidence what has been marked for identification as Defense's Exhibit I which is a statement in affidavit form made by one Sadao Ushijima, Lieutenant General, Retired.

MAJOR FOJAS: We offer an objection against the admission of this document in evidence as being immaterial and irrelevant.

MR. BONDA: May I state to the Commission, it is a statement as to the character and personal conduct of the

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accused in this case which I think is material.

COLONEL PARMELEE: The document is signed? The original was signed?

MR. BONDA: Yes, sir, so indicated on the copy we are offering.

COLONEL PARMELEE: The document offered will be received into evidence for any probative value it may have as Defense's Exhibit I.

(Defense's Exhibit I received in evidence.)

MR. BONDA: All of those documents are English translations of Japanese documents; they are copies that are being offered because the originals are in Japanese, which would have no value to the Commission, and on every one there is a certification by the official interpreter that they have been correctly interpreted. That is the reason for offering the copies rather than the originals.

We now have statements made by children of the accused and in two cases, classmates of the children of the accused, which are, as far as the children are concerned, they are character statements, but in essence they are pleas and I request an expression of opinion from the President of the Commission whether he desires to see them.. They have been prepared and copies have been made and they are strictly pleas of the children.

COLONEL PARMELEE: The documents appear to be of no value in bearing upon the issues at hand. In other words, they are a natural plea of a child in behalf of his parent.

MR. BONDA: That is correct, sir.

COLONEL PARMELEE: In other words, we have the consanguinity fact very strongly, and what a child sees in his parents is perfectly natural, and it can undoubtedly be true, but it does not have any bearing on the issues, and I don't believe the Commission should receive those at this time because they are going to have to adjudicate this case on the issues at hand.

MR. BONDA: Well, I want to advise the Commission of the fact that we do have them.

COLONEL PARMELEE: Yes.

MR. BONDA: With that the defense rests.

COLONEL PARMELEE: Has the prosecution any case in rebuttal?

MAJOR FOJAS: No, sir.

COLONEL PARMELEE: The summations and final arguments are in order, is that correct?

MR. BONDA: Yes, sir.

MAJOR FOJAS: Yes, sir.

COLONEL PARMELEE: Is the defense prepared to make his final arguments at this time?

MR. BONDA: The defense is prepared to a certain extent and would like a little polishing of his preparation he has made up to date. I would like an expression from the prosecutor as to when he is ready.

MAJOR FOJAS: Prosecution is ready to a certain extent but not entirely.

MR. BONDA: Can we agree on final arguments Monday?

MAJOR FOJAS: Yes.

MR. BONDA: That will be the 27th, I believe.

COLONEL PARMELEE: That sounds reasonable. There are over fifty volumes in this case to date, and some thirty-five hundred pages of testimony and other matter. The request for a continuance to prepare a summation, or rather a delay which is implied in the agreement of the prosecution and defense counsel, is believed reasonable and the case will be continued until 0830 hours, 27 January 1947.

(The Commission adjourned at 1045 hours, to reconvene at 0830 hours, 27 January 1947.)

I, Vicente T. Castillo, married, of legal age, Filipino and a resident of the City of Bacolod, Province of Occidental Negros, do hereby state and declare under oath the following:

That sometime in the month of September, 1943, thru the repeated requests and insistence on the part of the civil authorities of this province, who fled to the hills, I accepted the position and assumed office as Provincial Governor of Occidental Negros, with the view in mind and with the sole purpose of attending to the needs and to protect the rights and interests of the civilian population of this province, in such a manner as circumstances then prevailing could permit.

That in my capacity as Governor of this province I had the opportunity of knowing personally Col. Yamaguchi who was then the Commander of the Japanese Army of this province and have had official dealings with said officer.

That during the time of my incumbency as Provincial Governor of this province, Col. Yamaguchi did not interfere in one way or another in my official actuations as Executive of this province.

That during the time that I was Governor, many persons, both prominent and common from this City and other towns, were caught by the Kempei Tai and were subjected, in accordance with their informations given to me later on, to a rigorous and cruel investigations concerning their supposed connections with the underground movement, then organized in this province, and for having made propagandas in favor of the Allied Nations. The relatives of those detained persons approached me and asked my official help and intervention for the release of their respective relatives. I then made several visits to Col. Yamaguchi for the purpose of interceding and pleading for the cause of those prisoners, my efforts on this matter having been compensated by the release of many prisoners who might have been killed by the Kempei Tai, if not for the official intervention of Col. Yamaguchi.

DEFENSE EXHIBIT "C"
U.S.A. vs Masakazu YAMAGUCHI
Date of Entry: 21 Jan 47

The following is a partial list of the names of those persons who have been imprisoned and were later on set free:

Mr. Nicolas Encarnacion, Prov. Treasurer
" German Gaston
" Leon Ledesma
" Fernando Cuadra, Secretary to City Mayor
" Rodrigo Lacson
" Agustin Segovia, Secretary to Prov. Governor
" Jose V. Buenaventura, Mem. Phil. Nat. Bank, Bacolod Br.
" Luis Serra
" Manuel Olvido
" Felix Lopez Vito
" Emilio Lopez
" Ildelfonso Corcolluela
" Emilio Zayco
" F. Piedad, Supt. of Schools
Dr. M. Jardeleza
" S. Ochoa
" D. Kabayao
Capt. Emilio Bidan
Lt. de Vera
" Cuison
" Pepino
Judge Amante
Major Catuslao
Congressman Oscar Ledesma
Mr. Gosingco and
" Lopez.

That three months before the liberation of this province by the American forces, the Japanese Army under the command of Col. Yamaguchi, began to procure assiduously foodstuffs for their soldiers with the intention of storing same. That in their procurement of these foodstuffs I did not receive any report from anybody that they did avail of their force as conquerors, nor abused the civilians by taking away their food.

That one day, before Col. Yamaguchi and his soldiers retreated to the hills, he made representations to me to be transmitted to the civilian population of Bacolod City, that in case of the burning of some of the buildings where their materials were stored, to take refuge in the Cathedral of this City where he thought would be the safest and most convenient place where to go; and he further told me to inform the people not to be alarmed nor to get panicky, as there would be no fighting inside the City, inasmuch as they were retreating to the hills on account of the impending coming of the American soldiers.

That during the time of my incumbency as Governor of this province, I can state that Col. Yamamuchi was popular, at least, with respect to the civilian population living in the City of Bacolod, from whom I have on many occasions heard remarks from them to that effect; that the population of this City have had a high regard of his military actuations in this City; that during Yamamuchi's command of Negros Island, in many places public schools were reopened and classes were held regularly under the supervision of the Superintendent of Schools of this province, without interference on the part of said Yamamuchi with regards to the administration of said public schools; that during his command, on two or three occasions, meetings were held either in public or among the planters where, besides the Filipino authorities in the government, Yamamuchi also addressed the audience urging same to encourage the planting and production of foodstuffs in order to stave hunger which was about to prevail among the civilian population on account of shortage of foodstuffs caused by the war; and lastly, I can state here that as far as what I am concerned officially, Yamamuchi's general occupational policy was sound and tended more to the advancement of the welfare of the civilian population of the area comprised within his district as a Commander of the Japanese Army in an occupied territory.

IN WITNESS WHEREOF, I hereby sign this at the City of Bacolod, Province of Occidental Negros, on this 11th day of November, 1946.

/s/ Dr. Vicente T. Gustilo
/t/ DR. VICENTE T. GUSTILO

REPUBLIC OF THE PHILIPPINES
BACOLOD CITY

Subscribed and sworn to before me this 11th day of November, 1946. Affiant exhibited to me his Res. Cert. No. _____ issued at _____ on _____ 1946.

/s/ MODESTO PARAS
Notary Public
Until December 31, 1947

Doc. No. 482
Page No. 98
Book No. 1
Series of 1946.

CERTIFIED TRUE COPY:

Bruton B. Schardt

BRUTON B. SCHARDT
1st Lt. CAC
Asst Exec Officer
War Crimes Trials

The undersigned, Rev. Flaviano B. Ariola, Filipino, of age, Parish Priest of the Cathedral, Bacolod City, after having been duly sworn to under oath deposes and states that:

1. He remained in the city since May 30, 1943 until the American occupation on March 29, 1945;

2. In 1943 he happened to know Col. Yamaguchi, the Commanding Officer of the Japanese forces in Negros Occidental due to the following incidents:

(a) Before Christmas Col. Yamaguchi sent a messenger telling us to celebrate the Midnight Mass at Christmas. Being in a semi-blackout, he gave orders to have the electric lights lighted in the Cathedral during the whole night up to two o'clock in the morning, lifting at the same time the curfew hour up to two a.m.

(b) Sometime in October of the same year, Japanese officers came to ask for the Cathedral where they may used to celebrate their Shintoist Rites beofe sending the ashes of their dead soldiers to Japan. We denied such request as incompatible with the Catholic Faith. The Officers insisted and we had to see the Colonel and explained that such things could never be permitted in catholic churches. Col. Yamaguchi yielded to our request and even congratulated us for the denial, with the comment: "In Japan we admire men of strong spirit. It is my duty to congratulate you for your strong spirit."

(c) Again in 1944 the signal Corps men wanted to used the towers of the Cathedral as a transmitting station. We denied the request as it would be converting the church as a military objective. When it seemed that they were taking it by force, we appealed to Col. Yamaguchi explaining him the motives of our denial. The same Colonel ordered his men not to take the towers for the purpose intended.

(d) After the Colegio de la Consolacion was returned to us by the Military Administration - formerly occupied by Japanese civilians since the landing of the Japanese forces in Negros - Japanese officers wanted to occupy said school for the soldiers. They succeeded and had it for almost three weeks while we made the necessary interview with Col. Yamaguchi. Immediately after the interview the understanding Colonel ordered the school vacated. Then the classes were opened for the children having an enrolment of some four hundred children boys and girls, under the Filipinas Augustinian Sisters. Similar attempts in occupying the Colegio were made by the Air Corps men and the Marines, but they were unable to occupy it due to a poster given by Col. Yamaguchi which the good Sisters affixed at the main door.

DEFENSE EXHIBIT "D"
U.S.A. vs Masakazu YAMAGUCHI
Date of Entry: 21 Jan 47

(e) Early in August 1945, some Japanese civilians accompanied by a ranking Officer tried to send the Sisters away from the Sacred Heart Dormitory, a boarding house for girls who are studying in the Provincial High School. According to them they need the Dormitory to house the "Ina women" and many Japanese girls for the soldiers. At their insistence we saw it was homeless to oppose. We did our best to let them understand that such a move will arouse the religious sentiments of the people against the Japanese and who knows if it may cause many more troubles, - at that time the Japanese forces were already much troubled by the guerrillas. They retorted that we must cooperate and that the Japanese needed the house. The last resort was made, again an interview with the Colonel was made and the good Colonel once and for all forbid his men not to trouble nor touch anything pertaining to the religious and the Catholic Religion.

(f) Another consideration worth mentioning here was the granting of a "pass or passport" to all the catholic priests of the Diocese of Bacolod, to the native priests and the Spanish Recollects Fathers. By virtue of that 'pass' we can go out to the mountains, come back to the towns without being molested by the sentry or any investigation. We can minister to the spiritual needs of the people within the occupied area or outside in the 'bandit zone' as they called the barrios or places, haciendas where they do not have a permanent garrison. It was a concession on the part of the Colonel which was greatly appreciated by all whom we happened to help in their spiritual needs. As far as we know no other Japanese officer has so generously given such facility to priest in other places.

The above mentioned incidents is all I know in regards with my dealings with Col. Yamauchi. He tried to please the catholic population in the province of Negros Occidental, giving all these facilities to us catholic priests. We thank God, that in the Diocese not even a single priest was killed nor suffered maltreatment from the Japs. To whom was this due? People say it was due to the good luck that Negros had an understanding Colonel Yamauchi; but we Catholics say that it is thru the mercy of God that many many people and many things were spared from the ravages of war and destruction, death etc. from the hands of the enemy.

Done at Bacolod City, November 6, 1946.

/s/ Flaviano R. Ariola
/t/ FLAVIANO R. ARIOLA

REPUBLIC OF THE PHILIPPINES
BACOLOD CITY

Subscribed and sworn to before me this 11th day of November, 1946. Affiant exhibited to me his Res. Cert. No. AN-608636 issued at Bacolod City on March 26, 1946.

/s/ Modesto Paras
Notary Public
Until December 31, 1946

Doc. No. 480
Page No. 98
Book No. 1
Series of 1946.

CERTIFIED TRUE COPY:

BRUTON M. SCHARDT
1st Lt GAC
Asst Exec Officer
War Crimes Trials

PETITION

To the President of the Commission:

Yamaguchi, Masakazu, and were intimate friends and near nine lived in the same neighborhood. His character maybe described as being of gentle and honourable nature based upon his love for humanity; a true gentleman rarely not in military forces.

I was called into active service during the war served on the island of Luzon. After the cessation of hostilities I was in the POW camp on the outskirt of Manila where I received a kind treatment from your army and returned home safely in June of this year.

During my confinement at POW camp, since I concerned about Col. Yamaguchi's welfare I asked Lt. Col. Hosono, his former subordinate and a few other members of his unit when I met occasionally during my confinement at POW camp about his situation. They said "Col. Yamaguchi was commander of the independent unit on Negros Islands and during his servitude there, he strictly observed the laws of warfare and treated the natives with kindness. In his orders to his men he said treat the innocent ones with love and in case of any hostile acts against them the guilty ones will be severely punished. Even though he will be investigated as a suspect he will be cleared because the natives trusted him." Hearing this and knowing his character will I believe that to be true.

When I returned home I informed his wife and children of how great their father's love was for them. I pressed upon them the value of honesty and always urged them to put more effort into their studies.

I understand that he will be tried in your court as a participant in war crimes but since it is in his character to be chivalious, I believe that it is from this that he is taking the responsibility of the criminal conducts of other men.

DEFENSE EXHIBIT "E"
U.S.A. vs Masakazu YAMAGUCHI
Date of Entry: 21 Jan 47

Judging from his manners of speech and conduct in normal times I sincerely believe that he, as a child of God, is not guilty of any crimes.

At home in this trying and tempestuous life of post-war Japan, his wife despite her waning health devotes herself to in rearing up her (7) children and the children in turn obey her. The entire family have confidence in their father and await anxiously for his return.

The village people are deeply sympathetic and extend their helping hand by sending his family monthly funds. This, I firmly believe, is because of his philanthropic love he had extended to us in normal times.

Upon your consideration of the afore mentioned conditions I beg of you for a just and tolerant verdict.

I reverently submit this petition.

/s/ Imanaka, Isaburo

December 3, 1946

Kujoto ful, Hisasogun, Hisatsu-
mura, Oaza Hirakawa, Kousa
Yokomichi, 10-1

I certify that the above is a true and correct translation of the original document from Japanese into English.

Frank Yamamoto

FRANK YAMAMOTO
2nd Lt, MI
Acting Chief Interpreter
War Crimes Trials

STATEMENT OF CERTIFICATION

Deponent: Okuda Tokusaburo
Witness: Kenneth K. Simon
Tokyo, Japan
April 12, 1946

Colonel Yamaguchi's personal characteristics:

I. Colonel Yamaguchi, (henceforth) whom I shall refer to as Yamaguchi was born in Chibaken, Yasufusa-gun, Katsuyama-machi as the first son of a military man. At the present he makes his home in Tokyo-fu, Kuse-gun, Kutsugawa-mura and the rest of the family is residing at the same address.

II. The deponent, Okuda, Tokusaburo, (henceforth, whom I shall refer to as I) resides at the original domicile, Tokyo-to, Suginami-ku, Ogikubo 122. Yamaguchi is Married to my eldest daughter; in other words, he is my son-in-law.

III. Prior to retirement I had b n a Major General in the Army and at the present I have no occupation. I was born on 10 August 1875. I became seventy one this year.

IV. I first met Yamaguchi in March 1918 and if I remember correctly, he married my daughter in 1921.

V. Yamaguchi is honest and sincere; does not attempt to put on ostentations acts; possesses a strict sense of obligation (duty) and is a good mixer among friends. Around 1921 he held the rank of a 1st Lieutenant and led a simple life with his aging mother. Upon learning of his sincere devotion to his mother, the marriage proposal was brought about.

VI. At present Yamaguchi has seven children, (four daughters and three sons). The oldest daughter will be twenty-four next year the second daughter twenty-two and the next eighteen, consequently they are all of marriageable age and Yamaguchi has been quite worried over the matter. Therefore, only through Yamaguchi's own efforts, the oldest daughter's engagement materialized and she was married last November.

VII. Yamaguchi, being away from home, must've given considerable worry towards the family's well being. Whenever a good opportunity arose he would send some food home to his family. In short, he was very considerate and a very good father. Sometime in 1940, when I paid him a business call in Northern Manchuria, where he had been stationed. Even on this occasion he had entrusted me with something to take home.

VIII. Yamaguchi is such as upright and honest person that if anyone in the family did anything sly (dishonest), put on a gaudy appearance or made any false remarks, he would not to overlook them but he would politely advise and correct them. But, at times when the offense was repeated, he would scold them boisterously and even resort to physical punishments. Consequently, not caring to take the consequences of repeated offense, the members of the family were extremely obedient towards him. However, on the other hand, it is very touching to observe the respect and affection given him by the members of the family.

IX. Needless to say, the Yamaguchi family was not wealthy. However, he practiced strict economy and the rest of the family adopted his principle. They competently managed all their affairs by themselves and up until this day they have never found the necessity to hire outside help.

DEFENSE EXHIBIT "F"
U.S.A. vs Masakazu YAMAGUCHI
Date of Entry: 21 Jan 47

X. Although Yamaguchi has seen very little of home life, he has never shown parsimonious conduct towards men with whom he has business relations. For example, when visited by his fellow officers or a member of the service, naturally he does not offer them an extravagant reception, but, a simple, yet warm, but not so chary as to be unpleasant to his guests.

XI. Whether in private or in public, Yamaguchi believed in friendly relation. Consequently I have not seen him quarrel with anyone; nor seen permit himself as to be disliked by others nor take any actions which someone else would not approve. Furthermore, he does not compel others to do something that he would not do. In short it is against his principles to commit an offense.

XII. Yamaguchi regarded his honor and integrity so highly that it was rather an obsession. He would willingly aid the needy, but, when it come to matters of indistinct nature, whether it concerned relatives or in-laws, even I was surprised at his firmness.

XIII. I have often heard and sensed that Yamaguchi had been highly respected and liked by his colleagues. When he was stationed in Northern Manchuria, some of his collegues returned to Tokyo on various occasions and brought me tidings from Yamaguchi. On such occasions, whoever it might be, they've always made very favorable comments about my son-in-law. (On any account I don't think that anyone would make any abusive remarks about him, to me), but the sincerity with which they've eulogized him has amused me; and yet, on the other hand I was very glad to hear them. I have also head that the men who formerly worked with Yamaguchi in the Osaka Area have collaborated and decided to procure an opening (job) for him, upon his return to the homeland. Upon hearing this, I thought of the old adage, "A kindness is never lost," and I am very grateful to them.

XIV. Previously, while Yamaguchi served in Northern Manchuria as a garrison commander, his unit also participated in the nomonhon incident. During the battle an occasion arose when he was forced to send one of his men on a sacrificial mission. At that time Yamaguchi felt the responsibility very heavily; he compiled the brave and heroic deeds accomplished by this warrior and eulogized his exploits in a book which he wrote. (I, myself, have read this book.) On the other hand, I have heard that the men with the unit sensed (suspected) Yamaguchi, himself, had been looking for an opportunity to pursue (duplicate) the exploits of the warrior.

During his service in Negros, Philippine Island, I believe that some men under Yamaguchi must have been sent on a sacrificial mission. If so, he must feel the weight of responsibility all the more. Furthermore, by chance, if he had perpetrated an inhuman act, (which I know he is very much against), these accumulates events would laden his mind even more; simultaneously, it is my opinion that Yamaguchi would not exert wanoful influence upon others because of his deep rooted conviction in adhering to the Japanese Samurai Code. (It would be against his principles to compel someone to carry out inhuman activities.) Gathering from the lengthy period of time I have known him, I sincerely trust that he would never allow such occurrences.

XV. I am certain that Yamaguchi was a member of the twenty-fifth graduating class at the military academy. Although my information is limited, I have head that most members of that graduating class, now hold the rank of general officers. The remaining, (field officers), have been transferred quite frequently and until the end of the war, saw duty as unit commander field officers; Yamaguchi is among those very few. However, should he not possess some good qualities, humanly or militaristically, to be kept in the service up until this day? Although I may be biased in expressing my opinion as I did, I do not believe my statements concerning

Yamaguchi is a deviation from the truth, taken from, both, an intimate and casual viewpoint. In conclusion; I might add that I am inwardly proud of Yamaguchi.

December 12, 1946 Deponent: Okuda, Tokusaburo

War Crimes Trials,
Manila, P. I.

I certify that the above is a true and correct translation of the original document from Japanese into English.

Frank Yamamoto

FRANK YAMAMOTO
2nd Lt. MI
Acting Chief Interpretor
War Crimes Trials

CERTIFIED STATEMENT IN WRITING TO COLONEL YAMAGUCHI

(Witnessed by Kenneth K. Simon, Defense Counsel)

Deponent:

Name - /s/ Hideya, Oka

Address - Otsuki 330, Otsuki-cho, Kokutoryu-gun, Yamanashi-ken.

Occupation - Dentist.

Former Duty in Army - Attached 14th Army Hospital, Bacolod Br.

Rank - Former 1st Lt, Dental Officer.

Period of acquaintance with Colonel Yamaguchi: May, 1944 to March 1945.

In accordance with the promise made with Colonel Yamaguchi at Bacolod POW camp in January, 1946, the deponent, Hideya Oka married the Colonel's eldest daughter, Yoshiko, on the third of November, 1946.

I became acquainted with the Colonel when he came to the Bacolod Army Hospital to have a dental treatment. Ever since, then, we had conversed very intimately. He was of small stature and whenever he came to the Hospital, I noticed that he wore a short sleeved white short trouser and had a white helmet cap and a cane. I seldom saw him in a uniform when he walked alone in the city.

He was a Colonel, a Unit Commander and the Commander of the Bacolod Garrison Unit, but he was humble. This can be attributed to the intimate ways in which he smiled and talked to the natives, and they respected and loved him as "Colonel Yamaguchi". I believe that his philanthropism and his disrespect for racial differences gained the confidence of the populace.

Today, we here in Japan, we have come to respect and gain confidence in General MacArthur. It is only human for us to disregard the confused thoughts of the past and feel as we do today. I believe that this very feeling we possess today towards General MacArthur is similar to that felt by the natives of Bacolod towards Colonel Yamaguchi when he held his position there. I cannot but a moment think that Colonel Yamaguchi, who believes so much in Philanthropism, can order his men to kill and rape the populace. If the Colonel did claim that he issued

DEFENSE EXHIBIT "G"
U.S.A. vs Masakazu YAMAGUCHI
Date of Entry: 21 Jan 47

such orders, I am sure it is because he wanted to take all responsibilities of the misdeeds of his subordinates and to clear up the incident. In the Japanese Army, the question of any particularly of any errors committed by the subordinates, whether light or grave, will fall on the superior officer, and the superior officer must be willing to accept that responsibility. The statement made by the Colonel in the court is from his feeling of responsibility over his subordinates' actions. Even during the subjugation conducted by the Japanese Army, I cannot see how there could have been one commander who would permit raping and killing of the local populace. I've talked with a certain officer of the Yamauchi Unit, and he told me that the military discipline of that unit was very strict, even to the extent of being "bothersome". I cannot believe that such a unit commander could have issued an order to permit raping and killing of the natives. A soldier respects his superior officer not because of his rank but because of his character. Therefore, if the commander, during the subjugation makes a senseless move, his respect by the subordinates is lost. I will prove to you in the following paragraph how much Colonel Yamauchi was respected by his own men and men of other units.

When the Americans landed on Negros Island, we retreated deeper and deeper into the mountains and it almost rained daily. During this retreat, we did not stay in one place over more than ten days. Under this condition, there was one soldier who carried a large straw bedding up the roadless mountains. An officer spotted it and asked the soldier who it belonged to, since not even officers were allowed to sleep on beddings. The soldier replied, "this is Colonel Yamauchi's. I do not need any personal belongings but, I shall carry this under any conditions." The officer in kind words then said to the soldier, "Oh.. it's Colonel Yamauchi's, I am grateful to you." I am sure that if the bedding was for some other person, that officer would have disposed of it immediately. I am sure, too, that the Colonel was forced to sleep on it, and even then, it was probably for very few times. No one can order the bedding to be brought along.

The Colonel lost great many men after the Americans landed. He was very kind and loved his men. I believe he feels very reluctant and sad to leave the Philippines where his men died. That is the way I picture the Colonel's thought. When a soldier leaves for battle field, he does not think of returning home, but fortunately or unfortunately, Colonel Yamamuchi came out alive. As a responsible person, he felt it inevitable to stand trial, and I cannot help but feel that he is asking for death in his statement. This is the personal conviction of Colonel Yamamuchi, as a soldier.

The Colonel has a wife and many children. This petition being as short as it is, I would like to have you make a fair and honorable decision.

I certify that the above is a true and correct translation of the original document from Japanese into English.

Frank Yamamoto

FRANK YAMAMOTO
2nd Lt, MI
Acting Chief Interpreter
War Crimes Trials

THE STATEMENT OF CERTIFICATION CONCERNING EX-COLONEL MASAKAZU YAMAGUCHI

Deponent - Ex-Colonel Yasutsumi Okada

Administrative Official of the Inquiry Section of Historical Facts.

Tokyo Demobilization Station No. 1

The Period that I was acquainted with Colonel Yamaguchi:

From July, 1926 until Dec. 1929.

At that time he was Company Commander with the 38th Infantry Regiment.

The Character and Conduct of Colonel Yamaguchi.

He was straight-forward, upright, honest, cheerful and favored justice. He especially defied wickedness and he was extremely conscientious. He deeply sympathised the feeble and poverty - stricken people. He eliminated his own interest to benefit his subordinates of whom he was very considerate. In other words, he was the manly type of person who would take the responsibility of an offence committed by a subordinate and thus glorify his subordinate. Consequently, the subordinates gladly obeyed his orders and as pertaining to his traits his subordinates praised him in every way.

He was a very competent commander who was sincere, earnest, and had a strong sense of duties by which he facilitated my responsibilities. He had an exceptionally purified soul. He gave things to his subordinate and to the people in the neighborhood. In other words, he was very considerate.

I certify that the above is a true and correct translation of the original document from Japanese into English.

Frank Yamamoto

FRANK YAMAMOTO
2nd Lt, MI
Acting Chief Interpreter
War Crimes Trials

DEFENSE EXHIBIT "H"
U.S.A. vs Masakazu YAMAGUCHI
Date of Entry: 21 Jan 47

STATEMENT IN CONNECTION WITH COLONEL MASAKAZU YAMAGUCHI

PERIOD OF ACQUAINTANCE WITH COLONEL YAMAGUCHI:

From March, 1934 to October, 1936, when I was the commander of the Korean 19th Division, the Colonel (Major at the time) was under the command of Shimoyama Garrison Unit. From March, 1943 to February, 1944, when I was the Commander of the sub-military government of Visaya, Philippines (and was in charge of adjusting up the affairs of that district), Colonel was the commander of the Garrison Unit of Negros Island (I do not recall the date of his appointment to the duty).

AFFIDAVIT

While serving in Korea, the Colonel, trusted by his superior officers and respected by his subordinates, was faithful in his duties and possessed an excellent record. Despite the fact that I had no direct connection with his work, from what I had observed and heard, the Colonel, while serving as Commander of the Negros Garrison Unit, was very popular not only with his own men, but also among the populace of the district.

By nature, the Colonel possessed a character of kindness and he, particularly had a keen sense of responsibility. I believe that he is determined to burden the full responsibility of the actions of his subordinates; that were carried out in line of duty. Moreover, I know that his belief has grown stronger and it had become so that he was extremely warm-hearted towards people in general.

When I was on inspection tour, I stayed at Colonel's quarters twice and whenever he came to the Cebu Garrison Hqs, he visited me at my quarters.

/s/ Sadao USHIJIMA
Lt. Gen., Retired
779 Tichoro, Nishida-machi,
Suginami-ku, Tokyo

I certify that the above is a true and correct translation of the original document from Japanese into English.

Frank Yamamoto
FRANK YAMAMOTO
2nd Lt. MI
Acting Chief Interpreter
War Crimes Trials

DEFENSE EXHIBIT "I"
USA vs Masakazu YAMAGUCHI
Date of Entry: 21 Jan 47

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

VOLUME LIV

PAGES 3528 TO 3598 INCL.

DATE 27 January 1947

MANILA, P.I.

COPY NO. 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee

A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
vs	)	PUBLIC TRIAL
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
27 January 1947

Met, pursuant to adjournment, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	
2ND LIEUTENANT SAMUEL S. KOIDE	)	
PETRONILO VALLEJO	)	Japanese
CAESAR VO ALZONA	)	
ROMUALDO TACCAD	)	
CLARO ISHITA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

THELMA SELZER
ELIZABETH G. MCNAIR

ss

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I N D E X

GENERAL

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P R O C E E D I N G S

(The Commission reconvened, pursuant to adjournment, at 0830 hours, 27 January 1947, in Court No. 2, High Commissioner's Residence, Dewey Boulevard, Manila, P.I.)

COLONEL PARMELEE: The Commission is in session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

Sir, at this time the prosecution will request the Commission that they be authorized to withdraw from the record the original copy of the different exhibits they have offered in evidence and they be substituted by certified copies thereof.

MR. BONDA: No objection, sir.

COLONEL PARMELEE: Granted.

MR. BONDA: If the Commission please, the accused desires to make a statement.

COLONEL PARMELEE: Very well.

(The accused, Masakazu Yamaguchi, then stood before the Commission and made a statement, which was interpreted by Interpreter Ishita, as shown:

ACCUSED MASAKAZU YAMAGUCHI (through Interpreter Ishita): Final statement.

(1) General situation of Negros Island at that time. Immediately after I landed on the Philippines in January, 1943, and took charge of the security, the strength of the bandits confronted us on the entire island generally exceeded 15,000 men. They armed themselves with automatic rifles as Thompson or carbines and became very active, especially as the American

troops advanced in the Pacific. In contrast, we had only 1600 men when our strength was at its peak. Furthermore, our principal weapons were those used during the Russo-Japanese war, forty years ago. Therefore, it was with difficulty that we secured Bacolod, Fabrica, etc., vital points along the coast, and the vital line linking with the coast, and engaging in the minimum of defensive warfare. Consequently, bandits who knew the terrain features thoroughly and assisted by the civilians, thereby increased our casualties several times more than the enemy. Of approximately 1000 men in my battalion, about four hundred men suffered casualties in the period from January 1943 until July 1944. Thus, we were threatened with the disruption of communication lines until the time of the American landing.

(2) Concerning the existence of guerrillas. As garrison commander of Negros, my greatest problem was that my subordinates were sustaining casualties from surprise guerrilla attacks, and reports were pouring daily into the headquarters to that effect. We were unable to distinguish the real guerrillas from the innocent populace. It was as if we were fighting an apparition. They could see and knew about us, but we, in turn, did not know about them. If they were outnumbered, they mingled among the populace, but if they outnumbered us, they launched surprise attacks and caused casualties. These guerrillas were superior in strength and arms.

(3) My views toward guerrilla warfare. In these combats, I have lost a majority of my beloved subordinates. I detest and condemn this type of warfare. It is unfair, inhuman and against the ideals of civilization. We have fought these strong, cunning and barbarous guerrillas with our weak force

troops advanced in the Pacific. In contrast, we had only 1600 men when our strength was at its peak. Furthermore, our principal weapons were those used during the Russo-Japanese War, forty years ago. Therefore, it was with difficulty that we secured Bacolod, Fabrica, etc., vital points along the coast, and the vital line linking with the coast, and engaging in the minimum of defensive warfare. Consequently, bandits who knew the terrain features thoroughly and assisted by the civilians, thereby increased our casualties several times more than the enemy. Of approximately 1000 men in my battalion, about four hundred men suffered casualties in the period from January 1943 until July 1944. Thus, we were threatened with the disruption of communication lines until the time of the American landing.

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(3) My views toward guerrilla warfare. In these combats, I have lost a majority of my beloved subordinates. I detest and condemn this type of warfare. It is unfair, inhuman and against the ideals of civilization. We have fought these strong, cunning and barbarous guerrillas with our weak force

for three years under difficult conditions, taking full precaution to avoid casualties among the civilians.

I earnestly desire that the American Military Commission understand my heartsickening elaboration with fair mental attitude. The reason why I especially mention this is because I place trust in American justice and humanity which is responsible for insuring everlasting peace in the future. Also, that is the desire of many other Japanese Army commanders. Furthermore, if I am permitted to tell my views as an experienced person, for the sake of humanity, and if the Geneva convention upholds humanity, I insist that it is absolutely necessary to prohibit armed guerrilla warfare in order to maintain public peace and order, and protect the people of a nation which had become a battlefield.

(4) Concerning casualties sustained by civilians. To my dear people of Negros who suffered casualties, in spite of precaution, in the course of difficult and unavoidable battle, I express my deep regret and condolence.

(5) Concerning the wording of the charges. From the old days, the departing to the front line of a Japanese warrior was considered as synonymous of death. If the order for cessation of hostilities was not issued by the Emperor and if the Imperial Rescript did not instruct us to persevere the unbearable sufferings, I would not have endured the charges of having permitted felonious acts as rape and unlawful and wrongful torturings. I say this as one of the ranking officers of the Japanese Army.

(6) Conclusion. I am deeply moved with boundless gratitude for the fine and remarkable efforts of the defense counsel.

I pay my homage to the members of the Commission who sat and heard this case under severe heat for the past days in order to render an impartial judgment. I appreciate the effort of the prosecutors who tried their best in the name of humanity.

Whatever the result may be, I appreciate very much the kindness and consideration shown to me and I will never forget them.

27 January 1947

Colonel Masakazu Yamaguchi, Imperial Japanese Army.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess)

I pay my homage to the members of the Commission who sat and heard this case under severe heat for the past days in order to render an impartial judgment. I appreciate the effort of the prosecutors who tried their best in the name of humanity.

Whatever the result may be, I appreciate very much the kindness and consideration shown to me and I will never forget them.

27 January 1947

Colonel Masakazu Yamaguchi, Imperial Japanese Army.

COLONEL PARMELEE: The Commission will take a short recess.

(Short recess)

COLONEL PARMELEE: The Commission is in session.

CLOSING ARGUMENT FOR THE DEFENSE

MR. BONDA: Gentlemen of the Commission, this has been a long, arduous and trying case, because of the large number of specifications, the great number and character of witnesses, the complexity of alleged events and the fact that most of the witnesses were non-English speaking and testified through interpreters, this has been a difficult case to try. It was inevitable that during the period of almost three months this case was in trial there be some bickering and quarreling, and due to the fact that there is a nervous tension connected with such trials that causes nerves to get on edge occasionally, but on the whole we believe the relationship between the participants was not too uncongenial, and I am sure that no one who participated carries out of the courtroom any ill feeling towards any other participant.

I wish to take this opportunity to commend the interpreters for a job well done, and the reporters, Elizabeth McNair and Thelma Selzer, and the transcribers, Shirley Shannon, Marjorie Miller, Lillian Muhs and Willie Orr for an excellent job under most difficult and trying circumstances. I wish to commend the Military Police who maintained order and decorum at all times, and the prosecution, Major Fojas and Major Ramirez, and my co-counsel, Jerome Adler and David Roddan for their able assistance, and the Commission members for their patience, courtesy, tact and tolerance.

If I have offended at times, please charge it to my zeal in defending the accused, the man whom I have learned

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to respect in spite of the fact that he was recently a member of an enemy army with whom we Americans were in mortal combat.

The evidence is all in, and nothing I can say or that the prosecutor will say, will add to or detract from that evidence. I am sure that the Commission is thoroughly familiar with all the facts brought out at the trial. They have listened attentively to all the evidence, and they have, I know, read and re-read the transcript of all the proceedings, and with that assurance on my part, I shall not review the facts on each specification, but shall refer only to such specific facts as will assist the Commission in applying the law applicable to this trial. In general, I shall confine myself insofar as possible to statements on the law, and to those mitigating circumstances which the Commission should consider in arriving at its verdict.

It is basic in our system of jurisprudence that every accused is considered innocent until proven guilty. This means that last October 31st, when Masakazu Yamaguchi stood before this Commission and pleaded not guilty to the charge and specifications read to him, he must have been presumed innocent, in spite of the fact he was a professional soldier of an army we Americans had fought but sixteen months ago, and a member of a race we have been taught to hate. Because of this presumption of innocence, it became necessary for the prosecution affirmatively to prove each and every element necessary to establish the guilt on each specification, and to establish those elements beyond a

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reasonable doubt, not by a mere preponderance of the evidence, but beyond a reasonable doubt.

Reasonable doubt "is that state of the case which after the entire comparison and consideration of all the evidence leaves the mind of jurors in such a condition they cannot say they feel an abiding conviction to a moral certainty of the proof of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence, and every person is presumed to be innocent until he is proved guilty. If upon such proof there is a reasonable doubt remaining, the accused is entitled to the benefit of it by acquittal, for it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding and stays the reason and judgment of those who are bound to act consciously upon it. No man should be deprived of life under the form of law unless the jury can say upon their conscience that the evidence is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged." David versus U.S. 160 US 469, read from Bouvier's Law Dictionary at page 931.

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Bearing in mind the fact that the burden of proof is on the state to prove the necessary elements of the offense beyond a reasonable doubt, let us examine the elements necessary to prove the offenses charged. In the first place, all the specifications except number 9 contain the phrase, "did wrongfully and unlawfully permit soldiers under his command" to do certain things. This makes it incumbent on the prosecution to prove that the soldiers involved in the alleged acts were under the accused's command. They failed absolutely to do it in specifications 1, 2 and 3. They failed to introduce one scintilla of evidence as to who the soldiers involved in those specifications were, where they came from or in whose command they were. Not only did they fail to show that they were under the command of the accused, the positive proof of the defense shows that on the 24th of January, 1943, the date of the alleged event as definitely established by the prosecution's witnesses, none of the accused's soldiers could have participated. The fact is as established by positive proof the alleged events occurred at or near La Carlota, that La Carlota is south of the Bago River, and even if Colonel Yamaguchi had taken command of Fukuda's battalion prior to January 24th, should a man be held morally responsible for the acts of soldiers trained by another, who but very recently came under his command? The answer obviously is "no," but regardless, the fact is that Colonel Yamaguchi was not in command of any soldiers south of Bago at that time.

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Similarly, in the case of specifications 21, 22. and 23 it must be found that no liability attached itself to Colonel Yamaguchi for acts committed by Japanese soldiers for the reason that there was no command responsibility at that time on his part. The evidence incontrovertibly shows that Colonel Yamaguchi's over-all command of Negros Island, if it had ever existed, ceased in mid-August with the arrival of General Kono; that the dates of the last four specifications are all subsequent to 5 December, 1944; that on 5 December, 1944, on order of General Kono, Colonel Yamaguchi assembled all of his troops, took over the security of that portion of Occidental Negros south of Bago, and that they did not return north of Bago until the latter part of March; that specifications 21, 22 and 23 all occurred north of Bago.

Specification 21, the so-called Nanjo specification, allegedly occurred on the 8th of December, near the City of Bacolod, which is north of Bago. The evidence shows also that Nanjo was in the hospital on that date as a result of wounds. The testimony for the prosecution was given by only one man, Marcosde Tomas, whose testimony was uncorroborated. More on the matter of corroboration later. And incidentally, the witness stated that Nanjo wore civilian clothes, whereas the evidence clearly showed that he never was authorized to wear civilian clothes, and in fact never did while on a duty status.

Specifications 22 and 23 allegedly occurred north of Bago on the 8th day of March, 1945, at the Cubay garrison, which was placed by the prosecution witness as being north of Bago. In addition to the fact that Colonel Yamaguchi's

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troops could not have been there at that time, we have the uncontroverted testimony that Colonel Yamaguchi was relieved of command on the night of the 5th of March, 1945, because of wounds suffered by him, and did not resume command until the latter part of March, 1945.

Specification 24 alleged to have occurred on the 18th of March, at a time when it was definitely established Colonel Yamaguchi was relieved of command because of wounds suffered on the 5th. If the prosecution should believe that Colonel Yamaguchi was not relieved of command, how could they believe the accused was present in person? One witness, the main prosecution witness, testified that she saw him at the time of the alleged event, but said he wore neither bandages nor a sling (Volume XXXVIII.) She saw him when the Japanese first came to the house, and then changed her story to say that she saw him when she went to the school house. First she testified she had never seen him before, and then changed her story to say that she had seen him when they went to La Carlota to buy rice. Incidentally, the change in story came immediately after a noon recess. The fact is that Colonel Yamaguchi was not there. The prosecution failed to show what soldiers were present, and the evidence clearly shows that Colonel Yamaguchi had no command at that time.

So much for those specifications in which it was clearly established that there was no command responsibility on the part of the accused. Permit me to point out that it is in those same groups of specifications that the charges of rape are made. Let it be clearly pointed out that at all times

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when Colonel Yamaguchi was in command no cases of rape occurred. I challenge any command in any army of occupation, whether it be Japanese, German, Italian, British, French, Russian and yes, even American, to say as much.

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The next matter of law I will call the Commission's attention to is that of corroboration. We have shown that there is a presumption of innocence and that the burden of proof is on the prosecution, and that the state must make out its case beyond a reasonable doubt. The unsupported testimony of one person should not be sufficient to overcome these requirements, particularly in a case involving capital punishment. No man should be sent to his death, even though he be a Japanese, on the testimony of but one person. Especially is this true when we consider the types of witnesses whose testimony was uncorroborated. Known guerrillas and persons admittedly biased and prejudiced against the Japanese, persons of low mentality, and persons whose testimony was replete with inconsistencies, evasions, contradictions and utter disregard for the truth, where such disregard of the truth better serves their purposes; persons who stated that they were not prepared to testify to things not appearing in their affidavits which affidavits I was not permitted to see.

For each of Specifications 4, 6, 11, 17, 18 and 21 only one witness was called by the prosecution, and the prosecution relies on the testimony of but one witness in each of those specifications to establish the guilt of the accused. Simple justice dictates that there should be no finding of guilt on those specifications, and the Manual of Military Law bears me out on this at page 83.

We now come to the question of hearsay evidence. With certain exceptions not applicable to this case, hearsay

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evidence is excluded in all courts of which I have knowledge. It is excluded in trials by court martial, as this Commission well knows, and it is excluded in civil courts. Hearsay is primarily what a witness has heard another person say with respect to facts in dispute. The main reasons for excluding such evidence are that the statements are not made under oath and the accused has no opportunity to cross-examine its author.

"Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will and are disposed to speak untruthfully, even without any motive whatsoever, and one knows what little importance can be attached to any rumor of anything stated as a mere hearsay." Polini vs Gray, at page 425. We admit that the regulations governing the trials of accused war criminals do not expressly forbid hearsay; neither does it expressly permit it. The only possible basis for failure to exclude such evidence is paragraph 5d, (1) Rules and Regulations Governing War Criminals, letter 5 December, which reads as follows: "The Commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in its opinion would have probative value in the mind of a reasonable man." That is the only section under which hearsay evidence could possibly be offered by the prosecution. Please note the language used, "such evidence as in its opinion would have assistance in proving or disproving the charge." Throughout the years under our system of American jurisprudence hearsay could not prove a charge, and there is nothing in the regulations that permit hearsay to prove the charge in these war crimes trials. They can at best but merely assist in so doing. And further the language reads: "or such as in the Commission's opinions would have probative value in the mind of a reasonable man."

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For generations it has been held that there is no value to hearsay evidence. Therefore, what probative value should the Commission give to statements made not under oath and without the opportunity of such cross-examination as would enable the Commission to determine the truth or falsity of the statements. In any specification in which all or any part of the elements necessary to establish the commission of a war crime by this accused have been shown by hearsay only there should be a finding of "Not Guilty."

There are many instances of this. For instance, in Specification 11, at page 771, Volume XII, appears the following: "I was told the man was dead and they buried him." The record is full of just such evidence. As I stated before, I am satisfied the Commission has read and will continue to read the transcript of the record so that it is not necessary to cite the instances in which the necessary elements were attempted to be shown by hearsay only. I desire merely to point out to the Commission that they should not and they must not convict on hearsay evidence, and I include in this affidavits also which are unsupported by other evidence.

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The accused in this case is charged with violating the laws and customs of war. To sustain this charge, it must be shown that he committed certain specific acts which are a violation of the laws and customs of war. To find out what the customs of war are, we must examine those documents which establish the laws and customs of war. We have reference to rules of land warfare as defined by the Hague Conferences, the Geneva Conferences and Field Manual 27-10. It must be specifically shown that the accused violated the rules as laid down therein. First, it must be borne in mind that a state of war did exist between the Imperial Japanese Government and the United States of America, the rules being applicable only when such a state of war does exist.

The accused is charged with two types of offenses, killings and tortures. We are excluding rape for the reason it has been clearly shown that none of the soldiers under his command did commit rape. We admit that tortures and killings could constitute violations of the rules of land warfare, but we submit that to constitute such violations they must be committed against such persons who are entitled to the protection of the rules of land warfare in time of war. We submit that killings and tortures that the Commission might consider were proved, were committed, if at all, only against such persons as were not entitled to the protection of the rules of land warfare. Every specification contains the words "unarmed non-combatant Filipino civilians," or "unarmed Filipino civilians," or "non-combatant Filipino civilians," or "Filipino civilians."

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We do not know, nor has the prosecution shown why the verbiage is different in the various specifications, but the words "Filipino civilians" are common to all specifications. We submit that there has been a total absence of proof on the part of the prosecution that persons against whom the alleged acts were committed come under any one of the four classifications, and we submit that as a matter of fact, there is positive proof to show that they were not Filipino civilians, but rather they were active guerrillas or that they assisted guerrillas. We shall show that those persons were not entitled to the protection of the rules of land warfare.

Guerrillas have been defined as "self constituted bodies of armed men in times of war, who form no integral part of the organized army, do not stand on the regular pay roll of the army, or are not paid at all, take up arms and lay them down at intervals and carry on petty war, chiefly by raids, extortion, destruction and massacre." Bouvier's Law Dictionary, Volume 1, page 1397.

The term "guerrilla," as such, is not to be found in Basic Field Manual 27-10, "Rules of Land Warfare." Nor do the several Hague and Geneva Conventions, dealing with the various phases of warfare, make use of that word. Possibly the reason for the omission is that different, and at times, somewhat contradictory, connotations, have been applied to it. Bouvier's, for example, cited above, states that "partisans" and "free-corps" are terms almost synonymous with "guerrilla." From the viewpoint of ascertaining whether war participants are privileged to claim the protection of

the laws of war, the use of the word "guerrilla" will not be a determining factor, since diverse interpretations have been made in that respect. It is not to be implied, however, that authorities differ substantially as to the rights of war participants. The apparent conflict is due rather to the flexibility of the definition of the term "guerrilla."

A classification of another sort, with the object of distinguishing those who legitimately can claim the benefits of land warfare rules from those who cannot do so, is attempted by Field Manual 27-10, and the International Treaties. Articles 1, 2 and 3 of the Annex to Hague Convention Number Four of October 18, 1907, state the following:

Article 1. The laws, rights and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed, distinctive emblem recognizable at a distance;
3. To carry on openly; and
4. To conduct their operations in accordance with the laws and customs of war.

Since the clauses of Article 1 are conjunctive, all of them must be complied with in order to qualify war participants for the benefits of the rules of land warfare. The distance at which the emblem should be visible is undetermined. See Land Warfare, paragraph 23, where it is pointed out that it is reasonable to expect that all the silhouette of an irregular combatant standing against the skyline should be at

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once distinguishable from that of a peaceable inhabitant by the naked eye of ordinary individuals at a distance at which the form of an individual can be determined. Individuals whose sole arm is a pistol, a hand grenade, a dagger concealed about the person, or a sword stick, are not such as carried their arms openly.

Article 2. The inhabitants of a territory which has not been occupied, who on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with article 1, shall be regarded as belligerents if they carry arms openly, and if they respect the laws and customs of war.

Article 3. The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have the right to be treated as prisoners of war.

The cited Annex has been adopted by the United States (36 Statutes 2295), and all of the above articles have been incorporated verbatim in paragraph 9 of Field Manual 27-10.

Individuals or groups of individuals complying with the requirements of articles 1, 2 or 3 are designated as lawful belligerents, are subject to the laws, rights and duties of war, and in case of capture are to be treated as prisoners of war, with all the concomitant benefits. (Paragraph 72, Field Manual 27-10, citing Geneva Convention of July 27, 1929.)

All others, with certain exceptions not material to this discussion, are denied the protection granted lawful

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belligerents. (See chapter 4, Field Manual 27-10.) There are a number of references in the international conventions and in the rules of land warfare to those individuals, or groups of individuals, who might properly be designated as unlawful belligerents. Neither the conventions nor Field Manual 27-10 contain an embracing phrase for this type of war activity. For them the following general rule of land warfare applies:

"Persons who take up arms and commit hostilities without having complied with the conditions prescribed by the laws for recognition as belligerents are, when captured by the injured party, liable to punishment as war criminals. (Paragraph 348, Field Manual 27-10.) See also paragraph 351 of the same Field Manual.

"The law of nations, apart from the Hague regulations above noted, denies belligerent qualifications to guerrilla bands. Such forces wage a warfare which is irregular in point of origin and authority, of discipline, of purpose and of procedure." (3 Hyde International Law, section 652.)

An analysis of the various regulations and laws dealing with unlawful belligerents appears to indicate that these laws and regulations are not too precise and limiting in nature, with the result that a single act of illegal belligerency could be regarded as violating more than one of the rules. The same is, of course, true in criminal law generally. Nevertheless, that some overlapping and needless repetition exist in the portions of the rules of land warfare which discuss unlawful belligerents, can be conceded. Moreover, it will be found that these regulations are not

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compactly presented, but are distributed in different parts of the Field Manual. While their position is not haphazard, and is quite suitable for the overall design of the Field Manual, the resulting arrangement unavoidably increases the difficulty of a proper interpretation of the problem in question. To somewhat lessen this difficulty, we have here made the following rather arbitrary division of the pertinent rules:

a. Rules referring to violations in occupied territory only.

b. Rules referring to violations in occupied or invaded territory.

c. Rules silent as to the status of the territory in question.

Territory is to be considered occupied when it actually is placed under the authority of the hostile army. This occupation extends only to the territory where such authority has been established and can be exercised. (Article 42, Hague Convention.)

Paragraph 12 of the rules of land warfare specifically provides that if the people of a country or any portion thereof, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection. Paragraph 301 of the same rules makes further elaboration of the duties of the inhabitants of occupied places by saying, among other things, that they are to refrain from taking part in hostilities, or to perform any injurious acts towards the troops or in respect to their operation. And in paragraph 350, we have a listing

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of acts, which when committed by inhabitants under hostile military occupation, are considered as treasonable. Such persons are guilty of war treason. Also, persons within territory under hostile military occupation who rise in arms against the occupying army are known as war rebels (paragraph 349, Field Manual 27-10.)

An inhabitant in occupied or invaded territory, by giving information to his own government, is know as a war traitor. (Paragraph 207, Field Manual 27-10.) For the distinction between occupied and invaded territory, see 2 Oppenheim, International Law, paragraph 167. There is an exception, the levee en masse does not apply.

Men and bodies of men who, without being lawful belligerents as defined in paragraph 9, nevertheless commit hostile acts of any kind, are not entitled to the privileges of combatants. (Paragraph 351, Field Manual 27-10.) Other types of individuals who must be regarded as unlawful belligerents are armed prowlers (paragraph 352, Field Manual 27-10,) and marauders (paragraph 353, Field Manual 27-10.)

This brief survey shows:

(1) That unless compliance is made with the requirements of articles 1, 2 or 3 (quoted above,) war participants are acting in violation of laws of war, are not entitled to the protection and benefits of the rules of war, and are not to be treated as prisoners of war.

(2) That unlawful participation may occur in occupied territory; in invaded territory; within the lines of the belligerent, (paragraph

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352, Field Manual 27-10); in territory neither technically invaded nor occupied; in fact, anywhere.

(3) That, depending upon the particular activity, such unlawful belligerents, may be designated as war traitors, traitors, war rebels, war criminals, armed prowlers, marauders, unauthorized belligerents, or be given no certain classification.

The following quotations demonstrate conclusively that unlawful belligerents may suffer death for their crimes:

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"The war traitor is always severly punished. If his offense consists in betraying to the enemy anything concerning conditions, safety of the troops, his punishment is death." (Paragraph 210, Field Manual 27-10.)

"If captured they (war rebels) may be punished with death." (Paragraph 357, Field Manual 27-10.)

(See also paragraph 351, Field Manual 27-10, which provides for sentence of death.)

It can be stated with definiteness that unlawful belligerents are not entitled to the protection of the laws of war (Paragraph 12.) From this, one may infer that, granting that these individuals are unlawful belligerents or that in reason they are believed to be such, they can on capture be executed summarily. Indeed, Winthrop, is authority for the proposition that guerrillas (used in a general sense) can be executed summarily. (Military law and precedents, page 783.)

There are passages in the Rules of Land Warfare, however, which imply a contrary view. We will examine the seemingly relevant sections:

"The determination of the status of captured ~~troops is~~ to be left to higher military authority or military tribunals. Summary executions are no longer contemplated under the laws of war." (Paragraph 13, Field Manual 27-10).

"If captured, they (unauthorized belligerents) have no right to be treated as prisoners of war. They may not, however, after being captured, be summarily put to death or otherwise punished, but may be brought to trial before a military commission or other tribunal, which may sentence them to death or such other punishment as it may consider proper." (Paragraph 351, Field Manual 27-10.)

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"Their (marauders) acts are considered atrocities, and the severest punishment is imposed as to trial and conviction." (Paragraph 353, Field Manual 27-10.)

"No individual shall be punished for an offense against the laws of war unless pursuant to sentence imposed as to trial and conviction by a military court or commission or some other tribunal of competent jurisdiction designated by the belligerent." (Paragraph 356, Field Manual 27-10.)

An impartial interpretation of the above passages would seem to be that summary executions are frowned upon (notice the vacillating nature of the phraseology, "summary executions are not contemplated," and " may not be summarily put to death,") and that, in general, civilized nations in their military operations favor the view that there will be no execution of an unlawful participant unless so ordered by "higher military authority or military tribunal," or "military court or commission, or some other competent jurisdiction designated by the belligerent."

As to the nature and manner of the trial proceedings, the conventions and Field Manual 27-10 are silent. But it will be observed from the above phrasings that an execution will be legal if ordered by higher military authority, and that military courts or commissions or tribunals are to be designated by the belligerent; that is to say, the belligerent itself determines the procedure and rules for the trial. Since the conventions and Field Manual 27-10 do not formulate the way the trial should be held, since nations differ often basically as to the process for trials, since Field Manual 27-10 does state that the proceedings shall be designated

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by the belligerent, it would seem that the proceedings adopted by one nation must be respected by all other nations. Therefore, one country cannot attack the conviction of an unlawful belligerent on the ground that there is prejudice, that it is arbitrary, or varies in fundamental procedure or substance from that of the complaining nation.

. 2 Hyde, International Law, Paragraph 924, says in part:

> "It has also been observed that that standard is such as to enable each state to enjoy largest freedom in the administration of criminal justice. Even when an alien prosecuted in good faith and with careful regard for his rights of defense, is, nevertheless, convicted of a crime of which he is innocent, the result does not necessarily indicate the breach of an international obligation. The reluctance in such a case on the part of the State of the accused to interpose in his behalf is due to the absence of internationally illegal conduct in the matter of prosecution."

A relevant analogy would be that of our own military commissions, where the rules of evidence differ most substantially from those of civil courts, and whose findings cannot be set aside even by our Supreme Court.

> "If the military tribunals have lawful authority to hear, decide and condemn, their action is not subject to judicial review merely because they have made a wrong decision on disputed facts."

That is a statement made by our own Chief Justice Stone, in the Yamashita case.

We must conclude then, that, based on International customs and usage, if a belligerent grants an accused war criminal a trial, any sort of trial, so long as it conforms to the regulations of the belligerent, such proceeding is legal and must be given due recognition by the other nations.

While International Law grants certain protective rights to a belligerent in its disposition of unlawful belligerents, the question may arise whether such benefits accrue to the members of the Japanese Army, when Japan is the belligerent. The question should be answered in the affirmative.

First, Japan was one of the signatories of the Hague Convention (See the Yamashita decision, majority opinion): she also agreed to comply with the Geneva Convention of 1929 (See FM 27-251.) Furthermore, by far the greater portion of the rules of land warfare cited in this discussion are what are known as unwritten rules of war (Paragraph 3, FM 27-10). As stated in Paragraph 5, FM 27-10, "the unwritten rules are binding on all civilized nations." Thus, since Japan is bound to obedience to the rules, and is now suffering punishment for their violations, she properly can invoke in her defense the privileges of the rules, when her enemy has violated them against her. Although as Americans, we must applaud the bravery and patriotism of the Philippine guerrillas, from the viewpoint of International Law, their action may be unlawful, and if with this attitude the military commissions, reviewing Japanese handling of Philippine guerrillas, must face the problem.

> "Although a belligerent acts lawfully in employing spies and traitors, the other belligerent, who punishes them, likewise acts lawfully."

And at this time I submit, much should be made of the matter of reprisals. Under what circumstances, if any, is the use of reprisals against unlawful belligerents justified?

Reprisals are acts of retaliation resorted to against enemy individuals or property for illegal acts of warfare committed for the purpose of enforcing future compliance with the recognized rules of civilized warfare. (Paragraph 358, FM 27-10)

The first condition, then, is that the acts committed be

illegal from the viewpoint of the laws of war. And, we have shown that the acts of the suspected guerrillas were illegal.

Such illegal acts may be committed, not only by a government, or its military commanders, but also by a community or its inhabitants, whom it is impossible to apprehend, try and punish, (Paragraph 358c). Such offending forces or populations may be made the subject of reprisals (Paragraph 358d). Among the remedies provided injured belligerents is the punishment of captured individual offenders and reprisals. (Paragraph 346).

To determine, therefore, whether reprisals are appropriate, one must inquire:

(1) Are the acts complained of illegal? Note that reprisals against prisoners of war are expressly forbidden by the Geneva Convention of 1929. But, as has been shown in the earlier part of the discussion, unlawful belligerents cannot be considered prisoners of war. (Paragraph 76, FM 27-10).

(2) Are the illegal acts performed by a government, military commander, or community or individual thereof?

(3) Is it impossible to apprehend, try, and punish the offender or offenders?

(4) Has a preliminary inquiry been made? This requirement is waived where the safety of the troops necessitates immediate drastic action, and the person who actually committed the offense cannot be ascertained. (Paragraph 359f).

If these prerequisites are met, reprisals become a recognizedly legal remedy. Other factors also must be borne in mind by the injured belligerent:

a. Reprisals are not to be used merely for revenge.

b. They are an unavoidable last resort to persuade the offender to desist from his illegitimate practice.

c. The orders for reprisals must come from a commander, who must have had prior consultation with the highest accessible military authority, unless immediate action is required by the unscrupulousness of the enemy. (Paragraph 358b).

It is evident that the activity of so-called guerrillas may, in many instances, justify the use of reprisals. Their surreptitious movements, performed in stealth and secrecy, their appearance, disguising their military status; the facility with which they can be concealed and hidden among a populace hostile to the belligerent; and at times, their serious threats to the safety of the troops, and the success of the military objectives of the belligerent, by their harrassing action, very often makes reprisals the exclusive remedy available. In that case, hostages held may be put to death if the illegal acts are committed, (Paragraph 358d of FM 27-10), collective punishment may be inflicted, villages or houses may be burned (Paragraph 358e), and, in general, while the reprisals need not conform to the illegal acts, and should not exceed the degree of violence committed by the enemy (Paragraph 358e) they may be enforced on a quid pro quo basis, if the situation appears to indicate it. An ambush, resulting in the death of a number of troops of the belligerent,. may very well vindicate the summary execution of individuals of a community, which supplies, conceals or protects the offenders.

The facts are that during the period covered by the specifications, Japanese troops occupied Negros Occidental, guerrillas were active, that the so-called guerrillas did not have a fixed distinctive emblem recognizable at a distance, did not carry arms openly and did not conduct their operations

in accordance with the laws and customs of war. The facts are also that it is the duty of an occupied country to maintain law and order, that the Japanese were constantly harassed, they were ambushed, they were killed by snipers, they were attacked by armed bandits. It has been established by positive proof that all the persons named in the specifications were either guerrillas or assisting the guerrillas, that except for those who were killed in combat action, and the evidence shows that there were numerous combat actions, all persons who were executed were investigated.

Now, the word "investigation" throughout the trial has never been defined. However, the proof is that the persons were questioned and it was only upon a thorough showing of guilt by reason of the investigation that they were ordered to be executed. There are two specifications in which the accused stated that he ordered the executions of the persons named therein, and in both of those specifications, it has been established without any shadow of a doubt that those persons were guerrillas, and that it has been conclusively proven to the accused by his subordinates that the persons in question were guerrillas as shown by their so-called investigation. I am referring to Specification 9 of the killing of Bobit, and Specification 19, of the killing of Hisona and Gonzaga. It has been established that the persons named in the specifications had committed many acts which justified a death sentence, according to the rules of land warfare.

We have shown that the proceedings of trial are designated by the belligerent., and we cannot therefore question the method of trial adopted by the Japanese and can merely inquire as to

whether some sort of a trial was had. Even if it should be found by the Commission that trials were not held in the sense the Commission believes they should have been, and again we say we have no right to inquire into the method of trial, nevertheless, the facts are that the acts committed by the persons allegedly killed were such acts as to properly result in the death of those persons, so that we cannot say that those persons were unnecessarily killed, or gratuitously killed unless the Commission is willing to say that all persons killed in war are unnecessarily and gratuitously killed. It is indeed unfortunate that any persons were mistreated or killed, but war is what General Sherman said, it is, and as long as we do have wars we will have suffering and killing. If any persons who are innocent of any guerrilla activity were killed, believe me, gentlemen, it was not so intended. From his very nature the accused in this case is incapable of unnecessary cruelty or sadism. Innocent persons probably died, but so have they from time immemorial during times of war.

I have made no mention up to this point of the fact that on the specifications much of the so-called proof by the prosecution has been of acts committed against unidentified persons. There should be no finding of guilty for any alleged offenses committed against persons who are unidentified for the reason that it could not be established that they were civilians, nor could it be established that they did not undergo a trial, and in many of the cases it was not even established that they were Filipinos. It must not be permitted that the prosecution merely show that unidentified bodies are found, therefore, the person in command of the occupying force must have been responsible for

their deaths. We repeat, as we did at the outset, that every act necessary to establish the guilt of the accused must be affirmatively shown by positive proof, there must be no speculation as to what happened.

We submit that the prosecution has failed to establish the guilt of the accused beyond a reasonable doubt, and by a preponderance of the evidence in view of the facts that are in the record, and in view of the law that we have cited.

The Commission at the outset of this trial took an oath to try this case fairly and impartially and without bias according to the evidence. The accused is a Japanese. We have but recently been at war, a bitter and mortal war against the Japanese. During the period of hostilities and prior to the period of hostility, and subsequent to the period of hostility,

we, Americans, were taught to hate the Japanese. The accused is one member of that nation whom we have been taught to hate, but the accused is one individual who is on trial, not for the acts committed by the Japanese nation, but for acts alleged to have been committed by him. We, as an American nation, have always prided ourselves on our sense of fairness and our sense of justice, and every accused who has stood before an American bar of justice we have attempted to try on the facts alone, so please, if it is within your power to do so, in determining the guilt or innocence of this accused and in determining the sentence to be imposed upon him, in the event the accused is found guilty, divest yourselves of any feeling of hate or animosity or bias or prejudice.

During the three months we have been engaged in this trial I have come to know the Commission members, and I do sincerely respect and honor their fairness, and I know that they can divest themselves, and will divest themselves, and will divest themselves of that bias and prejudice that makes for an unfair trial.

During the time that I have represented the accused I have come to know him well. I make the unequivocal statement that in spite of the fact that he is a Japanese, I respect him as much as any person I have ever known. The evidence has shown that he was loved by his men and respected by the Filipinos. It is the first case that I have any knowledge of in which Filipinos themselves voluntarily appeared as witnesses to testify to the good character of a Japanese. Each of the Filipinos who testified in person, each of the Filipinos whose affidavits have been introduced has said that he was a good and kindly

to such a man. This man has been before you almost every day for about three months and you have had a chance to observe him, his bearing, his demeanor, and you gentlemen are observant enough to have read his character during that period of time. If there were no evidence as to his character in this case, from your own observation you must have concluded that he was not a killer, and that he was not a sadist, but is in truth and in fact a kindly father, a man beloved by his soldiers who looked up to him as a son would to a father, honored by his own people and respected by his enemies. I submit that it would be a loss for such a man to be put to death. The prosecutor may answer this by saying, "Did he spare the life of this one", or "did he spare the life of that one", but gentlemen, I submit that what acts he committed were dictated by necessity, the laws of war, and his duty to his country.

Under our rule of procedure the prosecution will have the last word, and I will be unable to answer, but I have confidence that what the prosecutor will say will require no further answer by me.

If there is such a thing as comparative justice, this man will not meet the ultimate fate.

COLONEL PARMELEE: The Commission will take a short recess. (Short recess)

CLOSING ARGUMENT FOR THE PROSECUTION

COLONEL PARMELEE: The Commission is in session.

MAJOR FOJAS: Gentlemen of the Commission: I join defense counsel in commending all the personnel who participated in this trial. I especially commend Mr. Bonda for a brilliant dissertation of the law although there is one thing which I

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noticed when he referred to the victims of the atrocities alleged in these specifications. He has attached so much importance as to their status whether or not they were civilians or guerrillas. To our mind, the distinction is not important whether or not they were guerrillas or civilians, once they came into the power of the enemy they are entitled to protection as provided for under the rules of land warfare. Now Mr. Bonds propounds the theory that the trial should be determined by the belligerent in whose power these people come, and he claims whatever kind of trial was given to these persons should be respected. If we shall follow that theory, the purpose for which these war crimes trials are being held would be thoroughly defeated because we believe the trial contemplated by the law is such a trial recognized by all civilized nations, and if the enemy could contend that a person was given a trial, no matter how, whether mistreatments were adopted, and then we would be precluded from now reviewing that kind of trial and these war crimes trials would be to no avail whatsoever.

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We shall come to discuss these points of law in the course of our argument, but there is one thing more which I would like to mention in connection with the citation of the laws of war made by Mr. Bonda, and that is when he referred to reprisal. We should like to call the attention of the Commission to the fact that reprisals are authorized only when a belligerent resorted to unauthorized tactics of warfare, and therefore the other belligerent, the enemy, is entitled to resort to reprisals to force that belligerent to follow the rules of war, and the guerrillas and the civilians, according to Mr. Bonda, are not authorized belligerents, and that therfore reprisals could not be adopted against them because they are not expected to follow the recognized rules of land warfare.

Now, there is another element in connection with reprisals. and that is to be resorted to only in case the offenders cannot be ascertained and cannot be brought to trial. In the instant case there is only one possible instance, if ever, where defense tried implicitly to show that there should be reprisal and that was in the expedition to Silay because they claim that the guerrillas attacked the Silay garrison, and so they conducted a punitive expedition, but then, according to defense itself, the offenders in that attack against the garrison were known and ascertained from a corporal in the guerrillas and whose name was mentioned, so that even in that case reprisal is not tenable.

Now, we come to our main argument. A total of sixty-one witnesses who lived to tell grim accounts of murder, rape, ill treatment and torture tried to give you a word picture of various incidents perpetrated by the Japanese upon the people of Occidental Negros during the period from January,

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1943, through March, 1945. We realize, and I am sure the members of the Commission also realize, that their testimony is utterly inadequate to render a realistic account of what actually took place during those long and horrible years. It was beyond the power and ability of those witnesses, for instance, to paint for you the thickness and color of human blood and its flow after each bayonet thrust upon the body of a victim; it was beyond their power to bring to your sight the picture of dying men, languishing in pain but completely helpless; it was beyond their power to make you feel the same way that men felt when they were made to line up and face the rattle of machine gun bursts; it was beyond their power to make you realize how the soft muscles of the human body reacted to merciless beatings with hard wood and iron bars; it was impossible for those witnesses to make you feel the same way that women felt when they were forced to give up their honor and virtue to men they detested and never loved. We believe, however, that enough has been told to enable the members of this Commission to realize the atrocities committed were not only infractions against the laws and customs of war, but were also flagrant violations of the laws of humanity revolting to the conscience of man.

We cannot add to or detract from what the witnesses have narrated before you. We can only at best summarize what they have told you, but we have no doubt that by now you have seen that the Japanese forces then stationed in Occidental Negros, which, as we have established in this case, belonged to the command of the accused, followed a definite pattern of atrocities perpetrated upon innocent civilians and guerrillas alike. This pattern may be stated in the following manner:

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First: That in an effort to curb guerrilla activities, punitive expeditions were sent out by the accused to several localities stated in the specifications. The inhabitants of a locality were then gathered in a certain place, most often in the plaza of the town or in the yard of the church, and there investigations were conducted for the purpose of singling out guerrillas and guerrilla suspects. In the course of the investigations, innocent civilians were beaten and tortured and killed right in the place where they were apprehended.

Second: After the expeditions persons suspected of guerrilla activities were taken to Bacolod either to the general headquarters of the accused or to the headquarters of his company commanders, and subjected to various forms of mistreatments. Some of these guerrillas were later executed.

Third: In various places the accused also maintained garrison units which took charge of arresting persons individually. Once in their power, these persons were subjected to ill treatment, beatings, tortures and killings, and

Fourth: No trial was ever given to any victim.

Following this pattern of atrocities you have heard the witnesses testify about the expeditions personally led by the accused to Sitio Camay-an in Cadiz, on 20 February 1944, to Barrio Rizal and Hawaiian Sugar Central in Silay on 7 March 1944, to Talisay on 19 April 1944, to Himamaylan and Kabankalan in April and May, 1944, to Barrio Santa Cruz in Murcia on 26 November 1944, and to Barrio Buena Vista in Pontevedra on 18 March 1945.

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You have heard how a number of persons were ill-treated, tortured and killed in the course of these expeditions, You have heard how persons apprehended during these expeditions were taken to Bacolod, investigated, mistreated and tortured and later killed in Sumag, Banago and other places. You have heard how individual persons were arrested, mistreated and tortured in and around Bacolod. You have heard how members of the garrison units of the accused in Hacienda Balabag, La Carlota, Berobore, Cubay and Silay committed murder, rape, torture and ill treatment. You have heard of tortures, mistreatments, executions right in the headquarters of the accused in the Bacolod High School. Such was the manner by which members of the command of the accused treated innocent civilians and guerrillas alike. They disregarded the laws and customs of war even after the people had been placed under their power and custody.

We respectfully submit that the evidence we have adduced during the trial of this case sufficiently proved the occurrence of the incidents alleged in the specifications in the places and on the dates we have specified. We have just given a general survey of that evidence. If on minor details the witnesses have seemingly made inconsistencies, those inconsistencies are not important enough to disprove the fact that the incidents took place. Taking into consideration the length of time that has elapsed since the incidents happened and the circumstances under which these witnesses observed those incidents, it is but natural that discrepancies should occur on some minute details. Each man has a different power and keenness of observation, and it is not human to expect them to agree on all aspects of a transaction.

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We now come to the responsibility of the accused as commanding officer in Occidental Negros during the periods alleged in the specifications. We shall take up each and every specification separately.

Specifications 1, 2, and 3. There is no controversy as to the occurrence of the incidents alleged in the first three specifications. The defense has not even attempted to disprove the fact that on 24 January 1943, Japanese forces committed mass murder and ill treatment in Hacienda Balabag a rape in the La Carlota Central Garrison. The only question is whether or not those forces were then under the command of the accused. We submit that they were. The accused became responsible for the security of all of Negros Island, and therefore commander of all the troops stationed therein 6 January 1943. This conclusion is based on the following considerations:

First, the evidence is uncontroverted that on 2 January 1943, the accused received an order assigning him to take responsibility for the security of Negros Island, and to take command of all Japanese troops therein, and in compliance with this order, he landed on Negros Island on 6 January 1943.

Second, Koishi Tanaka, a clerk in the battalion headquarters of the accused, and a witness for the defense, testified that it was usual in the Japanese Army for a commander to issue an order stating that a new commander has taken command of a new territory, and that such an order must have been issued by Colonel Yamaguchi upon landing upon Negros

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Island on 6 January 1943. From the time such announcement was made, command responsibility commenced to attach upon the new commander for the security of the territory and for the acts of all the troops assigned therein.

Third, if the accused became responsible for the security of Negros Island on 6 January 1943, it was logical for him to be, at the same time, in command of the troops actually guarding that security. Otherwise, he would be responsible for a certain thing, and yet impotent to carry out the obligations of his responsibility.

Fourth, Takahashi, a subordinate officer of Colonel Yamaguchi, testified that the Fukuda unit came under the command of the accused on 6 January 1943, although he maintains in name only.

Fifth, the accused himself, in a statement signed before investigating officers of the WCID, acknowledged the fact that he was the commander of all the Japanese troops in Negros Island from 4 January 1943. We submit that this statement should be given more credit than his present claim that he was not in command of the Fukuda unit for the reason that it was given at a time when there were yet no charges preferred against him, and he was not then conscious of the fact that he would be held responsible for atrocities committed by soldiers under his command on 24 January 1943.

The defense claims, however, that notwithstanding the fact that the accused received the order making him responsible for the security of Negros, and actually landed on

the island on 6 January 1943, he was not in command of all the Japanese forces on the said island from the aforesaid date.

It is claimed that on 6 January 1943, there were two other units on Negros Island which were to be placed under the command of Colonel Yamaguchi: the Yoshiyama unit in the northern part of Occidental Negros, and the Fukuda unit in the southern part of Occidental Negros. It is claimed that he took over the command of the Yoshiyama unit only on the 24th of January 1943, and that he took command of the Fukuda unit only on 30 January 1943. We submit that these allegations of the defense are not credible, and are adduced only to enable the accused to escape responsibility for the atrocities which took place in La Carlota on the southern part of Negros on the 24th of January, 1943.

We respectfully offer the following considerations to the members of the Commission to show the inherent improbability of the theory of the defense that the Yoshiyama unit did not come under the command of the accused until 24 January 1943, and the Fukuda unit until 30 January 1943:

The accused testified that a unit is brought under the command of a new commander in the Japanese Army after said commander has constituted himself to the headquarters of the unit, and has interviewed the old commander of the unit, and learned from him the conditions of the territory within the jurisdiction of said unit. We maintain that this procedure never existed, and it was not an essential requisite in order that a unit may be placed under the

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command of a new commander in the Japanese Army.

Lieutenant Colonel Watanabe, a witness for the defense, directly contradicted the statement of Colonel Yamaguchi when he said that the procedure by which a unit is placed under the command of a new commander is for the commander of that unit to go to the headquarters of the new commander and there explain to him the conditions existing in his territory, and the command is transferred from the moment the new commander states that he receives the command and accepts the responsibility therefore. In the face of these two conflicting statements, we are at a loss as to what actually was the formal procedure in the Japanese Army by which a unit is placed under the command of a new commander.

But even granting for the sake of argument that either or both of the two procedures mentioned by Colonel Yamaguchi and Lieutenant Colonel Watanabe was actually practiced in the Japanese Army, it is incredible that Colonel Yamaguchi assumed command of the Yoshiyama unit only on the 24th of January, 1943. In the first place, the evidence is clear that when he arrived in Occidental Negros, particularly in the city of Bacolod, the headquarters of Yoshiyama was in Bacolod, and was there until the 11th or the 15th of January, 1943. Colonel Yamaguchi also admits that on the eighth day after his arrival in Bacolod he met Yoshiyama, and on that occasion he was informed of the overall situation in his territory. If Colonel Yamaguchi was informed of the overall condition in the territory under the jurisdiction of the Yoshiyama unit eight days after he landed in Negros, why was it that Yamaguchi still maintains that he was not

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in command of that unit until after the 24th of January, 1943? It is also in evidence that during the expedition conducted by Colonel Yamaguchi on the 14th, 15th and 16th of January, 1943, the Yoshiyama unit was commanded by him in battle, and Yoshiyama took orders from him during that expedition. Having been informed of the overall situation in the territory under the jurisdiction of the Yoshiyama unit, and having commanded this unit in an expedition on the 14th, 15th and 16th of January, 1943, could it still be properly said that this unit was not under the command of Colonel Yamaguchi before the 24th of January, 1943? Such a contention is manifestly absurd and incredible.

With regard to the Fukuda unit, it is incredible that said unit did not come under the command of Colonel Yamaguchi until the 30th of January, 1943. The guerrilla situation demanded that he get in touch with Fukuda immediately, and yet he claims that he did not do so. Communication with the Fukuda headquarters was possible by way of the sea. Why was it that no communication was ever made with Fukuda between the period from the 6th to the 30th of January, 1943? Why was it that he did not even make any attempt to get in touch with Fukuda before the 30th of January, 1943? The only possible reason is that the date on which the atrocities alleged in these specifications took place was 24 January 1943, and that is the only possible way by which Colonel Yamaguchi could escape responsibility.

Koishi Taneka, we report, a clerk in the battalion headquarters of Colonel Yamaguchi, testified that it was usual in the Japanese Army to send out an order stating

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that a new commander has taken command of a new territory, and that such an order must have been issued by Colonel Yamaguchi upon his landing on Negros on 6 January 1943. We repeat that from the moment of this announcement, the accused was in command of the Fukuda unit. We also repeat that in a statement signed by Colonel Yamaguchi before investigating officers of the War Crimes Investigating Detachment, he acknowledged the fact that he was the commander of all the Japanese troops in Negros Island from 4 January 1943. His present denial of command responsibility over the Fukuda unit during the period alleged is therefore manifestly untenable.

Specification 4. The accused claims absolute ignorance of the incidents alleged in nineteen of the twenty-four specifications preferred against him. One of the specifications of which the accused professes complete ignorance is specification 4, the mistreatment of Emilio Gomilla in December, 1943, in the City of Bacolod. We submit, however, that this claim of ignorance cannot be tenable on the face of the evidence we have adduced in proof of this specification. The victim testified that he was mistreated right in the headquarters of the accused, and that the accused himself once visited this man in the guardhouse, and asked him if he were a guerrilla, and upon giving a negative answer was slapped on the face. To overcome this evidence a mere denial is not sufficient. The accused testified that he knew that members of his intelligence section were then conducting investigations in Bacolod. As commanding officer of the Japanese troops who committed these violations of the laws and customs of war, and having his headquarters right at the place of mistreatment, he is charged with the duty of seeing to it that the investigations conducted by his men were carried out in the proper manner, and that no such violations were committed. He did nothing in this respect. In failing to discharge the obligations of his command, we submit that he should be held responsible for those mistreatments and tortures which should be taken as proved in the absence of proof to the contrary.

Specification 5. This specification deals with the incidents of ill-treatment and killings of innocent civilians

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in Camay-an, Cadiz, Negros Occidental on 20 February 1944. This is also one of the many specifications of which Colonel Yamaguchi professes absolute ignorance. The defense has adduced no evidence whatsoever to disprove the fact that the incident actually took place. On the other hand, we have the admission of Colonel Yamaguchi that he conducted an expedition to the town of Cadiz, although he would not give us the date when this expedition was undertaken, and he even tried to state that Cadiz was not directly under his jurisdiction. The fact, however, is incontrovertible that on the date the incident took place he was responsible for the security of Negros Occidental, and that he was in command of the troops stationed in Cadiz. The tendency of the accused to evade responsibility is very apparent because whenever he was asked questions about Cadiz, he would readily inquire if Cadiz included Camay-an. On one occasion, he was asked this question: "Do you know what was the guerrilla situation in or around Cadiz, Negros Occidental, on or about the 20th day of February, 1944?" And he answered, "I do not know about the sitio of Camay-an in Cadiz."

And then again he was asked, "Did you go to any of the barrios in Cadiz?" And he answered, "Does it include Camay-an? Cadiz is very wide, and I went to the Town of Cadiz."

There you see the consciousness of the accused about the sitio of Camay-an. He was very careful throughout to avoid the sitio of Camay-an, and the reason for doing so is very obvious. But the point is this: the fact that

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Colonel Yamaguchi made an expedition to Cadiz within whose limits Camay-an was included, and the fact that the witnesses positively stated that atrocities were committed in the sitio of Camay-an, and that Colonel Yamaguchi himself was present in that place on the date mentioned, establish beyond a doubt the occurrence of this incident.

Specification 6. This specification refers to the mistreatment of certain persons in the Bacolod High School during the month of March, 1944, of which the accused also professes absolute ignorance. This claim, however, is not sufficient to overcome the testimony of the witnesses for the prosecution on the occurrence of the mistreatments and tortures, and cannot be given any amount of credit whatever. He admits that he knew there were investigations going on in the high school. He knew that the perpetrator mentioned by the witnesses, Sergeant Takashita, participated in the investigations, but claims that he did not know that the persons investigated were being tortured. As commanding officer of the troops stationed in the high school, it is contended by the prosecution that it was his duty to see to it that no ill-treatment or tortures are committed by his men upon persons under investigation, and his failure to take any step to prevent such ill-treatments from taking place is one of the short comings of his command responsibility. The accused did not only fail to take any measure to prevent ill-treatment and tortures, but also failed to make even an attempt to find out whether persons were being mistreated or tortured.

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Specification 7. This specification refers to the killing of Manuel Porques on March 7, 1944, in Barrio Rizal. The prosecution has established that on this date Colonel Yamaguchi conducted an expedition to Barrio Rizal, and in its vicinity, in an effort to apprehend guerrillas. On the occasion of this expedition, Manuel Porques was killed in Barrio Rizal.

The accused admits having undertaken this expedition, but claims that Porques was killed when he attempted to escape. As will be seen later, the accused has consistently claimed that all persons killed in the course of the expeditions undertaken by him were killed when they attempted to escape. We have in mind the killing of six persons in Talisay on the 19th of April, 1944, and the killing of several persons in Barrio Sta. Cruz, Murcia, on 26 November 1944.

Even in the case of Bebit where the evidence is overwhelming to the effect that Colonel Yamaguchi ordered the execution of the man in the presence of so many people, there was a time when he claimed that Leonardo Bebit was killed because he attempted to escape. Our point is to show to the Commission that if there was no other possible way by which the accused could avoid responsibility, he would ordinarily say that the man was killed because he attempted to escape.

With this consideration in mind, and the testimony of the witnesses we have presented in connection with this specification, we respectfully submit to the Commission that the facts should be considered as established that Manuel Porques was killed while he was in the custody of

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the troops under the command of the accused, following the usual pattern adopted by the accused and his troops during their stay in Occidental Negros.

Specification 8. The incident referred to in this specification also took place during the course of the expedition to Barrio Rizal, and its vicinity, including the Hawaiian Central, on March 7, 1944. As usual, Colonel Yamaguchi also professes complete ignorance of the mistreatment of the persons mentioned in this specification. But the evidence is incontrovertible on the fact that during this expedition people were rounded up in Barrio Rizal and in the Hawaiian Central, which is a few kilometers away, subjected to investigations in the course of which these people were mistreated and tortured.

This again, is in accordance with the pattern of atrocities followed by members of his command during their stay in Negros Occidental. And yet the accused claims that he has never heard of these mistreatments and tortures, nor did he even make an attempt to find out if during the course of the investigations the people were mistreated or tortured. But his claim of ignorance of this mistreatment cannot be given credence whatsoever because when he testified in the Nishikawa case he said that he had heard of these mistreatments committed in Barrio Rizal, although he became certain of those things only when he heard them in court. It is not important whether or not he has heard of these mistreatments. We maintain that as commanding officer of troops it was his duty to take measures to prevent violations of the laws and customs of war. By failing in this regard as a commander, he cannot escape

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responsibility.

Specification 9. The prosecution submits that there should be no controversy as to the guilt of the accused in connection with the killing of Leonardo Bebit. He admits having ordered the execution of this man without previous trial. The manner in which this man was executed was testified to by several witnesses, including a very prominent man in Negros Occidental, who was even utilized by the defense as one of its witnesses, and I refer to Mr. Jose Gaston.

There is only one thing on which the prosecution desires to invite the attention of the members of this Commission in connection with this specification. In doing this our only purpose is to show that the testimony of the accused cannot be given much credit in general because of his tendency to say one thing at one time and another thing at another time, depending upon the advantage which would accrue to him as the circumstances demanded.

At one time the accused claimed that there was no order to execute Leonardo Bebit because he was killed when he was about to be taken to Dacolod for the reason that he attempted to escape. He even claims that he only admitted having ordered the execution of this man because Takahashi who actually executed Bebit claimed that he did so upon order of the accused, and that being a commander he has to admit that he ordered said execution. But this gentlemanly gesture is not as genuine as it sounds. Granting that Takahashi did not tell the truth when he said that he was ordered by the accused to kill Bebit, but how about Mr. Jose Gaston, who testified that he attended a meeting where

Colonel Yamaguchi said that he had ordered the execution of a man to serve as an example to the people of Silay? Was this man also lying when he said that Colonel Yamaguchi ordered the killing of that man? How about the testimony of Panfilo Artagame who was in company with Bebit from the time they were apprehended up to the time that Bebit was executed, and who also attended the meeting in which Yamaguchi announced that he had ordered the execution of this man? The fact is that the accused had told two different versions of the killing of Bebit, and it was only when he found out that he could not escape responsibility therefor that he had the courage to admit having ordered the execution of this man.

Specification 20. This specification refers to the killing of Rodolfo Pedros and Ernesto Chavez, who were captured in Barrio Rizal and in the Hawaiian Central, and the attempted killing of Panfilo Artagame, who also was captured at the Hawaiian Central during the raid of March 7, 1944.

The accused also professes absolute ignorance of this incident. He admits, however, that it was possible that some of those guerrillas captured in or near Barrio Rizal were killed without his knowledge. We submit that the claim of the accused that he had no knowledge of this atrocity is not true, and even if it were, he could not escape responsibility for the reason that it was incumbent upon him as commanding officer to determine the final disposition to be made of persons that were placed under their custody, to see to it that the disposition of these persons were in accordance with the laws and customs of war, that whatever policy

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he had adopted in this regard he should see to it that they were carried out properly. But what has the accused done? He did not even take any step to find out what was done with these prisoners who were captured during the aforesaid expedition.

The prosecution respectfully submits that he utterly failed to discharge the functions of a commanding officer, and instead he permitted members of his command to commit the atrocities alleged in this specification, inasmuch as he did not adopt any measure to find out whether the members of his command were violating the laws and customs of war.

Specifications 11, 12 and 13. These specifications refer to the killing of an unidentified man, mistreatment and torture of an unascertained number of Filipino civilians in the Bacolod High School, and the mistreatment and torture of an unascertained number of Filipino civilians in a house on San Juan and Rosario Streets in the City of Bacolod during the months of March, April and May, 1944.

The accused, as usual, professes absolute ignorance of the violations of the laws of war alleged in these specifications. But we want to again reiterate that the accused cannot escape responsibility for these atrocities by a simple claim that he did not have knowledge of them. The incidents took place right in his headquarters, and in the office of Sergeant Takeshita, whom he knew was conducting investigations of persons suspected of guerrilla activities.

Under these circumstances, he should know what was taking place within his headquarters and its immediate vicinity. As commanding officer it was incumbent upon him to see to it that the investigations of persons placed in their custody

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were carried out in accordance with the laws and customs of war. It was incumbent upon him to see that no violations of these laws were committed, and failing in these, he should be held responsible therefor. But the evidence is clear that he did not adopt any measure to prevent the commission of such atrocities, nor did he even make any attempt to find out whether such violations were being committed by his men. In the face of such an actuation would it then be valid for him to claim that he did not know of these atrocities, and therefore should not be held responsible therefor? Apparently the accused believes that to profess lack of knowledge of these atrocities was the easiest way of avoiding responsibility. But unfortunately for him, it is not.

Specifications 14, 15 and 16. The expedition conducted by Colonel Yamaguchi in Talisay on 19 April 1944, gave rise to three incidents which were alleged in three separate specifications. It is admitted that Colonel Yamaguchi was in command of this expedition and was personally present in the plaza of Talisay on the 19th of April, 1944. It is also admitted by the accused that the inhabitants of Talisay were gathered in the plaza and then they were investigated in an effort to single out the guerrillas. After the investigations about thirty persons were arrested and taken in the vicinity of the Church of Talisay, and later some of them were brought to Bacolod.

In specification 14, the prosecution alleged that five men were killed in the vicinity of the church. Several witnesses described the manner by which these people were executed. On the other hand, Colonel Yamaguchi testified

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that these people were not executed, but that they were killed when they attempted to escape. This, he said, was according to a report which he received from members of his command. Between the positive testimony of the witnesses for the prosecution and the testimony of Colonel Yamaguchi based on a report, the truth or falsity of which was never investigated by him, it is respectfully submitted by the prosecution that the testimony of its witnesses should be given more credit.

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This is so if only for the simple reason that we have here testimony of eye witnesses as against testimony of the accused based on a simple report. The responsibility of the accused for this atrocity cannot be questioned for the reason that he was the commanding officer of those troops and he was in the vicinity where the killings took place.

Specification 15 refers to the mistreatment and torture of a number of individuals who were among those apprehended in the plaza of Talisay on the aforesaid date. This is also one of the incidents of which the accused professes absolute ignorance notwithstanding the fact that he was right there in the plaza when the mistreatments and tortures were committed or was in the vicinity of the church where these mistreatments and tortures were continued. We need not say any more on this point as the evidence we have submitted stands uncontradicted in the record except by a simple denial of the accused himself.

In Specification 16 it is alleged that a number of Filipino civilians were killed in the vicinity of Banago Wharf during the period from the 19th of April to the 25th of May, 1944. The witnesses for the prosecution have established that these persons were among those arrested in Talisay on the 19th of April, 1944, who, according to the accused himself, were taken to Bacolod and confined there. The accused did not have personal knowledge of what actually happened to these prisoners excepting that he claims that those people, being guerrillas, must have been sent to the Spiritual Training School and later released. He admits, however, that some of these prisoners could have been confined in the North Elementary School Garrison which was then under the command of Captain Nakajima and it was possible

that prisoners had been killed in the vicinity of the Banago Wharf. All these possibilities admitted by the accused fit in perfectly with the testimony of the prosecution witnesses to the effect that the persons alleged in Specification 16 were confined in the North Elementary School Garrison and then were killed in Banago on the 21st of May, 1944. The remains of some of these victims were exhumed in the vicinity of the executions and identified by their relatives. There is no question but that the accused should be held responsible for this atrocity as it was committed by members of his command and it was incumbent upon him as commanding officer to see to it that no violations of the laws and customs of war were committed by his troops.

Specifications 17 and 18. These specifications refer to the killing of unidentified Filipino civilians in the vicinity of Himamaylan and Kabankalan, Negros Occidental, during the months of April and May 1944. The accused, as usual, professes complete ignorance of these atrocities although he admits that during the period alleged in the specifications he personally commanded the expedition to these places and was present therein. The positive testimony of Sofronio Sabellon to the fact that these incidents took place cannot be disproved by a simple denial. The prosecution submits that the accused, being present in the places mentioned, should be presumed to have known of the occurrence of the atrocities and should be held responsible therefor.

Specification 19. This refers to the killing of Porfirio Garina, Teofilo Hisona, Jesus Gonzaga and several other unidentified Filipino civilians at the rear of the Bacolod High School during the period from the 19th to the 25th of July 1944.

The accused has admitted having ordered the execution of Jesus Gonzaga, Porfirio Garina, and that of Teofilo Hisona, although he denies knowledge of the killing of other unidentified Filipino civilians. Takeshita, an investigator of Colonel Yamaguchi, admitted having witnessed the execution of seven persons on the 20th of July 1944 at the rear of the High School, and the prosecution witnesses have testified that it was on that occasion that Porfirio Garina, Teofilo Hisona and Jesus Gonzaga were killed. These admissions made by the accused and by Takeshita perfectly fit in with the testimony of the prosecution witnesses as to the fact of executionscommitted at the rear of the High School which was the headquarters of the accused. After the execution of the other persons,of which the accused claims to have no knowledge at all, we have the positive declaration of eye witnesses, which declarations,we submit, should be given proper weight and credit. These persons were executed without previous trial. These were clear violations of the laws and customs of war for which the accused should be held responsible. He should also be held responsible for the executionsof other persons during the said period as it is not conceivable that they could have taken place within the vicinity of his own headquarters without his knowledge. That these men were executed by members of his command cannot be questioned because at the time of their executionsthere were no other units using the Bacolod High School as their headquarters except that of the accused himself.

Specification 20. This specification refers to the incident which took place in Barrio Santa Cruz, Murcia, on 26 November 1944. The accused admits that he was present at the place where

the incident happened, being then in command of his troops who were sent over there to rescue the Hori battalion. He claims, however, that the persons killed were guerrillas who resisted arrest. This claim of the accused, prosecution respectfully submits, cannot prevail over the direct testimony of the witnesses for the prosecution as to how the incident took place. The prosecution witnesses were survivors of this atrocity, one of them being a girl about twelve years old at the time of the incident who could not be expected to be present in a celebration by the guerrillas as claimed by the accused.

Specification 21. This specification refers to the killing of certain persons in the city of Bacolod on the 8th of December 1944. These persons were apprehended in Hacienda Carmen which was within the vicinity of the Boroboro Garrison on the 5th of December 1944, and were later taken to the said garrison and finally brought to Bacolod where the executions took place. The only witness to this atrocity was the lone survivor, Marcos de Tomas, who testified in a positive manner that he identified Nanjo as one of the men who arrested him and whom he has seen on several occasions at the Boroboro Garrison. He identified him as the man in charge of the Japanese who took them to the Boroboro Garrison, later to Bacolod and then to the place of execution. The defense, to overcome this testimony, tried to show that Nanjo was wounded on the 6th day of December 1944 and could not have been at the situs of the incidents because on the 5th of December 1944 he was in Bago and on the 8th he was in the hospital. In this connection, we only wish to invite the attention of the Commission to the following facts: That Nanjo was commander of the Boroboro Garrison and

that he was positively identified by the witness, Marcos de Tomas. Against this positive declaration of the prosecution witness, there is the alibi that he could not have been in the place of the incident. Now, this defense of alibi is a matter which should be established in such a way as to admit of no possibility whatsoever that he could be at the place of the atrocity. Prosecution submits that it has not been established that it was impossible for Nanjo to have been at the Boroboro Garrison on the 5th of December 1944 and in Bacolod on the 8th of December 1944, even assuming that he was in fact wounded on the 6th.

Specifications 22 and 23. These specifications refer to the incidents which took place in the vicinity of Hacienda Fortuna and the Cubay Garrison in the municipality of Silay on the 8th of March 1945. It is submitted that the evidence adduced by the prosecution as to the occurrence of the incidents alleged in these specifications are not controverted by the accused. It is claimed, however, that on March 5th, 1945, the accused was wounded in the vicinity of Pontevedra, that he stayed in the hospital until the 29th of March 1945, that on the 5th of March 1945 he was relieved of his command of the Yamaguchi battalion, and that the Japanese perpetrators, identified by a witness for the prosecution, were never on duty or assigned at the Cubay garrison.

We submit that the date of the alleged wounding of Colonel Yamaguchi has never been satisfactorily established. We have in the record the following conflicting testimony as to the date of the wounding of Colonel Yamaguchi: Andres Kovacha, a witness for the defense, testified that he received a report

to the effect that Colonel Yamaguchi was wounded either in February or March 1945. Takahashi, another witness for the defense, testified that Yamaguchi was wounded within five days from the middle of March 1945. Nishikawa testified that Yamaguchi was wounded on the 10th or even after the 10th of March 1945. The accused, on the other hand, said that he was wounded on the 5th of March 1945. Now, which of these dates should be taken as the correct date of the wounding of the accused? As a defense against incidents which took place on a certain date, the date of the wounding of Colonel Yamaguchi is mighty important and should be established in a more definite and convincing manner.

The defense also did not satisfactorily establish the date when Colonel Yamaguchi was alleged to have been in the hospital. Colonel Yamaguchi himself testified that he left the hospital on the 29th of March 1945. On the other hand, Takahashi testified that Yamaguchi was in his headquarters in a barrio between Bacolod and Granada either on the 22nd or 23rd of March 1945. Kanda testified that he saw Yamaguchi in his headquarters in Lourdes on the 20th of March 1945, while Nishikawa said that Colonel Yamaguchi was in the hospital on the 20th of March 1945 and Yoshihara testified that Yamaguchi was in his headquarters in Lourdes on the 27th of March 1945 --

MR. BONDA: I must interrupt, sir, for it is improper argument, not based on the evidence. The evidence was that there was no space available in the hospital, that he went to the hospital each day for treatment but he lived in his quarters. This is improper argument and based on facts not in the evidence.

MAJOR FOJAS: I can show you in the record where Colonel Yamaguchi himself so testified.

MR. BONDA: I am sorry I had to interrupt, but I must in duty to my client.

COLONEL PARMELEE: The Commission will check those points.

MAJOR FOJAS: In view of this conflicting evidence on the dates when Yamaguchi was really in the hospital, it was possible that he could have been in Pontevedra on the 18th of March 1945 as the witnesses testified that they saw him there.

As to the allegation that Yamaguchi was relieved of his command on the 5th of March 1945, we would like to call the attention of the Commission to the fact that according to Takahashi, it was Lieutenant Colonel Watanabe who relieved him of his command, while according to the accused it was Captain Inoue who took his place. But this is not the only discrepancy in this connection. There is also conflicting testimony as to the date when Colonel Yamaguchi resumed command of his unit. The accused said he resumed command of his unit on the 29th of March 1945. On the other hand, Takahashi said Yamaguchi resumed command of his unit either on the 22nd or 23rd of March. Nishikawa said that he was in his headquarters on the 20th while Yoshihara claims that he was in his headquarters in Lourdes on the 27th. In view of these conflicting statements, it is impossible to believe that Colonel Yamaguchi was ever relieved of the command of his troops at any time during the month of March 1945. The most logical thing to state is the fact that his command of

the troops in all Occidental Negros was never interrupted from January 6, 1943 up to the date of surrender which was so asserted by him in the statement which he signed for investigating officers of the War Crimes Investigating Detachment on the 11th and 13th of April 1946. I shall repeat that that statement should be given more credence because that was made at a time when there were no charges preferred against the accused and he was not conscious of the dates in the specifications which he is evidently trying to avoid at this time.

In connection with the claim of the defense that the perpetrators identified by the witnesses were never on duty at the Cubay garrison, we simply wish to state that it has no more validity than the claim of the accused himself that he has never heard of the Cubay garrison. The man who should know, having been in charge of the security of the town of Silay within whose territorial limits the Cubay garrison could be located, was Nishikawa, and this man testified that he had heard of the Cubay garrison in Silay.

In view of this discussion, it is respectfully submitted that the accused should be held responsible for the atrocities alleged in Specifications 22 and 23.

Specification 24. This specification refers to the killing of several persons and the attempted killing of a woman in Barrio Buenavista, Pontevedra, Negros Occidental, on the 18th of March 1945. The claim of the defense that Colonel Yamaguchi was wounded and was not in command of his troops at the time of this specification, is evidently also intended as a defense on this particular violation of the laws

of war. We have already pointed out that the facts have not been sufficiently established in view of conflicting testimony of the witnesses for the defense. I shall repeat here the statement that a defense of this nature purporting to be an alibi should be established in a more positive manner to admit of no possibility for the accused to be in Pontevedra on 18 March 1945. As against the statements by the witnesses for the defense to the effect that Colonel Yamaguchi was wounded and was in the hospital at the time of this specification, we have the positive declarations of the witnesses for the prosecution to the effect that Colonel Yamaguchi was seen in person in the vicinity of Pontevedra on 18 March 1945. He might have been wounded in the month of March, but in view of the circumstances established in this case, it is clear that he was wounded either on March 18, 1945, after he had been in Pontevedra or some time later. I shall also repeat here the positive statement of the accused given to the investigating officers of the War Crimes Investigating Detachment, that he was in command of the Japanese forces in Negros during the period from January 6, 1943 up to the time of surrender, so that he cannot now claim that he was not in command of his troops from the 5th to the 29th of March 1945. It would have been more logical and in accordance with common sense if he said that he was responsible for the security of the province of Occidental Negros until the 29th of March 1945 when the Americans landed in Negros. But certainly, it should not be claimed that he was not in command of his troops until the end of the war or until the time of surrender on 30 August 1945. As a matter of fact, Nishikawa, one of his subordinate

officers, testified that Yamaguchi was in command of the entire province of Occidental Negros until the 28th of March 1945 when the Americans landed. That was the most credible thing to state and being the truth it was what his subordinate officer stated.

Now to summarize, the prosecution respectfully submits:

(1) That the accused was the commanding officer of all Japanese troops in the province of Negros Occidental, from 6 January 1943 to 30 August 1945.

(2) That during the said period and on the dates mentioned in the different specifications, he permitted members of his command to commit atrocities upon the civilians and guerrillas in Occidental Negros in violation of the laws and customs of war. He ordered and permitted the commission of these atrocities because:

(a) In some instances, he directly ordered the execution of persons like Leonardo Bebit, Jesus Gonzaga, Teofilo Hisona, Porfirio Garina, Ricardo Granada, Loreto de Luao, Antonio Tenila and Constantino Mier, without previous trial;

(b) He personally mistreated some of the victims by hitting them with his cane and sometimes with his sword, by slapping them on the face as in the case of Emilio Gomilla, Felipe Lumacang, Antonio Avila, Martiniano Mejica, Epifanio Agravante, and others;

(c) He was in many cases within the immediate vicinity of the places where killings,

mistreatments and tortures were committed as in the case of the killings and mistreatments in Camay-an in Barrio Rizal, in his headquarters at the Bacolod High School, in Talisay, in Himamaylan, in Kabankalan, in Barrio Santa Cruz, Murcia, in Buenavista, Pontevedra and in other places;

(d) In places where he was not personally present when the atrocities were committed, he could be presumed to have knowledge of those atrocities, and therefore he tacitly permitted the commission thereof because said atrocities followed a definite pattern and were committed by members of his command who were not too far removed from him in a territory which is not too extensive and in a period of over two years;

(e) He had a standing order issued sometime in October, 1943, to the effect that guerrillas should be disposed of in the manner that garrison commanders saw fit, and that after February, 1944, upon the expiration of the amnesty proclamation of President Laurel, it became the policy to kill all guerrillas apprehended in the mountains.

3. That as a commanding officer, he failed to control the operations of the members of his command by permitting them to commit the atrocities detailed in the specifications because;

(a) He did not take appropriate measures to protect the civilian population and the prisoners taken by members of his command in their custody. He did not even make any attempt to find out whether in the course of investigations of civilians and guerrillas conducted by members of his command, killings, mistreatments and tortures were being committed.

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(b) Even if he adopted any policy to prevent the commission of atrocities, he did not adopt any measure by which he could be reasonably sure that those policies were carried out by members of his command.

(c) He did not exert any effort to discover violations of the laws of war likely to be committed by members of his command to enable him to adopt necessary measures to prevent the recurrence of such violations.

That the duties and responsibilities we have just referred to are imposed upon a commander of troops, is clearly stated in the decision of the United States Supreme Court in the case of General Tomoyuki Yamashita, and we quote:

> "It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the laws of wars to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could, with impunity, neglect to take reasonable measures for their protection. Hence, the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates."

In the discharge of these obligations, we submit that the accused, as a commander. has miserably failed. The defense seems to attach some importance to the status of the persons who were alleged to be victims of the atrocities mentioned in the specifications, that is, as to whether they were civilians or guerrillas. Prosecution submits that insofar as the responsibility of the accused is concerned, this distinction is of no consequence at all. Under the rules of land warfare, once a person is placed under the control

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of the enemy, whether he be a spy, common criminal or an unauthorized belligerent, he cannot be subjected to tortures or ill-treatments and under no circumstances could he be summarily killed without previous trial. We quote the following provisions of the rules of land warfare as contained in FM 27-10, 1 October 1940:

> "Par. 351. Unauthorized belligerents. Men and bodies of men, who, without being lawful belligerents as defined in paragraph 9, nevertheless commit hostile acts of any kind, are not entitled to the privileges of combatants. If captured, they have no right to be treated as prisoners of war. They may not, however, after being captured, be summarily put to death or otherwise punished, but may be brought to trial before a military commission or other tribunal, which may sentence them to death or such other punishment as it may consider proper."
>
> "Par. 356. Right of trial. No individual should be punished for an offense against the laws of war unless pursuant to a sentence imposed after trial and by a military court or commission or some other tribunal of competent jurisdiction designated by the belligerent."

Before we close, we would like to call the attention of the Commission to a certain point upon which defense has spent so much time and has adduced so much evidence. We refer to the evidence adduced in connection with the character and reputation of Colonel Yamaguchi.

Some influential people in Negros Occidental testified before this Commission as to his good reputation. What they actually said, however, was not the reputation of the man, but what they individually believed of him. The accused had been good to them because they were influential people, and he wanted their sympathy. But we may ask, what was the treatment the accused accorded to the poor, to the men of the

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streets, to the farmer, to the fishermen and to the common laborer? These witnesses did not know. But we have here a mass of evidence that these men of the masses were tortured and killed, directly contradicting that alleged good reputation which is more apparent than real.

We would like finally to state in this connection, that it is not Masakazu Yamaguchi, the man, who is on trial. It is Masakazu Yamaguchi, former colonel of the Imperial Japanese Army and the commanding officer of the Japanese forces in the province of Occidental Negros, from 6 January 1943 to 30 August 1945, who is now before the bar of justice. As a man, we have nothing against him, but as commanding officer of Japanese troops who permitted members of his command to commit atrocities upon innocent civilians and guerrillas in violation of the laws and customs of war, we have adduced overwhelming evidence to prove that he has utterly failed in his duties, he has caused the misery and suffering of thousands of people of Occidental Negros, for which he should be held accountable. He might have been a very good man. He might have been the finest man in the world, as the defense counsel would want us to believe, but as commanding officer of troops engaged in military operations, he failed to discharge his duties towards humanity, and he had been a participant and an accomplice to the commission of violations of the laws and customs of war. In view of all these considerations, which we hope the members of this Commission will take into account, we recommend that the accused in this case be sentenced to death by hanging.

COLONEL PARMELEE: Before the Commission goes into closed session to consider this case, has the prosecution any-

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thing further to present?

MAJOR FOJAS: No, sir.

COLONEL PARMELEE: Has the defense anything further to offer?

MR. BONDA: No, sir.

COLONEL PARMELEE: Neither the prosecution nor the defense have anything further to present; therefore, in accordance with the provisions contained in paragraph 5e (9), Letter of 5 December 1945, file AG 000.5 LS, General Headquarters, Supreme Commander for the Allied Powers, subj: "Regulations Governing the Trials of Accused War Criminals," the Commission will now meet in closed session to consider the evidence and arrive at a verdict, and sentence, if any.

(The Commission then met in closed session at 1100 hours, 27 January 1947, to consider the case and arrive at Findings, and Sentence, if any. The Commission adjourned at 0930 hours, 29 January 1947, to meet in open session at 1000, 29 January 1947, for the announcement of findings, and sentence, if any.)

(One-half hour recess.)

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

VOLUME LV

PAGES 3599 - 3605, INCL.

DATE: 29 January 1947

MANILA, P. I.

COPY NO.: 1

CERTIFICATION

THIS CERTIFIES that this volume is a part of the proceedings of the Military Commission appointed by

Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by

Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by

Paragraphs 19, 20, and 21, Special Orders 246, Headquarters, United States Army Forces, Western Pacific, dated 25 October 1946; amended by

Paragraph 14, Special Orders 262, Headquarters, United States Army Forces, Western Pacific, dated 14 November 1946; amended by

Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by

Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu YAMAGUCHI.

Dated 5 February 1947.

A. L. Parmelee
A. L. PARMELEE
Colonel, CAC
President of Commission

ACM

Before a
MILITARY COMMISSION
convened by the
COMMANDING GENERAL
United States Army Forces
Western Pacific

UNITED STATES OF AMERICA	)	
	)	
vs	)	PUBLIC TRIAL
	)	
MASAKAZU YAMAGUCHI	)	

Court No. 2
High Commissioner's Residence
Manila, P.I.
29 January 1947

Met, pursuant to adjournment, at 1000 hours.

MEMBERS OF MILITARY COMMISSION:

COLONEL ARCHIBALD L. PARMELEE, CAC, President and Law Member
MAJOR ROGER FITZWATER, ORD
MAJOR CARROLL H. STEVENS, INF

APPEARANCES:

FOR THE PROSECUTION:

MAJOR ELEUTERIO P. FOJAS, JAGS, (PA), Chief Prosecutor
MAJOR PRIMITIVO RAMIREZ, JAGS, (PA), Assistant Prosecutor

FOR THE DEFENSE:

MR. REUBEN BONDA, CS, Chief Defense Counsel
MR. JEROME ADLER, CS, Assistant Defense Counsel
MR. DAVID RODDAN, CS, Assistant Defense Counsel

OFFICIAL INTERPRETERS FOR THE COMMISSION:

2ND LIEUTENANT JAMES NAKAMURA	)	
2ND LIEUTENANT FRANK YAMAMOTO	)	
2ND LIEUTENANT SAMUEL S. KOIDE	)	
PETRONILO VALLEJO	)	Japanese
CAESAR YO ALZONA	)	
ROMUALDO TACCAD	)	
CLARO ISHITA	)	
MACARIO E. BELAONG	)	
ROGELIO CATANJAL	)	Ilongo (Visayan)
FILOMENA ZOSA	)	

OFFICIAL REPORTERS FOR THE COMMISSION:

ELIZABETH G. MCNAIR
THELMA SELZER

I N D E X

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P R O C E E D I N G S

(The Commission then met in open session at 1000 hours, 29 January 1947, in Courtroom No. 2, Former High Commissioner's Residence, Dewey Boulevard, Manila, P.I.)

COLONEL PARMELEE: The Commission is in open session.

MAJOR RAMIREZ: May the record show that all of the members of the Commission are present, the accused with his defense counsel and personal interpreter, and the members of the prosecution staff are also present.

COLONEL PARMELEE: This trial has taken three months to consumate and its proceedings are recorded in some 3500 pages covering fifty-three volumes. Throughout the trial it has been the guiding conviction of the Commission that any person, regardless of nationality, creed or belligerent status, is as much entitled to a full, fair and impartial trial as would one of its own countrymen, similarly charged.

The evidence in this case has been conscientiously and assiduously studied and weighed, and the matter of guilt or innocence has been determined solely on the issues of violation of the laws of war, as charged against the accused, in his official capacity as a high commander of the Japanese forces in Occidental Negros.

The Commission is ready to render its judgment. The accused, his chief defense counsel, and personal interpreter, if he so desires, and the official Commission interpreter will stand.

(The accused, his chief defense counsel and personal interpreter, and the official Commission interpreter then

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arose and stood before the Commission.)

COLONEL PARMELEE: Masakazu Yamaguchi, this Commission, in closed session and upon secret written ballot, not less than two-thirds of the members present at the time the vote was taken concurring in each finding of "GUILTY," finds you:

Of Specification 1, NOT GUILTY.

Of Specification 2, as amended: NOT GUILTY.

Of Specification 3, NOT GUILTY.

Of Specification 4, as amended: GUILTY, except the words, "months of December, 1943, and January, 1944," substituting therefor the words, "month of December, 1943;" and, except the words, "Gumilla, a Filipino civilian," substituting therefor the words, "Gomilla, a Filipino." Of the excepted words: NOT GUILTY; of the substituted words: GUILTY.

Of Specification 5, GUILTY, except the words, "an unascertained number of," substituting therefor the word and figure "sixteen (16)." Of the excepted words: NOT GUILTY; of the substituted word and figure: GUILTY.

Of Specification 6, GUILTY.

Of Specification 7, GUILTY.

Of Specification 8, as amended: GUILTY, except the words, "Filipino civilians, including, among others, Maria Porques Alabas, Panfilio Artagame, Loreto Recabar, Rodolfo Padios, and Segundo Lapo-os," substituting therefor the words, "Filipinos,, including, among others, Maria Porques Alabas, a civilian; Loreto Recabar, a civilian; Rodolfo

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Padios, a civilian; Segundo Lapo-os, a civilian; and Panfilo Artagame, an unarmed guerrilla." Of the excepted words: NOT GUILTY; of the substituted words: GUILTY.

Of Specification 9, GUILTY, except the words, "a Filipino civilian," substituting therefor the words,

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"a Filipino guerrilla suspect". Of the excepted words: NOT GUILTY, of the substituted words: GUILTY.

Of Specification 10, as amended: GUILTY, except the words "Panfilio Artagame, an unarmed Filipino civilian", substituting therefor the words "Panfilo Artagame, an unarmed guerrilla". Of the excepted words: NOT GUILTY, of the substituted words: GUILTY.

Of Specification 11, NOT GUILTY.

Of Specification 12, as amended: GUILTY, except the words "Filipino civilians, including, among others, Roberto Amoleria, Roman Placente, Hermelo Villarete, Martenianø Mejica, Eulogio Naragdan; one Procopio, surname unknown; Ambrosio Ruiz (without substitution), Jose Mejica, Felix Pena, and Alfonso Tan", substituting therefor the words "Filipinos, including, among others, Roberto Amoloria, a civilian; Roman Placente, a non-combatant, unarmed member of the organized guerrillas; Hermelo Villarete, an unarmed member of the organized guerrillas; Martiniano Mejica, a civilian; Eulogio Naragdao, a civilian; one Procopio, surname unknown, a civilian; Jose Mesa, a civilian; Felix Pena, a civilian; and Alfonso Tan, a civilian". Of the excepted words: NOT GUILTY, of the substituted words: GUILTY.

Of Specification 13, as amended: GUILTY, except the words "Filipino civilians, including, among others, Hermelo Villarete, Martenianø Mejica, Eulogio Naragdan, one Procopio, surname unknown", substituting therefor the words "Filipinos, including, among others, Hermelo Villarete, an unarmed member of the organized guerrillas; Martiniano Mejica, a civilian; Eulogio Naragdao, a civilian; and one Procopio, surname unknown, a civilian". Of the excepted words: NOT

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GUILTY, of the substituted word. GUILTY.

Of Specification 14, GUILTY.

Of Specification 15, as amended: GUILTY, except the words " Igmidio Apohen, Wenceslao Birondo, Julian Buenaventura, Melchor Celia, Pablo Cervantes, Conrado Clavecellas, Paulino Mesina, Leonardo Ocera, Emiliano Peroja, Pablo Peroja and Serafin Vingson", without substitution; and, except the word "Rafa", substituting therefor the word "Rapa". Of the excepted words: NOT GUILTY, of the substituted word: GUILTY.

Of Specification 16, GUILTY, except the words "an unascertained number of", substituting therefor the word and figure "eleven (11)"; and, except the words " Vicente Basiledes, Enrique Birondo, Dominador Garcia and Rafael Toledo", without substitution. Of the excepted words: NOT GUILTY, of the substituted word and figure: GUILTY.

Of Specification 17, GUILTY.

Of Specification 18, GUILTY, except the word and figure "three (3)", substituting therefor the word and figure "two (2)". Of the excepted word and figure: NOT GUILTY, of the substituted word and figure: GUILTY.

Of Specification 19, GUILTY, except the word and figure "thirty-five (35)", substituting therefor the word and figure "nineteen (19)". Of the excepted word and figure: NOT GUILTY, of the substituted word and figure: GUILTY.

Of Specification 20, as amended: GUILTY, except the words "Julieta (Lolita) Getida, Emma Getida, Servano Gensoli, Felipe Herida, Loreto Medalla, Marcelino Sumagui, one Loreto, surname unknown, and an unknown woman", substituting therefor the words "Julieta (Lolita) Getida, Emma Getida, Severino Gensoli, Felipe Herida, Loreto Medalla, Juan Loreto, and an

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unknown woman, all Filipino civilians; and Marcelino Sumagui, a suspected Filipino guerrilla"; and, except the word "Flordeleg", substituting therefor the word "Flordeliz". Of the excepted words: NOT GUILTY, of the substituted words: GUILTY.

Of Specification 21, as amended: NOT GUILTY.

Of Specification 22, NOT GUILTY.

Of Specification 23, NOT GUILTY.

Of Specification 24, as amended: NOT GUILTY.

Of the CHARGE: GUILTY, except the words "hereto attached", substituting therefor the words "on which there has been a finding of 'GUILTY' ". Of the excepted words: NOT GUILTY, of the substituted words: GUILTY.

(Findings were then translated to the accused by the official interpreter.)

COLONEL PARMELEE: Further, this Commission, in closed session and upon secret written ballot, not less than two-thirds of the members present at the time the vote was taken concurring, sentences you to:

DEATH BY HANGING.

(Translated to the accused by the official interpreter.)

COLONEL PARMELEE: The Military Police will escort the prisoner from the courtroom.

(The prisoner was then removed from the courtroom by the Military Police.)

COLONEL PARMELEE: The Commission desires to recognize the sustained and conscientious efforts of those who have had a part in the conduct of, and the recording of the proceedings of this trial and to express its appreciation

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for the many courtesies shown it. Particularly is it desired to give recognition to the reporters, interpreters and transcribers whose duties have, at times, been trying and arduous, and to the members of the Military Police detachment for soldierly bearing and assistance in maintaining decorum during the trial sessions.

The Commission will adjourn sine die.

(The Commission then adjourned at 1025 hours, sine die.)

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AUTHENTICATION OF RECORD

The foregoing 3605 pages, contained in Volumes I to LV, inclusive (together with Prosecution's Exhibits 1 to 11, inclusive and Defense' Exhibits B to I, inclusive), are hereby certified as the record of the proceedings of the Military Commission appointed by

> Paragraph 3, Special Orders 235, Headquarters, United States Army Forces, Western Pacific, dated 12 October 1946; amended by
>
> Paragraph 8, Special Orders 245, Headquarters, United States Army Forces, Western Pacific, dated 24 October 1946; amended by
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> Paragraph 18, Special Orders 290, Headquarters, United States Army Forces, Western Pacific, dated 19 December 1946; amended by
>
> Paragraph 4, Special Orders 294, Headquarters, United States Army Forces, Western Pacific, dated 24 December 1946,

in the trial of the case of the United States of America against Masakazu Y. MAGUCHI.

Dated 5 February 1947.

A. L. Parmelee
A. L. PARMELEE
Colonel, CAC
President of Commission

THIS ACKNOWLEDGES that the above-described record was submitted to defense counsel prior to being certified by the President of the Commission.

Reuben Bonda
REUBEN BONDA, CE
Chief Defense Counsel

ACH

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO) 7305
(Reporting Office)

File Number T - 55 Date of Report 5 Feb 47

Title of case U.S. vs HARA, Masato

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

27 Jan 47 - 3 Feb 47

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P" 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

GUILTY - Life Imprisonment

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the cas (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSC, The Pentagon, Washington 25, D. C.

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report 20 July 46 [redacted]

Title of case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

Between 1 December 1945 and 1 May 1945 at Fukuoka Prisoner of War Camp #1, Fukuoka Area, Kyushu, Japan, the accused, then a Private in the armed forces of Japan, did violate the Laws and Customs of War.

3. Names and Nationalities of Victims

AMERICAN	BRITISH	DUTCH
Henry Gottlieb	Jack Dickens	Capt Hans Hasing
Peter W. Hansen	A.S. Lyalle	
Gordon W. Lehman		

4. Probable Place and Date of Trial

[redacted]

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 194

39

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDGS, The Pentagon, Washington 25, D. C.

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

.231J

File Number T - 69 Date of Report 5 Feb 47

Title of case U. S. vs NAKAJIMA, Hidemaro

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

24 Dec 46 - 27 Jan 47

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P" 000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

NAKAJIMA, Hidezaro - GUILTY, 2 yrs imprisonment at hard labor

---

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific [redacted])

---

8. Action of Confirming Authority (Specify authority and date and relate to specific [redacted])

---

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, ~~The Pentagon, Washington 25, D. C.~~

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted]

2. Nature, Place and Date of Offense

[redacted]

3. Names and Nationalities of Victims

[redacted]

4. Probable Place and Date of Trial

[redacted]

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 194

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSG, The Pentagon, Washington 25, D. C.

25-80621-300

2 of no 16 231

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 69 Date of Report 15 December 1947

Title of Case U. S. vs Hidemaro NAKAJIMA

PART A

1. Names and Nationalities of Accused

Japanese: Hidemaro NAKAJIMA

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General Eighth Army - 3 November 1947

APPROVED

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

27 January 1947 - Sugamo Prison, Tokyo, Japan

11 months confinement remitted.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (Tokyo)
(Reporting Office)

File Number T - 137 Date of Report 11 Nov 46

Title of case U. S. vs TAGUCHI, Yoshio, et al

PART A

1. Names and Nationalities of Accused

JAPANESE:

TAGUCHI, Yoshio
AOKI, Yuzu
KATAYAMA, Kengo
KOND, Hiroaki
KURIYAMA, Michio
OOTA, Narumi
SHIBANO, Tadao

2. Nature, Place and Date of Offense

Torture, beating, murder

Dec 1942 - Sept 1945

Naoetsu, POW Camp 4-B, Niigata, Honshu, Japan

3. Names and Nationalities of Victims

American:

Naad R. Gustafson
Fremont F. Sheets
Kenneth H. Hannan
William C. "Speed" Larson
J. Ward
Lt. A. Toulon

Australian:

Sigmn. D. Fraser (deceased)

cont...

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 30 Nov 46

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSG, The Pentagon, Washington 25, D. C.

25-89621-300

Australians, cont...

Pvt. G. P. Lubey (deceased)

Pvt. F. O. Bayliss (deceased)

Pvt. James W. Downie

Pvt. Robert G. Farley (deceased)

Cpl. Garnett Judd (deceased)

Pvt. A. V. Burns(deceased)

Pvt. T. M. Comerford (deceased)

Sigman. J. M. Baker (deceased)

Pvt. J. G. Harper (deceased)

Pvt. J. E. Perkins (deceased)

Pvt. G. A. Sutton

Pvt. W. C. Lewis (deceased)

Lt Col A. E. Robertson (deceased)

Sgt T. Fardy

H. J. F. Sweet

Capt. Jack Hepburn

Capt. A. I. Yates

Pvt. F. Hole

Pvt. R. W. H. Law

J. Kitchener

F. Langbourne

_ _ McDonald

Pvt. W. Hale (deceased)

Pvt. J. T. Laughton

WO/2c W. G. Swanston

Pvt. T. Gratorex

WO/1c M. B. Chapman

Pvt. _ _ Burling

Lt. A. W. Campbell

Pvt. G. A. Sutton

Pvt. W. C. Lewis (deceased)

Pvt. F. O. Bayliss (deceased)

Pvt. J. Hurley (deceased)

L/Cpl C. T. Tracey (deceased)

L/Cpl J. Magin

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP, (TOKYO) 232J
(Reporting Office)

File Number T - 137 Date of Report 5 Feb 47

Title of case US vs SAGUCHI, Yoshio, et al

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

21 Nov 46 - 3 Feb 47

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P-M 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

Guilty - [illegible], Toshio - Life imprisonment
" AOKI, Tsuyu - Death
" KATAYAMA, Kengo - 20 yrs imprisonment
" KOMO, Hiroaki - Life imprisonment
" KURIYAMA, Michio - Life imprisonment
" OOTA, Narumi - Life imprisonment
" SHIBANO, Tadao - Death

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

(Reporting Office)
LEGAL SECTION, GHQ, SCAP (TOKYO)

File Number _____ Date of Report _____

Title of Case _____ 26 December 1947

U. S. vs Kunio MIYATAKE

PART A

1. Names and Nationalities of Accused

Japanese; Kunio MIYATAKE

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) "DSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General Eighth Army - 11 September 1947

APPROVED

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

31 January 1947 - Sugamo Prison, Tokyo, Japan

Five and one-half months remitted.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

2 - 3 8

File Number T - 164 Date of Report 5 Feb 47

Title of case U. S. vs MIYATAKE, Kunio

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

Yokohama, Honshu, Japan

WD AGO Form R-5392
21 June 1946

21 Jan 47 - 31 Jan 47

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to specific accused)

MIYATAKE, Kunio - GUILTY, 20 yrs imprisonment at hard labor

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP, (TOKYO)
(Reporting Office)

File Number T - 364 Date of Report 6 Jan 47

Title of case U. S. vs MIYATAKE, Kunio

PART A

1. Names and Nationalities of Accused

MIYATAKE, Kunio - Japanese

2. Nature, Place and Date of Offense

Beating - torture - contributing to deaths of several POW's.

Kobe Branch POW Camp, Osaka Area, Honshu, Japan

June 1943 - August 1944

3. Names and Nationalities of Victims

British: Sgt. R. E. Burbridge
Capt. N. D. Weedon
Lt. Douglas H. Baird
Pvt. Lipscomb
WO Dudley Gore
James McDougall
WO J. Seaby
Norman Archer
American: Cmdr. Harrington
Lt. Col. Fitzpatrick
American: Lt. Percy M. Cotton
Thomas Knutson (deceased)
Australian: Pvt. H. S. Jaynes
George E. Elberurne
Lt. John Fuller
Pvt. W. E. Hall (deceased)

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 7 February 1947

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 1946

(233J)

VOLUME I

RECORD OF TRIAL
(5th Original Carbon)

in the case of

UNITED STATES

vs

KUNIO MIYATAKE

Case Docket No. 162

Military Commission

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama, Japan
21 January 1947 - 31 January 1947

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

SUBJECT: Transmittal of Record of Trial

TO: Commanding General, Eighth Army, APO 343

Transmitted herewith is the completed record of trial in the case of United States vs Kunio Miyatake tried by Military Commission.

Willard S. Curtis
Colonel, GSC
President

Inclosures
Vol. I--Record of Trial
Vol. II--Exhibits

MILITARY COMMISSION [illegible]

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?						
c. Was accused asked whom he desired as counsel?	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?						
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?						
b. Was the action of the commission upon challenges regularly and properly taken?						
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?	✓					

offenses

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?						
c. Was accused asked whom he desired as counsel?	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?						
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?						
b. Was the action of the commission upon challenges regularly and properly taken?						
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?	✓					

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
14. Were the interpreters sworn?	✓					
15. Was the accused properly arraigned?	✓					
16. Are there copied or incorporated into the record:						
a. Charges and specifications?	✓					
b. Name, grade and organization of person signing the charges?	✓					
c. Affidavit to the charges and specifications?	✓					
d. Name of the person who administered the oath verifying the charges and his official capacity?	✓					
e. The order of reference for trial?	✓					
17. Does each specification state an [illegible] offense?	✓					
18. Are the pleas of the accused regularly entered?	✓					
19. Are the findings properly entered?	✓					
20. Was the vote upon each finding in closed session?	✓					
21. Was the vote upon the sentence in closed session?	✓					
22. Did at least two-thirds of the members present at time vote on each finding was taken concur therein?	✓					
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?	✓					
24. Does the evidence sustain the findings of the commission?	✓					
25. Are the findings legal?	✓					
26. Is the sentence legal?	✓					
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?		✓				
28. Is the record properly authenticated?	✓					
29. Does it sufficiently appear that the defense counsel accepts the record as correct?	✓					
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?	✓					

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?						
b. In death cases does the action refer the case to SCAP for final action?						
33. Is clemency recommended by the commission?						

John V. Langfitt
Prosecutor

6 May 1947
Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

BEFORE THE MILITARY COMMISSION CONVENED BY THE COMMANDING GENERAL, UNITED STATES EIGHTH ARMY	)	UNITED STATES OF AMERICA VS KUNIO MIYATAKE

CHARGE

That the following member of the Imperial Japanese Army, with his then known title:

Kunio MIYATAKE, Lieutenant,

at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.

SPECIFICATION

1. That in or about July 1943, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat Sergeant A. A. Burwisge, British Prisoner of War, by beating him with a belt, by kicking and otherwise abusing him.

2. That on or about 16 July 1943, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat and torture Captain N. F. Gordon and Lieutenant Douglas M. Baird, British Prisoners of War, by forcing them to stand at attention holding pails of water over their heads, by beating them with his fists, by kicking and otherwise abusing them.

3. That on or about 27 July 1943, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat Private H. S. Jeynes and one Private Lipscomb, Australian and British Prisoners of War respectively, by beating them with a belt, by kicking and otherwise abusing them.

4. That between 10 June 1943 and 1 August 1943 at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat and torture one Commander Marrington, one Lieutenant Colonel Fitzpatrick, Lieutenant Percy M. Cotton and approximately twenty-two others, mostly officers, all American Prisoners of War, by forcing them to stand at rigid attention staring into a glaring light for a long period of time, by beating and kicking them, by humiliating the officers, by forcing them to scrub the streets, and by otherwise abusing them.

5. That in or about June 1943, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat and abuse Warrant Officer Dudley Gore, British Prisoner of War, by beating him with his sword scabbard and by kicking him.

6. That in or about June 1943, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat James Mainugali, a British Prisoner of War, by beating and otherwise abusing him.

7. That sometime in the latter part of 1944, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat George E. Elbourne, Australian Prisoner of War, by beating and otherwise abusing him.

8. That between 10 June 1943 and 31 August 1943, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat Lieutenant John Fuller, Australian Prisoner of War, by beating and otherwise abusing him.

9. That between 11 August 1943 and 16 August 1943, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kumio Miyatake, did willfully and unlawfully mistreat and abuse Private F. E. Hall, an Australian Prisoner of War, by beating and kicking him, and, by neglecting and refusing to give him proper and adequate medical treatment, thereby contributing to his death.

SPECIFICATIONS

10. That between 10 June 1945 and 31 August 1945, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kunio Miyatake, did willfully and unlawfully mistreat and abuse numerous American and Allied Prisoners of War, by neglecting and refusing to give them proper and adequate medical attention and by forcing sick prisoners to work when physically unfit to do so.

11. That between 10 June 1945 and 31 August 1945, at Kobe Branch Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kunio Miyatake, did willfully and unlawfully mistreat and torture numerous American and Allied Prisoners of War by beating them with fists and sword scabbard, by kicking them, by making unnecessary inspections in the late evening and early morning hours, thereby depriving said Prisoners of needed sleep and thereby contributing to the death of W. E. Hall, an Australian Prisoner of War, who, because of exhaustion after two early morning roll calls in one week, fell from a scaffolding at work on 12 August 1945 and received fatal injuries, and by otherwise abusing them.

12. That between 1 November 1945 and 1 January 1946, at Headquarters Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kunio Miyatake, did willfully and unlawfully mistreat Warrant Officer J. Seaby, Norman Archer, and approximately sixty other British Prisoners of War by beating them with a sword scabbard and by otherwise abusing him.

13. That between 1 November 1945 and 1 January 1946, at Headquarters Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kunio Miyatake, did willfully and unlawfully mistreat Thomas Knutson, an American Prisoner of War, by forcing him when ill with pneumonia to leave his bed and stand at attention, by then beating him and ordering him transported to a hospital in an open truck in the rain and cold, thereby contributing to and accelerating his death.

14. That between 1 September 1945 and 15 August 1946, at Headquarters Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Kunio Miyatake, did willfully and unlawfully mistreat and torture numerous American and Allied Prisoners of War by making unnecessary inspections in the late evening and early morning hours, thereby depriving the prisoners of needed sleep, by beating them with fist and sword scabbard, by kicking them and by otherwise abusing them.

23 December 1946

/s/ Alva C. Carpenter
/s/ ALVA C. CARPENTER
Chief, Legal Section
General Headquarters
Supreme Commander for the Allied Powers

AFFIDAVIT

Before me personally appeared the above named accuser this 23d day of December 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R. Pritchard

/s/ Captain, Infantry
Summary Court

A TRUE COPY

R. L. JONES
1st Lt. Inf.

[illegible] 23 December 1946.
subject: "Trial of Suspected War Criminals".

AG 000.5 (YR) 2d Ind.

HEADQUARTERS EIGHTH ARMY, APO 343.

TO: Colonel Millard S. Curtiss, 010642, QMC, President of the Military Commission appointed pursuant to Paragraph 1, Special Orders Number 15, this Headquarters, 18 January 1947.

The attached charges against Kunio Miyatake are referred for trial to you as president of the Military Commission appointed by Paragraph 1, Special Orders, Number 15, this Headquarters, 18 January 1947, APO 343.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Otis M. Luckman

1 Incl:
n/c

A TRUE COPY

F. E. BOUSH
Capt. WAC

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (25 Dec 46)LS, 25 December 1946, subject: "Common Trial of Suspected War Criminals".

AG 000.5 (25 Dec 46)LS 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500, 25 December 1946.

TO: Commanding General, Eighth Army, APO 343.

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (25 Dec 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Common Trial of Suspected War Criminals" 25 December 1946, said power is redelegated to you and you are hereby directed to appoint a Military Commission for the trial of the following named persons, members of or serving with the Japanese Imperial Forces:

Kunio MIYATAKE

2. The trial will be held in the City of Yokohama, Honshu, Japan. The trial held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named persons assigned to General Headquarters, Supreme Commander for the Allied Powers, have been made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Mr. John P. Laughna, Chief Prosecutor
Mr. Franklin E. Morris, Assistant Prosecutor

BY COMMAND OF GENERAL MacARTHUR

1 Incl: n/c

/s/ R. G. Kersey
R. G. KERSEY
Lt. Col. AGD
Asst. Adj. Gen

A TRUE COPY

R. L. JONES
1st Lt. Inf.

AG 000.5 (22 Dec 45)LS APO 500
22 December 1945

SUBJECT: Trial of Suspected War Criminal.

TO : Commander-in-Chief,
United States Army Forces, Pacific.

1. It is desired that a Military Commission be appointed for the trial of the following named person, member of or serving with the Imperial Japanese Forces, for the alleged offenses indicated on the attached

Kumio MIYATAKE

2. The trial will be held in the City of Yokohama, Honshu, Japan. All trials held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

BY COMMAND OF GENERAL MacARTHUR:

/s/ R. G. Hersey
/s/ R. G. HERSEY
Lt. Col. AGD
Asst. Adj. Gen

1 Incl:
Chg vs Kumio Miyatake

A TRUE COPY

H. L. JONES
1st Lt. Inf.

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 16

16 January 1947

EXTRACT

1. Appointment of Military Commission.

Pursuant to authority contained in letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45) LS, Subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals", a Military Commission is hereby appointed to meet at the Yokohama District Court Building, Yokohama, Japan on or about 20 January 1947, or as soon as practicable at the call of the President, to try Kunio Miyatake and such persons as may be properly brought before it.

DETAIL FOR THE COMMISSION

COL MILLARD S CURTIS, 010642, QMC, Hq 71st QM Dep., LAW MEMBER
MAJ CHARLES C RINGWALT, 0139939, CAC, 138th AAA Gp, Hq
MAJ COLIN A DIXON, 0379473, FA, Hq Eighth Army
MAJ JAMES L. WEATHERS, 01296304, INF, Hq Eighth Army

FOR THE PROSECUTION

MR JOHN P. LAUCHNA, CHIEF PROSECUTOR
MR FRANKLIN C. MORRIS, ASSISTANT PROSECUTOR

ADVISORY COUNSEL FOR THE DEFENSE

MR JOHN L. FULLER
MR SIMON J. NASH
Accused are expected to provide individual defense counsel

The procedure of the Commission will be governed by letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945, AG 000.5 (5 Dec 45) LS, Subject: "Regulations governing Trials of Accused War Criminals", as amended by letter AG 000.5 (27 Dec 46)LS-L, General Headquarters Supreme Commander for the Allied Powers Subject: "Amendments to Regulations governing the Trials of Accused War Criminals", 27 December 1946, letter, this Headquarters, 5 February 1946, AG 000.5 (YO), Subject "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", as amended by letter this Headquarters, same subject, dated 16 January 1947, file number AG 000.5 (YR) and such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers. The employment of an enlisted or civilian court reporter is authorized. (AG 334)

(K. Miyatake - Case # 162)

Extract SO 15, Hq Eighth Army, 18 Jun 47 Contd.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL:

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

J. E. GLASGOW
Colonel, AGD
Adjutant General

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R-E-S-T-R-I-C-T-E-D

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

GENERAL ORDERS
NUMBER 56

4 June 1945

MILITARY COMMISSIONS

1. Power to appoint military commissions has been vested in the Commanding General, Eighth Army.

2. a. Composition.—Military commissions appointed pursuant to this authority shall consist of not less than five (5) members, one of whom shall be a qualified lawyer designated as law member. The prosecution and defense will be conducted by qualified officers designated by the order appointing the commission.

b. Charges.—Charges shall be signed under oath by a person subject to military law having either personal knowledge thereof or knowledge based upon information and belief.

c. Oaths.—The members of the commission and the prosecutor will be sworn as provided for the members of a general court-martial and the trial judge advocate in AW 19, eliminating therefrom the provisions "according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then" and otherwise substituting the word "commission" for the word "court" and substituting the word "prosecutor" for the term "trial judge advocate" wherever such word or term shall appear therein.

d. Challenges.—No peremptory challenge will be accorded. Challenge for cause shall be permitted and when exercised the challenged member may be examined under oath as to his qualifications. The challenged member need not withdraw, and the president shall rule upon the challenge unless he be the challenged member, in which case the designated law member will rule thereon. The rulings of the president or the law member in each case shall be final and conclusive.

e. Conduct of Proceedings.—The commission shall be guided generally by the applicable rules of procedure prescribed by the Manual for Courts-Martial, 1928, as amended. Unless superior authority directs otherwise, a military commission shall have power to and shall as the occasion arises make such rules for the conduct of its proceedings as it shall deem necessary for a full and fair trial of the matters before it consistent with this order, with the powers of military commissions under the Articles of War, and with the customs and usages of war in like cases. Such evidence shall be admitted as would have probative value to a reasonable man, or such relative evidence as a reasonable mind might accept as adequate to support a conclusion. All questions as to the admissibility of evidence shall be decided by the law member and in his absence by the president of the commission.

R-E-S-T-R-I-C-T-E-D

GO No. 56, Hq Eighth Army, 4 June 1945, contd.

f. Rights of an accused.—The following rights will be accorded to an accused: (1) To have a copy of the charges before trial; (2) to consult his counsel before the trial and to be represented by him before the commission; (3) to be present at the trial, to present available witnesses in his own behalf, and testify in his own behalf if he so desires; (4) to cross-examine witnesses; and (5) to have present with him and his counsel a qualified interpreter in case the accused does not understand the English language.

g. Conviction.—The concurrence of two-thirds of the members of the commission present shall be necessary for both conviction and sentence. The acquittal or conviction and the sentence, if any, will be announced in open session unless otherwise directed by the convening authority.

3. Common Trial.—Common trial of two or more accused is authorized.

4. Record and Action.—The commission will make a record of its proceedings conforming as nearly as practicable to that prescribed for a general court-martial. The services of an enlisted or civilian reporter are authorized and a verbatim record of the proceedings will be made. However, in event no qualified reporter be available, the proceedings may follow generally the record prescribed for the proceedings of a special court-martial. The record of trial, including the conviction and any judgment or sentence, shall be forwarded directly to the Commanding General, Eighth Army, for review by his staff judge advocate, and for his action thereon.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL:

CLOVIS E. BYERS
Brigadier General, GSC
Chief of Staff

[illegible]
WARD W. CONQUEST
Colonel, AGD
Adjutant General

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GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500

AG000.5 (27 Dec 46)LS-L

27 December 1946

SUBJECT: Amendments to Regulations Governing the Trials of Accused War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Reference is made to Letter Order, AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Regulations Governing Trials of Accused War Criminals."

2. The following amendments are directed in Letter Order, referred to in paragraph 1 above:

a. In paragraph 1a, delete the words, "units and organizations."

b. In paragraph 3a, delete in the last sentence thereof, the words "in open court" and add immediately after said last sentence the following: "This fact will be announced by the president of the commission in open court."

c. Delete paragraphs 5d(4) and 5d(5).

d. Delete "(6)" from 5d(6) and substitute therefor "(4)."

e. Delete paragraph 5d(7) and substitute therefor:

"(5) All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured."

f. In paragraph 5g, delete the first sentence and substitute therefor:

"g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, forfeiture of real or personal property, fine, or such other punishment as the commission shall determine to be proper."

5. Add paragraph 7 as follows:

"(7) OATHS.

a. Power to Administer Oaths.

Any person, military, naval, civilian, who, by competent authority is assigned the duty of administering, investigating, prosecuring, or defending suspected war criminals subject to trial under these regulations, and while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, or by the convening authority or his designee, to administer oaths with respect to all matters in the execution of such duty."

3. These amendments shall not affect any case in which the accused has been duly arraigned and, except as amended, all provisions of the subject regulations continue to remain in full force and effect.

BY COMMAND OF GENERAL MacARTHUR:

/s/ J. B. Cooley
JOHN B. COOLEY
Colonel, AGD,
Adjutant General.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45)LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
Commanding General, Sixth Army, APO 442.
Commanding General, Eighth Army, APO 343.
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)JS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXI Corps.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offence charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person when the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

o. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to

submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of

a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MACARTHUR:

H. W. Allen

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

AG 000.5 (6 Dec 45) LS

APO 500
6 December 1945

SUBJECT: Detention, Interrogation and Trial of Suspected Japanese War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Supplementing radio 8A5457, CINCAFPAC ADV. 15 September 1945, all suspected Japanese War Criminals apprehended on order of this headquarters will be held incommunicado, generally, but in order to permit desired interrogation, all properly identified personnel will be permitted to interview and interrogate such suspects as are confined under the control of your headquarters, upon presentation of credentials or a letter from this headquarters, signed by the Adjutant General, in the following form:

The bearer of this letter _____
NAME

accompanied by _____ _____
NAME NAME

_____, is authorized to interview

_____ at such appropriate
NAME OF PRISONER (s)

times as may be found necessary.

By Command of General MacARTHUR

2. You are directed to establish suitable facilities exclusively for the confinement, interrogation and safekeeping of war criminal suspects, unfriendly witnesses and persons placed in protective custody in connection with war crimes trials. Such facilities will comply, so far as possible, with the following requirements.

a. A location in or sufficiently near Tokyo to enable ready access by persons charged with the prosecution and defense of war criminals.

b. Quartering and messing facilities for approximately fifteen hundred persons.

c. An arrangement of quarters and messing facilities which will permit segregation of suspects from witnesses; of suspects and witnesses formerly stationed or employed in a camp or involved in an atrocity from all other suspects of the same camp or atrocity; and of prisoners who have been interrogated from those who have not.

d. A minimum of ten adequately equipped interrogation rooms.

e. At least 60 single sound-proofed rooms for the solitary confinement of selected individuals.

f. Adequate facilities for the quartering and messing of approximately 10 Allied Officers whose duties may require them to remain at the enclosure and approximately 50 friendly witnesses in protective custody pending trials.

BASIC: Ltr. GHQ SCAP ADV file AG 000.5 (6 Dec 45) LS. dtd 6 December 1945, subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals". to CO, Eighth Army.

3. All persons now detained as war criminal suspects, unfriendly witnesses or persons in protective custody anywhere within the jurisdiction of this headquarters will be transferred forthwith to said facilities, and all such persons subsequently arrested or placed in protective custody will be confined there.

4. Suspected war criminals will be held in close confinement without access to the press or other media of public information, and without distinction as to rank or position, as befits ordinary criminals. The following special provisions will be applied to war criminal suspects and unfriendly witnesses.

a. They will not be treated as prisoners of war.

b. Quarters, food and privileges will be accorded suspects in keeping with those customarily provided for ordinary criminals, charged with an equally revolting domestic crime.

c. Communications among suspects and witnesses, even within segregated groups, will be prevented as far as possible.

d. Each person will be thoroughly searched and all means of self-destruction will be removed from his quarters and person.

e. Suspects and unfriendly witnesses, after their interrogation, will not be returned to their quarters, but will be assigned new quarters sufficiently removed from the old to prevent communication with those not yet interrogated.

f. Suspects will be segregated from witnesses; and suspects, and witnesses involved in the same atrocity or atrocities at the same camp will be segregated from each other.

g. All possible measures will be taken to prevent the exchange of information between inmates and such civilian personnel as may be employed at the facility.

5. You will be responsible for the appointment of Military Commissions for the trial of suspected Japanese war criminals, with several trials being conducted concurrently.

6. It is contemplated that the trials will commence immediately.

7. The Legal Section of this headquarters will furnish personnel for the investigation and prosecution of cases, but in addition to your responsibility for providing personnel for appointment as members of the Military Commissions including law members, if specified, you will also be responsible for:

a. Providing personnel to serve as defense counsel, reporters, interpreters, translators and court orderlies.

b. The selection, procurement and maintenance of the court rooms where the cases will be tried.

c. The summoning, billeting and transportation of witnesses.

By Command of General MacARTHUR

/s/ H. W. Allen
/t/ H. W. ALLEN
Colonel, A. G. D.,
Asst Adjutant General

(stamp) Mailed 0855 [redacted] 7 '45 Adv.Ech Ag. GHQ

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

AG 000.5 (YO) 5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO: Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as war criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements, affidavits and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any statement, affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is novise to be limited to matters brought out on direct examination.

b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications excepting therefrom all testimony relative to the issue of guilt or innocence.

5. In case in which the defense moves for a finding of not guilty after the conclusion of the prosecution's case, and upon the overruling of the motion rests its case without offering evidence in defense, and the court after submission of the case, finds the accused guilty, the court before imposing sentence may permit the defense to offer competent evidence in extenuation or mitigation of the offense alleged subject to the right of the prosecution to rebut such evidence.

6. Interpreters and Interpretation.

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

(1) The Chief Interpreter will be advised of a complaint during the next court recess.

(2) The Chief Interpreter will investigate the matter and:

(a) Convince the complaining party that no substantial error exists; or

(b) Caution and advise the interpreter if necessary; or

(c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or

(d) Prepare an opinion to be given to the Commission if required.

(3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

b. Counsel are reminded that:

(1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and rearrangement of thought.

(2) Counsel is advised, when working through an interpreter:

(a) To use short, simple questions as free from artifice as if examining a small child.

(b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.

(3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile descussions:

(a) Long questions. (Impossible for interpreter and witness to remember)

(b) Complicated questions. (Dependent clauses confuse both interpreter and witness)

(c) Conditional questions. (Usually beyond comprehension of an oriental witness)

(d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)

(e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No — I saw them")

(f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)

(4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trial.

a. The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.

b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the record the fact that the record has been submitted to him and checked by him prior to authentication.

c. In the event the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

SECTION II: OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commissions of persons, units and organizations accused as war criminals.

There will be present: Commission
Accused
Prosecution Staff
Defense Staff
Interpreters
Commission Reporters
Press Representatives
Photographers
Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Bailiff" for the Commission will announce the entrance

of the Members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of accused as read form the caption).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

(Reporters sit down and thereafter are not required to rise until the oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTORS: "The Interpreters will be sworn."

(Interpreters rise, and the Prosecuter facing them repeats the following oath:)

"You (names of Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do."

(Interpreters are then seated.)

PROSECUTOR: "The following Members of the Commission appointed by Paragraph _____, Special Orders No. _____, Headquarters _____, dated _____ (as amended by Paragraph _____, Special Orders No. _____, dated _____) are present."

(The Prosecutor announces by name and rank the Members present.)
"There are no Members absent."
(Or: "Absent, Colonel Jones, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

"Letter Order AG 000.5 (5 Dec 45) L3, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being 'Regulations Governing the Trials of Accused War Criminals.'

"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated _____, with the subject being "Trials of _____."

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated _____, with the subject being 'Trials of _____.'

"Paragraph ____ of Special Orders ____, Headquarters Eighth Army, dated ____, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to Challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel _____ for cause.' The Defense then states reasons for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of _____(name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel _____, Colonel _____, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the Court until they shall be published by the proper authority or duly announced by the court, except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do."

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

PRESIDING OFFICER: "The Prosecution will be sworn. You Major _____, Captain _____, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help You God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

DEFENSE: "The Charge and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel, the proceedings will continue. If accused desires Counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If accused desires Counsel of his own selection and requests that the proceedings be continued until such Counsel be made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charge and Specifications will be read to the accused."

(Prosecutor will read the complete Charge and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of Commission, the Prosecution introduces the Charge and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special Pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "_____ (Naming accused) at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either 'Guilty' or 'Not Guilty'".

(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each specification and to the charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refused to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of "Not Guilty".

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)

PROSECUTOR: "The Prosecution calls as its first witness:_____."

(Witness presents himself in front of and faces the Presiding Officer, and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

*NOTE: Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecuter).

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) to be attached to the record and marked Exhibit ____, (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its Opening Statement."

(The Defense makes its Opening Statement).

DEFENSE COUNSEL: "The Defense calls as its first witness_____."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

(The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the Arguments for the Prosecution and Defense." (Arguments to be conducted as directed by the Commission)

PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgment and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (all of whom remain standing), the Presiding Officer announces the judgment and sentence.)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

Ward W. Conquest

WARD W. CONQUEST
Colonel, AGD
Adjutant General

RESTRICTED

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

16 January 1947

AG 000.5 (YR)

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO : Presidents of War Crimes Commissions.

Letter, this headquarters, subject, same as above, file number AG 000.5 (YO), dated 5 February 1946, is amended as follows:

Paragraph 2 of Section I is hereby rescinded.

BY COMMAND OF LIEUTENANT GENERAL MICHELMORE

/s/ Otis N. Luckman
/t/ OTIS N. LUCKMAN
Capt AGD
Asst Adjutant General

RESTRICTED

CIVILIAN REPORTERS CERTIFICATE

DATE 10 April 1947

Case No. 162 U.S. vs Kunio Miyatake

I, the undersigned hereby certify, that I reported the trial proceedings in the above case of which the attached record of trial is a true transcription, that I am a civilian court reporter, in the civil service of, and paid for my said services by, the United States.

Geo R. Larson

War Crimes Div. Form #9 (Revised 3 Jan. 1947)

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PROCEEDINGS OF A MILITARY COMMISSION

which convened at Yokohama, Japan, pursuant to Paragraph No. 1, Special Orders No. 15, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 18 January 1947.

The Commission met at the Yokohama District Courthouse at 0900 hours, 21 January 1947.

PRESIDENT: The Commission is in session and is ready to hear any matter to be brought before it.

PROSECUTION: The prosecution is ready to proceed with the trial of the United States of America against KUNIO MIYATAKE. The accused is present together with defense counsel appointed by the convening authority. The prosecution is ready to proceed.

PRESIDENT: You may proceed.

PROSECUTION: The reporter will be sworn.

MR. OMIE B. TANNER was sworn as reporter.

PROSECUTION: The interpreter will be sworn.

MR. MINORU SATO was sworn as interpreter.

INTERPRETER: At this time I would like to put in the record that the assistant interpreter has suddenly taken ill and the Section Chief received a telegram yesterday morning saying he would be absent for several days.

PROSECUTION: I will ask a ruling of the Commission on that and the view of the defense as to the advisability of proceeding with just one interpreter. It is perfectly all right so far as the prosecution is concerned.

DEFENSE: It is satisfactory so far as the defense is concerned.

PROSECUTION: We feel one can handle it for several days at least and we will go as slowly as possible so that he will be able to keep up with us. The following members of the Commission appointed by Paragraph No. 1, Special Orders No. 15, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 18 January 1947, are present:

DETAIL FOR THE COMMISSION

COL. MILLARD S. CURTIS, 010642, QMC, Hq 71st GH Dep., LAW MEMBER
MAJ. CHARLES C. RINGWALT, 0139999, CAC, 138th AAA Gp. Hq.
MAJ. COLIN A. DIXON, 0379473, FA, Hq Eighth Army
MAJ. JAMES M. WEATHERS, 01296304, INF, Hq Eighth Army

FOR THE PROSECUTION

MR. JOHN P. LAMCHEA, Chief Prosecutor
MR. FRANKLIN E. MORRIS, Assistant Prosecutor

ADVISORY COUNSEL FOR THE DEFENSE

Mr. JOHN L. FULLER
MR. KIRCH J. HASH

PROSECUTION: For the record I wish to make mention that the name of Mr. Fuller has been misspelled in the Orders in that one "l" has been omitted.

The prosecution submits for incorporation into the record of these proceedings the following documents:

(1) Letter Order, AG 000.5 (23 Dec 46)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 23 December 1946, subject: Trial of Suspected War Criminal.

(2) First Indorsement to Letter Order AG 000.5 (23 Dec 46)LS, General Headquarters, United States Army Forces, Pacific, dated 23 December 1946.

(3) Letter Order AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, Subject: Regulations Governing the Trials of Accused War Criminals.

(4) Paragraph No. 1, Special Orders No. 15, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 18 January 1947, subject: Appointment of Military Commission.

DEFENSE: The defense has no objections and waives the reading of these documents.

PRESIDENT: There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the prosecution desire to challenge any member of the Commission for cause?

PROSECUTION: The prosecution has no challenges for cause.

PRESIDENT: Does the Defense desire to challenge any member of the Commission for cause?

DEFENSE: The defense does not desire to challenge any member of the Commission for cause.

PROSECUTION: There has been an amendment to the ruling of 5 December 1945 and I ask that the Letter Order AG 000.5 (27 Dec 46)LS-L, General Headquarters, Supreme Commander for the Allied Forces, dated 27 December 1946, Subject: Amendments to Regulations Governing the Trials of Accused War Criminals be incorporated into the record. Any objection?

DEFENSE: No objection.

PRESIDENT: It will be incorporated into the record.

PRESIDENT: The charge and specifications will be read to the accused.

PROSECUTION: Before reading the specifications the prosecution would like to make a motion to amend two of the specifications - Specification No. 1 in this respect: we would like to strike out the initials "H. A. " in front of the name Burbridge, and substitute therefor the initial "H". The defense were given due notice of this proposed amendment and at that time had no objection to the amendment.

DEFENSE: That is correct; it is a formal amendment; also, the accused has been advised and agrees.

PRESIDENT: The amendment may be made.

PROSECUTION: We desire, also, to amend Specification No. 13 to change the date "1 January 1944" to "8 January 1944". The accused was also advised of the proposed amendment and at that time the prosecution understood that the defense had no objection to it.

DEFENSE: That is correct and there are no objections.

PRESIDENT: The Commission will be sworn.

The Members of the Commission and the personnel of the Prosecution were sworn.

PROSECUTION: At this time I would like to request permission for the Assistant Prosecutor to be excused for a few days in order to enable him to conclude a trial now in process of being tried.

PRESIDENT: The request is granted.

Mr. Franklin E. Morris, Assistant Prosecutor, was excused and withdrew.

DEFENSE: The Charge and Specifications were received by the defense counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 3b of Letter Order AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings.

PROSECUTION: I wish to ask a question: Has the accused also been acquainted with the amendments of the regulations pursuant to letter cover dated 27 December?

DEFENSE: He has and we prepared a Japanese translation of that which he has and he has been fully advised of his rights.

PRESIDENT: When does the accused desire to introduce as defense counsel?

DEFENSE: The accused desires to introduce Mr. K. Kumahara of the Tokyo Bar as Special Defense Counsel and asks that the regularly appointed defense counsel serve with the special counsel.

PRESIDENT: The amendment may be made in the record.

PROSECUTION: We wish to call the attention of the Commission to Specification No. 13. The mimeographed copies have a mistake in them, in the fifth line. It should be "to leave his bed" instead of "to leave his head". The original and translation did not contain that mistake. It was just a mimeograph mistake. There being no objections, the Charge and Specifications will be read.

DEFENSE: No objection.

The Charge and Specifications were then read by the prosecution.

PROSECUTION: With permission of the Commission the prosecution introduces the Charge and Specifications, having been read to the accused, for incorporation into the record of these proceedings.

DEFENSE: No objections.

PRESIDENT: There being no objections, the Charge and Specifications will be received and incorporated into the record of these proceedings. Are there any special pleas by the defense?

DEFENSE: There are, if the Commission please, and at this time, briefly as I can I will outline certain matters that we believe. First, the defense moves to strike from Specifications No. 1, 2, 3, 4, 6, 7, 8, 11, 12, and 14 the phrase "and otherwise abusing him or them". Now, that is the final phrase that is contained in each one of the specifications. The prosecution alleges specific offenses with definiteness and particularities and then adds a phrase enlarging upon the specification "and otherwise abusing him". We don't know what that term includes. You can abuse someone in some instances when the abuse is not of the nature that inflicts injury, either mental or physical, and therefore it wouldn't be a crime. So, for general purposes, we call the Commission's attention to that and ask it be stricken.

Second, we move to strike from Specifications No. 4, 10, 11, and 14 the phrase "approximately twenty-two others, mostly officers". Now, that general wording of that phrase appears in these five specifications. These particularly allege a particular crime in a manner and method of performance of the offense and then names others unknown to them. They don't know their names and, of course, we don't know it, and we believe that is too general to enable the accused an adequate and proper defense. For instance, the accused does not know who is meant by that and certainly his counsel couldn't, and I see no practical way we can prepare defense under that kind of allegation. They also include in one of the specifications, I think it is No. 4, the words "stand at rigid attention". We ask the word "rigid" be stricken for the reason that there is no such word as rigid attention. You are either at attention or you aren't. To make a man stand at attention, that is a legitimate allegation, but to show rigid attention, I don't know what that means and it is not only prejudicial but I don't think it is proper in a formal plea in a criminal case. In Specification No. 6 they allege an offense by beating. Now, they say he is guilty of an offense and the manner in which he performed the offense was by beating. Now, it fails to describe any method or manner or instrument used in the alleged offense. They fail to allege any injury that resulted from such a beating and in my opinion it does not state legally an offense under any criminal procedure I have ever heard of - ever. In other words, I can abuse someone and it might seem as though it were abusing him

but if he suffers no mental or physical pain that isn't an offense - it is something that isn't appreciated, I will say that, but here they don't say what he hit him with, where, nor the result. Now, I don't want to take the Commission's time, but, for instance, if I assault a man with a feather - now that technically is correct - I can be guilty of assault by hitting someone with a feather but we all know as common sense a feather does not leave any injury, therefore I am not guilty criminally. Now, that particular phrase and failure to set out the injury resulting from it - that is in Specifications 6, 7, and 8 - and it is the contention of the defense that it simply doesn't state a cause of action as it should and should be stricken.

The next specification is Specification No. 9. Specification 9 alleges an act on the part of the accused contributing to the death of one Hall, an Australian prisoner of war, and the act caused, or the prosecution says led or contributed to the death of Private Hall. Now, the supposed act consisted of "by willfully and unlawfully mistreating and abusing, by neglecting to furnish proper medical treatment". Turn to Specification No. 11 and it reads as follows: "Between the same period of time the accused did willfully and unlawfully mistreat and torture numerous American and Allied prisoners of war by beating them with fists and sword scabbard, by kicking them, by making unnecessary inspections in the late evening and early morning hours, thereby depriving said prisoners of needed sleep and thereby contributing to the death of W. E. Hall, an Australian prisoner of war" - Here the same victim is mentioned in Specification 9, - "who, because of exhaustion after two early morning roll calls in one week, fell from a scaffolding at work on 12 August 1943 and received fatal injuries". Now, it is our contention there are two clauses of action con aimed in No. 11. If this accused is guilty of an act contributing to Hall's death, of course, properly that should be in one specification so that it would be clear. Now, the same general matters of mistreatment are contained in both of these specifications - both 9 and 11 - and we believe that the prosecution should be required to elect which specification they are going to try the accused on for an act contributing to the death of Hall because Hall didn't die but one time and if we contributed to it we should know exactly what it is that we did and not have that specification mixed up with torturing numerous American and Allied prisoners. In other words, Specification 11 has two clauses of action in it.

Those are all the special pleas and we believe as a matter of pleading we are legally correct.

PROSECUTION: In answer to the defense's special pleas we wish to cite to the Commission paragraph 5d - Evidence - (1) The Commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the Commission's opinion would have probative value in the mind of a reasonable man. The Commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted. In other words, the procedure under which this Commission operates is a very liberal one. Of necessity, it has to be. These Charges and Specifications cannot be drawn in a form that would be too technical because that in itself would prove injurious to the defendant. They must be set forth in clear, plain language so that there can be no possibility that the defendant doesn't understand the charge. The prosecution submits that these are in clear, plain, everyday language which offers no difficulty in being translated into Japanese. Furthermore, they clearly apprise the defendant of the charge against him. That is the purpose of any pleading, to apprise the defendant of the charge against him. "By otherwise

As for specification 9 we have alleged one offense against Hall; we have alleged that the accused mistreated him by doing these various things which all tended to contribute to his death. We have also alleged as a matter of aggravation in specification 11 that the accused contributed to the death of Hall. However, No. 11 is entirely separate and distinct from No. 9. In 11, we have alleged practically that the accused abused numerous Allied and American prisoners of war by beating them with fists and sword scabbard, by kicking them, by making unnecessary inspections in the late evening and early morning hours, thereby depriving said prisoners of needed sleep and thereby contributing to the death of Hall. This is separate because that contributed to the death of Hall. It is a matter of aggravation which resulted from this accused's mistreatment of numerous prisoners of war - it is just a matter of aggravation. He not only deprived Hall of sleep but numerous prisoners of war of sleep and, in an attempt to make the specification more definite and more clear, we have inserted that phrase and it is proper in each and every specification. Here it is objected to by the defendant, but it has been before these Military Commissions numerous times in this form. In other words, it is more or less a ruling with these Commissions that these are proper. They have been objected to and approved and for these reasons the prosecution submits these also be denied.

PRESIDENT: Have you anything further to say?

DEFENDANT: Nothing further.

abusing" has been objected to as being too general but I submit to this Commission that this is the usual term passed upon by other Commissions and has been accepted. The defendant clearly knows what he has to defend against because under the rules all written matter which the prosecution intends to offer has to be furnished to the defendant so in conjunction with these pleas he knows each and every detail he has to defend against. For these reasons I submit that the term "otherwise abusing" is a proper and legitimate term for this Commission.

As for Specification 4 and Specification 12 where the terms "approximately twenty-two others" and "approximately sixty others" are used I submit to the Commission that is the only practical term to be used where we have set forth the names of definite victims to identify a particular incident to inform the defendant of which incident the prosecution has reference to and the terms "approximately twenty-two others" and "approximately sixty others" are proper in order to fully acquaint the defendant of what particular incident he is being charged with.

As for the objection to Specification 6 - the defense has made objection to Specification 6 stating there is no cause of action. Yet in his argument he admitted it did. The defense said if a man should assault another man with a feather, technically it would be an assault yet it wouldn't be criminal. That is contradictory of itself - if he is guilty he is guilty. That is all there is to it. How serious that was might determine the punishment and that is a matter of proof and a matter of pleading. We have alleged an assault clearly and properly and we have alleged violation of the Rules of Land Warfare. Now, how seriously he was beaten - what injury was received - that is a matter of proof which would determine, if he is found guilty, the sentence he will receive from this Commission. However, we see no possibility of sustaining this objection to the specification inasmuch as it clearly alleges an assault and that is all that is necessary before this Commission. The defendant has received all the written evidence to be used against him, and he has all the specifications, therefore, he knows what to defend against.

PRESIDENT: The Commission feels it is the prerogative of the Commission to make changes in the specifications after the case has been presented and the evidence presented to the Commission. If the Commission thinks that these specifications should be withdrawn it will depend on the evidence presented to the Commission and the Commission can do that when the findings are arrived at. For that reason the motions are denied. Anything further?

DEFENSE: No, sir.

PRESIDENT: Is the accused ready to plead?

DEFENSE: The accused is.

PRESIDENT: Miyatake, at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either guilty or not guilty.

MIYATAKE (Through interpreter): I plead not guilty.

PRESIDENT: To all Specifications?

INTERPRETER: That is correct.

PRESIDENT: To the fourteen specifications and the Charge, not guilty.

MIYATAKE (Through interpreter): Yes.

PRESIDENT: The Prosecution will make its opening statement.

PROSECUTION: The prosecution believes that the Charge and Specifications of this mistreatment of prisoners of war are clearly worded and no long explanation or interpretation of them are necessary to the Commission at this time. We believe that the evidence as they will be introduced will be too clear and definite to require any prior explanation. We do wish to state that the prosecution intends to prove that the accused while a medical officer in the Japanese Imperial Army misused that position to indulge in vicious, sadistic mistreatment of numerous American and Allied prisoners of war. There are ten definitely named victims in the specifications. We will prove these victims were brutally beaten with fists, brutally beaten with sword scabbards, and kicked and even while a victim in one case was thrown to the ground, this man was not content to let it go but revived him with water and commenced again - that there were privates and there were officers; that his continuous course of conduct while a medical officer at Kobe constituted a reign of terror. He did not treat them as men - he did not treat them as military men but as mere animals; that as a medical officer he made sick call a farce and a thing of terror of the prisoners of war; that he abused and mistreated the prisoners of war at that sick call and so kept them away; that he neglected them and when they came there sick he refused to give them available medicines to treat their injuries; that in the course of his reign of terror it was customary for the accused when he was duty officer to go into the barracks in the late hours and early morning and call tenkos whereby each and every man was forced to get up, dress and stand in the Japanese manner of attention and if they didn't jump to attention at the first instance he beat them, thereby depriving them of their sleep. We will show also that it was especially a hardship upon these prisoners of war because they were not only undernourished but were doing hard work - stevedore work. These men needed all the sleep they could get in their condition but this man, a medical

officer, knowing that, would still continue this reign of terror the following day. Among other things, aggravation contributed to the death of W. E. Hall. When Hall was brought home after falling from the scaffolding and laying outside there for several hours, he not only refused to treat him but we shall prove he refused to let any allied prisoner of war doctors treat him. In his course of treatment, his victims either numbered one, sometimes two, and in some instances a whole group of twenty-two or sixty at a time and he would go up and down flailing them with his sword scabbard, knocking them to the ground. That is all too plain and clear to go into a long discussion about. We do think that before this case is over the prosecution will present sufficient evidence to convince this Commission that this accused is guilty of each and every Charge and Specification to which he has pleaded. We do believe that if this Commission finds the accused guilty as charged he deserves the death penalty, for contributing to the death of a man deserves death. We claim it is just as much murder to refuse to give them treatment as it is to kill him. We believe it is just as much an error to deprive them of this medical treatment as to actually kill them.

DEFENSE: If the Commission please, I hate to object to an opening statement but it seems that this verges very closely to a closing argument in giving his opinion as to this and to that. It is my idea that an opening statement should be confined to the facts and what he expects to prove. That is up to the Commission to draw their conclusions from that and I don't think it is fair to the accused to have this line of argument presented at this stage of the proceedings.

PROSECUTION: I submit that as an opening statement it is proper. However, in view of the defendant's objection we will withdraw that last statement to this extent and we do insist that it remain to this extent - we do intend to ask for the death penalty. Other than that we will withdraw the matter objected to. In view of the prosecution's opinion of the evidence which it will produce, we will close our remarks at this time.

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 0950 hours to 1000 hours at which hour the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: It is stipulated by and between the prosecution, defense, and accused that the official records of the Japanese Prisoner of War Information Bureau indicate that the following named Allied Prisoners of War were interned during the dates stated below in the POW Camp which was established on 23 September 1942 as the Osaka POW Camp Kobe Branch Camp at Kobe-shi, Kobe-ku, Ito-cho, 28; renamed the Osaka POW Camp No. 1 Branch Camp on 18 February 1943; destroyed by air raid and moved to Kobe-shi, Hayashida-ku, Maruyama-cho, 3-1, on 5 June 1945; moved to Kibe-shi, Fukiai-ku, Nakihama-cho on 21 June 1945; renamed the Osaka POW Camp No. 2 Branch Camp in August 1945; and terminated in September 1945.

NATIONALITY	NAME	RANK & SER. NO.	PERIOD OF INTERNMENT
British	Baird, Douglas Horace	Lieut 186949	11 October 1942 - 30 March 1945

NATIONALITY	NAME	RANK & SERIAL NO.	PERIOD OF INTERNMENT
British	Burridge, Harold James	L/Sgt 1871346	11 October 1942 - August 1945
British	Gore, Dudley Eric	n/k	11 October 1942 - 18 June 1945
British	Lipscombe, George	Pvt 6203524	11 October 1942 - August 1945
British	Lipscombe, James	Pvt 6459134	11 October 1942 - August 1945
British	McDougall, James	Pvt 3053495	11 October 1942 - August 1945
British	Weedon, Martin Pryce	Capt. 64628	11 October 1942 - 30 March 1945
Australian	Kilbourne, George Ernest	Pvt VX 38317	7 June 1943 - August 1945

PROSECUTION: Does the Defense stipulate to that?

DEFENSE: That is correct.

PROSECUTION: The prosecution submits in evidence a translation from General Headquarters, Supreme Commander for the Allied Powers, Military Intelligence Section, General Staff, Allied Translator and Interpreter Section, its Exhibit No. 1, which purports to be a translation of a death certificate of Walter Edward Hall. The defense has examined this and I ask the defense if they have objection to it at this time?

DEFENSE: The defense has no objection.

LAW MEMBER: It will be accepted in evidence.

Prosecution's Exhibit No. 1 was then received in evidence and read by the Prosecution.

PROSECUTION: At this time the prosecution submits as its Exhibit No. 2, a translation from General Headquarters, Supreme Commander for the Allied Powers, Military Intelligence Section, General Staff, Allied Translator and Interpreter Section, a translation of the death certificate of Thomas Knutsen. I ask the defense if they have any objection to this at this time?

DEFENSE: The Defense has no objection to either of the two exhibits just offered.

LAW MEMBER: It will be accepted in evidence.

Prosecution's Exhibit No. 2 was then received in evidence and read by the prosecution.

PROSECUTION: The prosecution at this time submits the original of the affidavit of H. BURBRIDGE and asks it be marked Prosecution's Exhibit No. 3, and we offer it into evidence subject to objection on the part of the defense.

DEFENSE: The defense objects to this document being characterized as an affidavit; it is merely a statement.

PROSECUTION: I am sorry, it is a statement signed by H. Burbridge. The Defense is right. It is offered only as a statement.

DEFENSE: The defense objects to the introduction of this statement into evidence at this time for the following reasons: it is an ex parte statement in which it accuses the accused of various crimes. The accused was given no notice that this was to be taken, he was given no opportunity to cross-examine the person making the statement. It is a hearsay statement entirely and it contains matters irrelevant to the issues in this case and it is highly prejudicial to the accused. It also contains conclusions and speculations which have nothing to do with the case and we feel the introduction of this statement into evidence will constitute a denial of the rights of this accused. I want to state for the purpose of the record that this same objection is to apply to each and every affidavit or statement or instrument introduced by the prosecution in its case.

PROSECUTION: The prosecution in answer to the Defense's objection calls the Commission's attention again to Letter Order AG 000.5 (5 Dec 45) General Headquarters, Supreme Commander for the Allied Powers, paragraph 5d, sub-paragraph (1) "The Commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the Commission's opinion would have probative value in the mind of a reasonable man. The Commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted." In other words, this Commission, under SCAP rules, will receive any and all evidence which might have any probative value. As to this particular document it is a document signed by H. Burbridge who is the alleged victim in Specification 1. It is the count of the charge set forth in Specification 1 - it isn't only material, it is proper and should be received by the Commission. I take it by the Defense's general objection that they are arguing against the introduction of this and all future affidavits and object to it because the accused wasn't present. I submit to the Commission under these rules it isn't necessary that the accused be present at the time any of the statements were taken. I also take it that they will object to any and all hearsay statement and again I state that these rules apply to such evidence, that the Commission in accepting these hearsay statements will give it only such value as they deem it worth. For these reasons I submit that the Defense's objections are without basis.

LAW MEMBER: The objection is overruled; the statement will be received in evidence as Prosecution's Exhibit No. 3.

Prosecution's Exhibit No. 3 was received in evidence and read by the prosecution.

DEFENSE: If the Commission please, may we object to any individual portion of this? We would like to do so at this time, stating our grounds. We object to the final clause read. That is speculation on the part of this witness and is highly prejudicial to the accused. He shows no basis for that statement and we ask it be stricken. It is mere speculation. This man could not possibly have known what was in the mind of the accused at that time. It is not shown that this person who signed the statement knew or understood Japanese. It is a gratuitous statement made to prejudice the accused and consequently we ask it be lined out and disregarded by the Commission.

PROSECUTION: I submit that matters of common observation can be testified to by any witness. I mean by that lack of attention, or attention, and other such things. Such matters of common observation may be testified to by any witness in any court of law and I submit this is such a matter and should be admitted.

DEFENSE: We have no objection to this man telling us what happened where he was, what they were doing, what the accused did, what the accused said, but when he tells us that the accused was not in the least bit interested he is telling us the state of mind of the accused. It is mere conclusion on his part. He is speculating as to what the accused was thinking and it is prejudicial and it is up to this Commission to determine from the facts whether or not the accused was interested.

LAW MEMBER: I think the Commission can determine from the evidence presented here and further from evidence in the same or similar statements as to the facts as to whether or not the accused was guilty or not guilty of the specification under proof. Therefore, subject to objection by any member of the Commission, the objection is overruled.

PROSECUTION: I ask that this original statement and the original of any document introduced by the prosecution be withdrawn at the conclusion of the trial and that a certified true copy be substituted therefor in the record.

LAW MEMBER: It is so ordered.

DEFENSE: May I suggest it would shorten the proceedings perhaps that at the conclusion of the reading of the affidavit then the defense be permitted to make their objections to these statements that we desire to object to. It will save interrupting him and the Commission is going to know what the statement contains because you will have them in argument and I believe we can save time that way.

PROSECUTION: In other words you wish to wait until the statement is read before making your objections - before it is accepted?

DEFENSE: I believe that would be best.

PROSECUTION: The prosecution has no objection to this procedure.

DEFENSE: For instance, in this first exhibit, it is apparent that —

PROSECUTION: This has been received into evidence. Now do you want to make objections?

DEFENSE: I do.

PROSECUTION: And have the Commission rescind its prior ruling? I am speaking for the sake of the record now. You are asking permission to rescind the ruling

that it be admitted in evidence to permit you to make objections?

DEFENSE: That is right.

LAW MEMBER: As I understand it in the future in other exhibits that may be introduced you desire to do that. In this last one, this one has already been admitted.

PROSECUTION: It has been, but inasmuch as this is the first exhibit and we are just now getting the procedure started, the prosecution is willing that the ruling of the Commission that this will be admitted be rescinded for the time being and give the defense opportunity to make its objections.

LAW MEMBER: Very well.

DEFENSE: In the fifth from the last paragraph of the statement the witness uses the expression "inhuman and sadistic treatment". Now, that could be nothing but conclusion. Now, he says he didn't count the lashes but he understands there were seventy-two lashes administered because someone else counted them and evidently told him about them. Then in the last paragraph he says "This incident of brutal treatment is only one of many carried out. ." and then he doesn't specify what other acts were administered that he has any personal knowledge of. That part of statement is prejudicial and no one can defend against it because I don't know the instances and it is merely conclusion.

PROSECUTION: I submit that this man can state he received a great number of lashes and if they were reported to him by his friends the natural thing to do would be to - - - That testimony is of such nature that it has probative value and should be admitted by this Commission. As for the accusation that he was sadistic and inhuman being conclusion, I still submit that anybody can make an opinion as to matters of ordinary everyday observation. Certainly a man can characterize a beating as to whether it was a light beating, cruel, inhuman and sadistic beating, and for this reason we submit that should be left in the statement. As to the last statement, "This incident of brutal treatment is only one of many carried out". We submit that that is proper because one of the specifications is he beat many prisoners of war. We submit that Prosecution's Exhibit No. 3 should be admitted in its entirety.

LAW MEMBER: It is my opinion that all statements you will find before these Commissions, what I know of them personally, were taken at a time when the man was just released from prison camp and his statements are based upon his experiences during his time there and there may be matters of opinion and there may be matters of personal observation as this purports to be. In some cases, and I think it is within the prerogative of the Commission to evaluate the testimony, and further thinking back to the facts, this soldier had been under stress and strain in a prison camp and his feelings towards the Japanese nation were such that he wanted to put out and give them the works, we will say, particularly to any man that might have beaten him. Therefore, it is my opinion it is the duty of the Commission to evaluate as such certain opinion matter or facts in arriving at its findings. It is the Commission's desire to get the evidence presented on these things. Therefore, the Commission is going to overrule the objection particularly in view of Paragraph 5 of the SCAP memorandum which allows great liberality. The objection is overruled.

PROSECUTION: Then it is the ruling of the Commission that Prosecution's Exhibit No. 3 is admitted into evidence in its entirety.

LAW MEMBER: That is correct.

PROSECUTION: The prosecution submits the affidavit of RONALD ALEXANDER CAMPBELL as Prosecution's Exhibit No. 4. The prosecution claims this pertains to Specifications 1, 2, 3, 10, and 11.

Prosecution's Proposed Exhibit No. 4 was then read.

DEFENSE: The Defense objects to the introduction of paragraph 13 on the ground it is entirely irrelevant and it is highly prejudicial to the accused. It places the occasion between 5 October 1942 and 8 June 1943 and the specifications allege that this man came into camp on 10 June 1943 so whatever happened before him is irrelevant and we feel it is prejudicial.

PROSECUTION: The prosecution has no objection whatsoever to that being stricken. It was merely left as a background pertaining to the camp and the prosecution does agree that it doesn't help the case and the prosecution is agreeable that it be stricken.

LAW MEMBER: I don't see where it has any connection with the accused.

PROSECUTION: It doesn't have - other than it pertains to the camp where he was at and is introduced to show the background of the camp. It does not pertain to the accused.

LAW MEMBER: The Defense's objection is sustained, the 13th paragraph will be stricken.

DEFENSE: The defense objects to paragraph 17, sub-paragraph g, the fourth word, unnecessary, that is conclusion on the part of the witness. He shows no basis for making it. He states that the accused made unnecessary roll calls all parades during the night. In determining whether those roll calls were necessary or not he cannot testify because he is not in a position to know what the orders were that were given to the Japanese officers at this camp. Therefore, we think that should be stricken.

PROSECUTION: The prosecution submits again that it is a matter within the province of this Commission to determine. This man was in the camp, he was an officer, and he would be a fair witness to state such an opinion as to whether the roll calls were necessary or not. We also state it is the intention of the prosecution to offer other evidence which will sustain this man's conclusion.

LAW MEMBER: The objection is overruled.

PROSECUTION: Has the Defense further objections to this No. 4?

DEFENSE: We have one more. The objection to paragraph g of the paragraph 17 the affiant gives as his opinion that Hall died from exhaustion. He does not show he was there or knew the circumstances under which Hall fell and sustained the injury which led to his death and he says "in my opinion". He shows no predicate upon which to base an opinion. When a witness himself admits it is only opinion I don't think it is a proper part of this record.

PROSECUTION: The prosecution submits the affiant made the statement of this act on the part of the accused resulting in loss of sleep, fatigue and nervous exhaustion among the prisoners. In other words, he was in a position to notice the effect of the action of the accused and those things are common matters of

everyday observation and I think based upon that observation he is in a position to make an opinion as to what possibly caused that act and it does have some probative value and it is admissible before this Commission and it is up to this Commission to determine how much probative value, if any, it does have. Under the rules, it is admissible.

LAW MEMBER: The objection is overruled.

PROSECUTION: Is there further objection on the part of the defense on this affidavit?

DEFENSE: No.

PROSECUTION: We ask that this be admitted as read with exception of paragraph No. 13, and it be marked Prosecution's Exhibit No. 4.

LAW MEMBER: It is so ordered.

Prosecution's Exhibit No. 4 was then received in evidence.

PROSECUTION: The prosecution submits the affidavit of JOHN ANTHONY QUINN as Prosecution's Exhibit No. 5. It pertains to Specifications 1 and 3.

Prosecution's proposed Exhibit No. 5 was then read.

PROSECUTION: The prosecution submits this as Prosecution's Exhibit No. 5, subject to objection by the Defense.

DEFENSE: No objection.

LAW MEMBER: It is so ordered.

Prosecution's Exhibit No. 5 was received in evidence.

PRESIDENT: The Commission will take a brief recess.

The Commission then recessed from 1050 hours to 1100 hours at which hour the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: The prosecution now submits as its proposed Exhibit No. 6 the signed statement of H. P. WEEDON.

Prosecution's proposed Exhibit No. 6 was then read.

PROSECUTION: The prosecution offers this as Prosecution's Exhibit No. 6 subject to objections by the Defense.

DEFENSE: No objections.

LAW MEMBER: It will be admitted.

Prosecution's Exhibit No. 6 was received in evidence.

PROSECUTION: The prosecution submits its proposed Exhibit No. 7, the affidavit of ALAN REA GARRICK.

Prosecution's proposed Exhibit No. 7 was read by the prosecution.

PROSECUTION: The prosecution offers this into evidence as Prosecution's Exhibit No. 7, subject to objections by the Defense.

DEFENSE: No objections.

LAW MEMBER: It will be admitted.

Prosecution's Exhibit No. 7 was received in evidence.

PROSECUTION: The prosecution offers its proposed Exhibit No. 8, the affidavit of LESLIE JAMES AUSTIN HUNER, pertaining to Specifications 2 and 3.

DEFENSE: We would like to object to this affidavit come in for this reason: The prosecution says it pertains to specifications 2 and 3. Now, we have affidavits from the victims in these specifications and we contend these affidavits are the best evidence and this affidavit is not made by an eye witness of either of these two beatings. Consequently, it is only cumulative. If we didn't have the affidavits of the actual victims in Specifications 2 and 3 our objection would not be sound because this would then be evidence of these beatings but where we have affidavits of the actual victims I don't think this should be admitted. And this witness states he did not witness either of these beatings and we feel it should not be allowed, especially at this time. Perhaps later if the prosecution feels it hasn't established these two sufficiently.

LAW MEMBER: What is the grounds of your objection?

DEFENSE: It is made by a person who wasn't witness to the beatings and consequently is not the best evidence inasmuch as we have affidavits from the victims themselves.

PROSECUTION: I submit to the Commission the mere fact that there are affidavits from the victims does not mean that corroborative evidence cannot be admitted. In fact, it is customary to receive it.

LAW MEMBER: As I get it you want to shorten the case by omitting this.

DEFENSE: Yes, sir; it is very lengthy and prejudicial and irrelevant. Now, as to Specification 3 I believe there are about twenty affidavits on that.

PROSECUTION: I submit that the proposed procedure was that we would read the affidavit and then he would make his objections.

DEFENSE: Well, we just wanted to keep it out to shorten the case.

PROSECUTION: I might say we have affidavits of the victims but I do believe it is customary to receive corroborative evidence.

LAW MEMBER: I think it is customary to allow the prosecution to present its case as it so desires.

DEFENSE: We will withdraw the objection.

Prosecution's proposed Exhibit No. 8 was read by the prosecution.

PROSECUTION: Subject to objection by the defense the prosecution offers this in evidence.

DEFENSE: No objection.

LAW MEMBER: It will be received as Prosecution's Exhibit No. 8.

Prosecution's Exhibit No. 8 was received in evidence.

PROSECUTION: Our proposed Exhibit No. 9, the affidavit of DOUGLAS HORACE BAIRD, pertains to Specifications 2 and 11.

DEFENSE: The Defense objects to the characterization of this as an affidavit. It appears to be a signed statement but I don't believe it is in affidavit form.

PROSECUTION: I think it is purely a technical objection. "To the best of my belief the above particulars are correct" and it is signed by the interrogating officer, which under British Military practice is sufficient, but the prosecution will accept the Defense's objection and offer it as a statement.

DEFENSE: The Defense is not making it as a technical objection at all. We believe the fact that a man makes an affidavit bears no weight when he just signs a statement because an affidavit is a formal affair and the man is under oath. It makes a great difference as to how much weight is to be given it whether it is a sworn statement or a signed statement.

LAW MEMBER: You want to change the phrasing of the thing?

PROSECUTION: The prosecution will submit the signed statement of Lieutenant Douglas Horace Baird as its proposed Exhibit No. 9.

LAW MEMBER: Is that satisfactory to the defense?

DEFENSE: Yes, sir.

LAW MEMBER: Okay.

Prosecution's proposed Exhibit No. 9 was read by the prosecution.

PROSECUTION: The prosecution introduces this as Prosecution's Exhibit No. 9, subject to objection by the Defense.

DEFENSE: No objection.

LAW MEMBER: It will be accepted.

Prosecution's Exhibit No. 9 was received in evidence.

PROSECUTION: Our proposed Exhibit No. 10 is the affidavit of JACK NICHOLAS BAKER, pertaining to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 10 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the Defense the prosecution offers this as its Exhibit No. 10.

DEFENSE: No objection.

LAW MEMBER: It will be accepted.

Prosecution's Exhibit No. 10 was received in evidence.

PRESIDENT: The Commission will take a recess for lunch until 1315.

The Commission then recessed from 1135 hours to 1215 hours at which time the personnel of the Commission, prosecution and defense, interpreters and counsel, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: The prosecution at this time offers as its proposed Exhibit No. 11 the affidavit of ARTHUR STEVENS JOYNE, pertaining to Specification 3.

Prosecution's proposed Exhibit No. 11 was read by the prosecution.

PROSECUTION: At this time the prosecution offers as its Exhibit No. 11 the affidavit of Arthur S. Joyne, subject to objection by the Defense.

DEFENSE: No objection.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 11.

Prosecution's Exhibit No. 11 was received in evidence.

PROSECUTION: The prosecution at this time submits as its proposed Exhibit

No. 12 the affidavit of DONALD GEOFFREY KENTWELL. This pertains to Specification No. 3.

Prosecution's proposed Exhibit No. 12 was read by the prosecution.

PROSECUTION: Subject to objection by the defense the prosecution offers this as its Exhibit No. 12.

DEFENSE: No objection.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 12.

Prosecution's Exhibit No. 12 was received in evidence.

PROSECUTION: As our proposed Exhibit No. 13 we offer the affidavit of KYLE J. FITZPATRICK, pertaining to Specifications 3 and 4.

Prosecution's proposed Exhibit No. 13 was read by the prosecution.

PROSECUTION: Subject to objection by the Defense, the prosecution offers this as its Exhibit No. 13.

DEFENSE: No objection.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 13.

Prosecution's Exhibit No. 13 was received in evidence.

PROSECUTION: As proposed Prosecution's Exhibit No. 14 we offer the affidavit of GEORGE ERNEST KLEOURKE, pertaining to Specifications 3, 7, 8, and 11.

Prosecution's proposed Exhibit No. 14 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense we offer this as Prosecution's Exhibit No. 14.

DEFENSE: No objections.

LAW MEMBER: It will be admitted as Prosecution's Exhibit No. 14.

Prosecution's Exhibit No. 14 was received in evidence.

PROSECUTION: At this time the prosecution offers as its proposed Exhibit No. 15 the affidavit of G. R. BOYUR, as it pertains to Specifications 3, 9, and 10.

Prosecution's proposed Exhibit No. 15 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as its Exhibit No. 15.

DEFENSE: If the Commission please, the defense objects to all of the statements contained in this exhibit down to and including the first four pages to the first paragraph of Page 5. There is no objection to the statement that covers the Hall incident nor the Joynes incident at the commencement of Page 5, nor the Hall incident. The other statements are all just general descriptions of conditions that existed in the camp and there was no connection between the responsibility of the defendant, or the accused, in this case, or having any power to alleviate them and we don't believe they are competent as against him.

PROSECUTION: The prosecution submits that they are competent as matters of aggravation. It is fundamental that matters of aggravation or like matters are admissible. This is a statement by an Australian medical officer and as such first it describes the rations, the working conditions, the sleeping conditions in that camp, and the prosecution contends that it added to the accused's offense when he as a medical officer acting as officer of the day went into the barracks and pulled these midnight beatings as set forth, disturbing the slumbers of men who had only a space 26" by 6' long. It was only a matter of aggravation when these men received only a small amount of food - it was only a matter of aggravation when he, presumably a healthy man, struck and beat these overworked, undernourished prisoners. For that reason we contend these things read to this Commission are admissible.

DEFENSE: Well, in reply to this I will say this. That is as far fetched as any reason I have heard of in furnishing food. Here is a medical officer - he is charged with specific crimes. What could that medical officer do in regard to the food - he didn't furnish the food; he couldn't furnish the food. We all know that the food was scarce over here - they were undernourished. There is one paragraph devoted to the food conditions. Well, the camp commander at the main camp in Osaka, if he were on trial, as coming under his responsibility that would be this, but here, in other words, is a hired hand. He couldn't produce food - he was a medical officer. This affidavit is clear - they were short on medicines. The affidavit goes further saying that surgical equipment was short. We all admit that, but is he going to be tried for failure to equip a camp when there is nothing here that I can see that charges him with that responsibility. He simply could work with what tools were furnished him and there are certain allegations that clearly go to bear out some of the intents of the prosecution but now if you are going to charge this defendant with everything like that when he wasn't the camp commander I don't see where we would ever get through.

PROSECUTION: I think the defense does not realize the point of the prosecution. Briefly the point of the prosecution is this: it is a much greater crime to strike a half starved man than to strike a healthy man; to disturb the slumber of hard working men than to disturb the slumber of well cared for men. For this reason we submit it is admissible. We are not charging this accused with failure to provide men more food but we are charging him with knowledge of these conditions and he knew these conditions and came in and beat them and disturbed their slumber and failed to provide medical attention for them. We submit to this Commission it was an aggravating offense and for that reason we submit it is proper to be admitted by this Commission.

LAW MEMBER: The objection is overruled; continue with the next.

PROSECUTION: Then this will be accepted as No. 15.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 15.

Prosecution's Exhibit No. 15 was received in evidence.

PROSECUTION: As Proposed Exhibit No. 16 we offer the affidavit of RONALD ALEXANDER CAMPBELL, as it pertains to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 16 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as its Exhibit No. 16.

DEFENSE: The defense objects to paragraph 8 on the ground that that is medical conclusion and that the basis is not shown. In other words, this man did not witness the acts - he had only hearsay information concerning the acts and it isn't shown he is a qualified medical officer when he states a contributing cause or gives his opinion. For that reason we object to that and ask it be stricken from the affidavit and not be considered by this Commission.

PROSECUTION: We submit to the Commission that this affiant was a Major in the Australian Army - a prisoner of war in this camp - one of the officers in charge of the prisoners of war in that camp - one of the senior officers, and that as such he was in a good position to observe the physical conditions of the men and the physical condition is just an everyday occurrence which can be passed upon by any competent layman who has had chances to observe their physical condition. I submit this is proper evidence to be received. It has some probative value and for that reason it should be received. The weight of that affidavit is to be determined by the Commission but it should be received for what the Commission chooses to attach to it.

LAW MEMBER: Anything further?

DEFENSE: I would like to have the record show this, that this witness doesn't even say that he knows how the man met his death. Now, for the benefit of the Commission I will state that the man was working on a scaffolding over a ship and as I understand it he fell off the scaffolding and hit on the steel deck of the ship on his head and never regained consciousness. I have never heard of anything so far fetched as to say that a man - - because he heard a man fall, can conclude without being present, without seeing the man immediately before the accident itself tell wif a man were weak and fatigued? If I were present perhaps I might be able to say I believe he fell from fatigue but if I wasn't present and I was away in the camp and I made that statement I don't believe the Commission should give it any probative value - it is a wild guess.

PROSECUTION: Before this accident happened the same affiant complained to the commandant about this night tenko, that it was preventing the men from resting properly. I think he was in a position to know the condition of these men - it is granted he was on a scaffold - but this man is and was in a position to make an opinion as to what those contributing causes were.

LAW MEMBER: You say you are introducing further evidence?

PROSECUTION: Yes, sir.

LAW MEMBER: The objection will be overruled; this will be entered as Prosecution's Exhibit No. 16.

Prosecution's Exhibit No. 16 was received in evidence.

PROSECUTION: At this time as Prosecution's proposed Exhibit No. 17 we offer the affidavit of ALLEN RAYMOND IMALL, pertaining to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 17 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as its Exhibit No. 17.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 17.

Prosecution's Exhibit No. 17 was received in evidence.

PRESIDENT: The Commission will take a short recess.

The Commission recessed from 14:20 hours to 14:30 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: As our proposed Exhibit No. 18 we offer the affidavit of JOHN ERNEST GREY and submit it pertains to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 18 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as its Exhibit No. 18.

DEFENSE: No objections.

LAW MEMBER: It will be entered and marked Prosecution's Exhibit No. 18.

Prosecution's Exhibit No. 18 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 19 the prosecution submits the affidavit of CHARLES FREDERICK HOLF and submit it pertains to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 19 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense we offer this as Prosecution's Exhibit No. 19.

DEFENSE: No objection.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 19.

Prosecution's Exhibit No. 19 was received in evidence.

PROSECUTION: As our proposed exhibit No. 20 we offer the affidavit of CHARLES KERR and submit it pertains to Specifications 3 and 10.

Prosecution's proposed exhibit No. 20 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as its Exhibit No. 20.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 20.

Prosecution's Exhibit No. 20 was received in evidence.

PROSECUTION: As proposed Prosecution's Exhibit No. 21 we offer the affidavit of JOHN ALEXANDER McINTYRE and submit it pertains to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 21 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as its Exhibit No. 21.

DEFENSE: We have no objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 21.

Prosecution's Exhibit No. 21 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 22 the prosecution offers the affidavit of CAMPBELL KERR and submits it pertains to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 22 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the Defense Counsel the prosecution offers this as Prosecution's Exhibit No. 22.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 22.

Prosecution's Exhibit No. 22 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 23 the prosecution offers the affidavit of BAXTER HNOBERG OLSEN, pertaining to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 23 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the Defense the prosecution offers this as its Exhibit No. 23.

DEFENSE: No objections.

LAW MEMBER: It will be admitted as Prosecution's Exhibit No. 23.

Prosecution's Exhibit No. 23 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 24 the prosecution offers the affidavit of ARTHUR DOUGLAS BROWN, as it pertains to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 24 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as its Exhibit No. 24.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 24.

Prosecution's Exhibit No. 24 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 25 the prosecution offers the affidavit of LEROY H. LUCAS pertaining to Specification 4.

Prosecution's proposed Exhibit No. 25 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as Prosecution's Exhibit No. 25.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 25.

Prosecution's Exhibit No. 25 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 26 the prosecution offers the affidavit of PERCY MACDONALD COTTON and submits this pertains to Specifications 4 and 11.

Prosecution's proposed Exhibit No. 26 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as its Exhibit No. 26.

DEFENSE: No objection.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 26.

Prosecution's Exhibit No. 26 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 27 the prosecution offers the affidavit of EUGENE STEDMAN MORREY and submits it pertains to Specifications 3, 4, and 10.

Prosecution's proposed Exhibit No. 27 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as Prosecution's Exhibit No. 27.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 27.

Prosecution's Exhibit No. 27 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 28 the prosecution offers the affidavit of BRIAN GORDON, pertaining to Specifications 9, 10, and 11.

Prosecution's proposed Exhibit No. 28 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as its Exhibit No. 28.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 28.

Prosecution's Exhibit No. 28 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 29 the prosecution offers the affidavit of [illegible] and submits it pertains to Specifications 9 and 10.

Prosecution's proposed Exhibit No. 29 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as Prosecution's Exhibit No. 29.

DEFENSE: The Defense objects to the statement in paragraph 8, Page 2, the 9th line from the bottom of paragraph 8, reading as follows: "I am of the opinion that his death was due to the failure of this medical officer to either give him proper attention or to permit [illegible] doctors to attend to him". We object to that because that is obviously medical conclusion and this witness even if he were present in this courtroom couldn't testify to that. It has no probative value whatsoever because only a qualified medical expert is qualified to testify before a court as to the cause of a man's death. Therefore, we ask that it be stricken and the Commission be directed to ignore it.

PROSECUTION: We submit to the Commission that the translated death certificates are before this Commission - that the accused is not charged directly with killing this man but he is charged with contributing to his death. I think it would be a matter that anybody could judge - if a man with serious wounds were to be kicked and beaten and refused medical attention I think anybody could make opinion as to whether or not that contributed to the man's death. Here it is related that it occurred on the same night that the man, [illegible] Hall, died and as such I think it has such value if taken in account and given the man's qualifications, that he was there and saw it. I think it is admissible.

DEFENSE: This man does say he believes - it is his opinion that the death occurred as a result of the beating - it would be a different thing then but he assumes he knows of the proposed treatment and says the man died because he didn't have proper treatment - - refusal. This man has no possible way of knowing what is proper medical attention because he is not a doctor. It does not even show he was a medical orderly or had any connection with the medics and we think for that reason it is medical opinion and is incompetent evidence.

LAW MEMBER: The objection is overruled. Proceed. This will be entered as Prosecution's Exhibit No. 29.

Prosecution's Exhibit No. 29 was received in evidence.

PROSECUTION: As its proposed Exhibit No. 30 the prosecution submits the affidavit of BRIAN GORDON and submits it pertains to Specifications 9 and 10.

LAW MEMBER: We have one Brian Gordon here.

PROSECUTION: This is a second affidavit by the same man.

Prosecution's proposed Exhibit No. 30 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as Prosecution's Exhibit No. 30.

DEFENSE: The defense makes the same objections as made to the previous affidavit, that this is medical opinion by an unqualified witness.

LAW MEMBER: I think most of this testimony about some of the instances here is merely opinion on the part of the witness because - - -

DEFENSE: We are anxious to make certain objections for the benefit of the record.

LAW MEMBER: I think the Commission will agree with you that most of this is opinion but I see no reason for taking it out of the record because the Commission can arrive at what is opinion and what is fact.

PROSECUTION: Well, the prosecution deems it is admissible for such value as the Commission wishes to place upon it.

LAW MEMBER: The objection will be overruled and this will be entered as Prosecution's Exhibit No. 30.

Prosecution's Exhibit No. 30 was received in evidence.

PROSECUTION: As proposed Prosecution's Exhibit No. 31 the prosecution offers the affidavit of GEORGE HENRY CLIFFORD TYK and submits it pertains to Specifications 10 and 11.

Prosecution's proposed Exhibit No. 31 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as Prosecution's Exhibit No. 31.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. 31.

Prosecution's Exhibit No. 31 was then received in evidence.

PRESIDENT: We will now adjourn until tomorrow morning at 0900.

The Commission then at 1540 hours, 21 January 1947, adjourned to reconvene at 0900 hours, 22 January 1947.

John P. Langhira
JOHN P. LANGHIRA
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
22 January 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case, being present.

PRESIDENT: The Commission will come to order.

PROSECUTION: The prosecution is ready to proceed with its case and calls as its first witness Lieutenant Colonel Franklin Flinlan.

LIEUTENANT COLONEL FRANKLIN M. FLINLAN, a witness for the prosecution was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q State your name, rank, and organization.
A Franklin M. Flinlan, Lieutenant Colonel, Serial Number 0-30263, present organization is Armored Force, Fort Knox.

Q How long have you been in the service?
A Over twelve years.

Q Were you ever on duty in the Island of Honshu, Japan?
A I was held prisoner of war on the Island of Honshu.

Q When was that?
A I arrived in Kobe, Island of Honshu, in October 1942; I stayed there on the Island of Honshu until liberated on September 9, 1945.

Q When you said you were at Kobe where were you as a prisoner of war?
A I was held at the Kobe prisoner of war camp, also known as Kobe House in the City of Kobe.

Q What Japanese officers were on duty at Kobe Branch Prisoner of War Camp during that time?
A The camp commander was Lieutenant Harimoto. He was commander from the time I arrived there until approximately June of 1944. He also had a medical officer which arrived there in June of 1943 by the name of Lieutenant Miyatake.

Q Do you know his full name?
A Lieutenant Kunio Miyatake.

Q Would you know Lieutenant Miyatake if you saw him again?
A Yes.

Q Do you see him in this courtroom?
A Yes.

Q Will you point him out to this Commission?
A This man right here.

Q When you say "this man" will you identify or designate him by location and the people near him?
A Sitting to the right of Mr. Miller and to the left of the Japanese interpreter - that is, I presume he is an interpreter.

MR. MILLER: Let the record show this witness pointed to the accused.

Q Did you know a Japanese sergeant by the name of W. Burbridge?
A Yes, I knew him very well.

Q Where did you know him?
A He was the Mess Sergeant of Kobe House for practically the entire period I was there.

Q Did Japanese Sergeant W. Burbridge was in Kobe House Prisoner of War Camp in July, 1943?
A Yes.

Q Do you know of any unusual experience which Japanese Sergeant W. Burbridge had in or about the month of July 1943?
A Yes; on the night of July 12th or 13th Sergeant Burbridge was carrying out his duties as Mess Sergeant in the Kitchen. At approximately 8:30 at night he and the rest of the cook staff, which numbered ten, were eating their evening meal, as was the custom to do, their eating after the rest of the prisoners were fed and after the cook staff had cleaned up and polished the kitchen for the evening roll call and the inspection. Lieutenant Miyatake came into the kitchen, found the mess sergeant and the rest of the staff eating their evening meal and he wanted to know the reason why. Sergeant Burbridge explained to him that it was the usual custom as they had been doing it from the time the prison camp opened to eat their evening meal after they had fed the rest of the prisoners and after they had polished the kitchen. That, to Lieutenant Miyatake, was not any reasonable or feasible excuse. He ordered Sergeant Burbridge to the guardroom. Sergeant Burbridge went to the guardroom and stood in front of the guardroom, Lieutenant Miyatake following him there, calling at the same time for Captain Houghton, the prisoner camp commander, Corporal Noblett, who was a member of the Marine Corps acting as our Interpreter, Captain John Hayes, who was the prisoner O.D., and also for me. The reason I was called was because I lived in the camp office with Captain Houghton. We went downstairs to the guardroom. Through the interpreter Miyatake wanted to know why Sergeant Burbridge and the rest of the cooks were eating at that time. Corporal Noblett explained in detail and fully that it was the custom to do that. That wasn't sufficient for Miyatake. Miyatake then told Sergeant Burbridge to stand at attention and which he did. Miyatake then called to the corporal of the guard, calling to him to fill a bucket of water and the corporal of the guard did that and handed it to Sergeant Burbridge. Sergeant Burbridge was forced to hold that bucket of water over his head for approximately 45 minutes. Each time a little of water slopped over he was slapped and beaten.

At the end of the forty-five minute period Sergeant Burbridge was then let into by Miyatake. Miyatake used primarily the Japanese Army wide web belt with a very large three inch buckle on it. He doubled the belt and started in beating Sergeant Burbridge across the face and body and legs. Sergeant Burbridge eventually fell from the terrific beating he was receiving. As he fell and went to the ground, Miyatake then started kicking him, hitting him with his sword scabbard and eventually Sergeant Burbridge became unconscious. At the point when he became unconscious Miyatake ordered the corporal of the guard to throw a bucket of water on him. He did that. Sergeant Burbridge came out of it enough to stand to his feet again. By this time Sergeant Burbridge was nothing but a mass of blood. His ears - one ear was practically severed. His body, from the kicking, was a mass of bruises. His nose was bleeding and blood was coming from his eyes. When he stood to attention again Miyatake again beat him. Sergeant Burbridge went down. When he went down, he was again kicked and beaten by the sword scabbard. This beating lasted for a period from the time he went in front of the guardhouse and the time he was dismissed finally to go to his quarters it lasted approximately four and a half hours. In that period he was beaten continuously for at least two hours and forty-five minutes. After he was dismissed he went to his quarters. The other prisoners in his quarters talked him into going to the camp hospital for medical treatment. Burbridge was afraid. He was afraid if he went to the hospital he would find Miyatake again, but eventually they talked him into going. He went to the hospital and was given medical treatment by Chief Petty Officer Patrick Flynn of the Royal Navy and L.A.C. McGreen, also of the Royal Navy, both trained medical men. The beating was probably one of the most severe that I witnessed. I saw personally the entire beating. It was later proven the following day that Sergeant Burbridge had also sustained two broken ribs from the kicking. He received medical attention for the next ten days, not as a hospital patient because they refused him admission to the hospital but he went daily for his treatments. That is just the one case of the beating of Sergeant Burbridge.

Q Colonel Flinlan, were you the senior Army officer at Kobe Branch Prisoner of War Camp?

A Yes, I was the senior officer present; however, the camp commander and Lieutenant Miyatake refused to acknowledge my rank and appointed Captain Waugh on of the British Army as the camp commander. However, the troops, prisoners, in the camp recognized me as their senior officer and for any complaint they always came to me.

Q As camp commander did you make checks on the men under your jurisdiction? In other words, did you function as a camp commander so far as the prisoners of war were concerned?

A So far as the prisoners of war were concerned I represented them, and in every way - except getting the proper recognition from the Japanese staff and I was just another number to them.

Q Going back to the mistreatment of Sergeant Burbridge, what was his position during the time this beating was going on.

A What was his position?

Q Yes.

A He had to stand at a very strict Japanese style of attention, which is much more severe than our own Army in the position of soldiers at attention.

Q In which way is it much more severe than the American way?

A In the first place, the arms are close to the side, fingers extended, joined along the seams, straight out; no relaxation of that position - eyes straight to the front, no movement of any part of the body. That was the reason so many beatings took place in Kobe and one reason Sergeant Burbridge was beaten so severely because after he was started in on he did not have the stamina due to his physical condition to stand up. His knees buckled and everytime he would get hit. His arms hung loosely; due to that, he was hit. So whenever a beating took place they would have to stand to this strict position of attention.

Q Did you witness the entire beating?
A Yes.

Q Approximately how long was he forced to stand to attention?
A He went to the guardroom a little after 8:00 in the evening; he was there until after midnight. All of that time he was either standing at attention or he was on the ground in a semi-conscious or unconscious condition.

Q How do you know that Sergeant Burbridge sustained two broken ribs as a result of this beating and kicking?
A I was told by the Australian medical officer who had arrived with the Australian contingent on 8 June 1943 - Captain Clyde Bayes of the Australian Medical Corps told me personally two ribs were broken from the beating Miyatake gave him.

Q How did Captain Bayes come to tell you about these injuries?
A Captain Bayes and I were very close friends and I would spend a certain amount of time everyday in the hospital. I got to know him very well. I knew the two Royal Navy medical orderlies extremely well and I would check on patients there and everyone discharged and every sick man that came sick off the job and he told me many things confidentially of the happenings of prisoners in the camp.

Q In making these checks on prisoners, were you acting in any official capacity?
A No official capacity other than I was the senior officer present and I knew if I lived through that imprisonment I would be called upon by governments represented for a report.

Q Do you know Captain M. P. Meeden, a British officer?
A Yes.

Q Where did you know him?
A He was also a prisoner of war at the same camp that I was in in Kobe.

Q Do you know Lieutenant Douglas Baird, a British prisoner of war?
A Yes; he was also a prisoner at the same camp I was in.

Q That was at Kobe Branch Prisoner of War Camp?
A That is right.

Q Were they at Kobe Branch Prisoner of War Camp in July, 1943?
A Yes, they were both there.

Q Do you know of anything unusual - any unusual experiences these men had at Kobe Branch Prisoner of War Camp in or about 15 July 1943?
A Yes; on the morning of the 15th at 1000 hours Lieutenant Miyatake happened to be wandering around the camp and he went into the officers' quarters

which were located on the third floor of the brick warehouse. He found both of them in the quarters - Captain Weeden and Lieutenant Baird, both in bed. He first talked to Captain Weeden, asking him why he was in bed at that time of the day. Captain Weeden explained to him that he was sick and that he had been sick the night before and he didn't sleep well, and was catching up on a little bit of sleep. He then ordered Captain Weeden down in front of the guardroom; then he started asking Lieutenant Baird the same questions and got the same answers from Lieutenant Baird, who had been sick for several days prior to this beating. Lieutenant Baird was ordered to meet in front of the guardroom. Both of the men reported to the guardroom and were ordered to fill buckets of water and hold it over their heads. They both held this water over their head for a period of time from approximately thirty minutes to forty-five minutes. Miyatake showed up, ordered them to put the water down and took off his wide web belt and first hit Lieutenant Baird and then hit Captain Weeden. This beating was for over a period of about thirty minutes. Captain Weeden was eventually knocked to the ground and was kicked by Lieutenant Miyatake and was knocked unconscious. Lieutenant Baird received the same treatment, knocked to the ground, became unconscious. Water was then thrown on them to revive them. They then returned to their quarters. Captain Weeden, through the help of Captain Mann of the same regiment of Captain Weeden, came down and reported the incident to me and to Captain Haughton. A written report was sent in to the camp office - nothing was ever heard of from that report.

PRESIDENT: Is this to be interpreted or is it to be presumed that the prisoner can understand it?

PROSECUTION: It is being interpreted now.

PRESIDENT: In other words, the accused is getting all of the testimony of Colonel Flinise? The question in my mind is whether he can understand English well enough to understand what the witness is saying or - - -

INTERPRETER: He says he is getting just the points that the witness is testifying. However, he cannot get the whole picture of what he is testifying.

PRESIDENT: Is the Defense satisfied with the way the examination is being conducted by the prosecution in that there is no interpreting going on and all the testimony is in plain English. Is the Defense satisfied or does he desire it be interpreted for the benefit of the accused?

(The Defense questions the accused)

PROSECUTION: May I suggest that inasmuch as the witness is testifying in English and he is not getting all of the testimony it might be just as well to have the official interpreter interpret it to the defendant?

PRESIDENT: The Commission's only feeling in this is that this man is getting a fair trial in hearing all the testimony that is given against him.

PROSECUTION: I want the record to show that the accused does not fully understand all the testimony given so far so I think it would be better

inasmuch as he stated he didn't get the entire picture I think it might be well to start back again and have it translated to him. I think then that we can be entirely sure that the record - - - well, just what is going on and that the accused is fully advised.

PRESIDENT: I am informed that the accused can talk English.

DEFENSE: He understands a considerable amount of English but when going as fast as it is I don't know whether he is getting it all or not.

PRESIDENT: Nothing has been going on whatever. I have been watching it just for that purpose.

PROSECUTION: Since he made the statement he has I do think the record might be a little in doubt as to whether he understands. We have covered the first specification and most of the second and it hasn't gone too far back.

PRESIDENT: Let the Reporter read it back.

(All of the testimony of Lt. Colonel Flinim to this point was read back by the Reporter and interpreted by the Interpreter to the accused)

PROSECUTION: Does the accused fully understand all the testimony that has been interpreted to him?

ACCUSED (Through interpreter): Yes.

DEFENSE: Now, what is the procedure going to be from now on?

PROSECUTION: The procedure from now on is this: the witness will testify and pause every couple sentences to allow the interpreter to interpret to the accused.

PRESIDENT: Is that what you want? All the Commission wants is to make sure that the accused knows what is going on.

DEFENSE: If the Commission please, that is the only way I know of where we will all know that he does.

PRESIDENT: Okay.

PROSECUTION: But inasmuch as it is a live witness I would like the record to clearly show that the accused understands all of the testimony.

PRESIDENT: Okay.

Q Has stated, Colonel Flinim, that this incident was reported to you; did you personally see any part of it?

A The part that I saw was about ten minutes of the beating. I did not see Miyatake in the quarters of Lieutenant Baird and Captain Weeden. I saw enough of the beating to know that they were beaten severely and also held the water over their heads. The part of the beating which I witnessed was the latter part of it where both of them were knocked unconscious to the ground.

Q The beating that you saw Miyatake make, did he use any weapon of any sort?
A Besides using the belt and his fists he also used his sword scabbard.

Q Did you see Miyatake kick Captain Weeden?
A Yes, I saw Miyatake kick both Captain Weeden and Lieutenant Baird.

Q How many times did he kick Captain Weeden?
A I would say that Weeden was kicked eight times.

Q Did you see Miyatake kick Lieutenant Baird?
A Yes.

Q How many times did Lieutenant Miyatake kick Lieutenant Baird?
A I would say approximately the same number of times.

Q As a result of this beating do you know whether or not Captain Weeden sustained any injuries?
A Yes; Captain Weeden, as a result of the beating, was very severely bruised, particularly on the thighs, due to the kicking. His face was badly cut up and bruised but no permanent injury resulted from that. His ribs were severely injured but not broken. One wrist, I am not positive whether it was the left or right, was badly injured whereby he was forced to wear a brace on that wrist for a considerable length of time.

Q As a result of this beating do you personally know whether or not Lieutenant Baird sustained any injuries?
A The only thing that I think Baird received out of the beating was a badly cut up face and his body was bruised. It did not leave him impaired in any way.

Q Do you personally know the physical condition of Captain Weeden immediately prior to this beating?
A Captain Weeden, I know, just prior to the beating was sick - that he was in bed - he was in bed the previous night. I went up to the officers' quarters the previous evening and at that time, it was approximately 7:30, Lieutenant Baird and Captain Weeden were both in bed and they were in bed at the time roll call was taken at 8:00.

Q Do you know the nature of the illness of Captain Weeden?
A Weeden at that time was suffering from a bad cold and on the very edge of developing influenza.

PRESIDENT: The Commission will take a ten minute recess.

The Commission then recessed from 1005 hours to 1020 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution he was still under the oath previously taken)

Questions continued by the Prosecution:

Q Colonel Flinim, do you know a Commander Harrington of the United States Navy?
A Yes.

Q Was he at Kobe Branch Prisoner of War Camp with you?
A Yes, he was a prisoner in the same camp with me at Kobe Camp.

Q Do you know Lieutenant Colonel Fitzpatrick of the American Army?
A Yes, he was a prisoner with me in Kobe Camp.

Q Do you know Lieutenant Percy M. Cotten, United States Army?
A Yes, I also know Lieutenant Cotten. However, he was of the Navy instead of the Army.

Q Was he also at the Kobe Branch Prisoner of War Camp with you?
A Yes, he was in Kobe Camp with me.

Q Do you know of any unusual experiences that these three men had during the period between 10 June 1943 and 1 August 1943 at Kobe Branch Prisoner of War Camp?
A Yes; these three officers along with all of the American officers in Kobe Camp and the enlisted men who were used as servants to the officers, plus the enlisted men servants living in the quarters on the third floor of one of the brick warehouse barracks during the month of July 1943, all of these men and officers were ordered down to the guardroom by Lieutenant Miyatake. During the evening roll call, at which Lieutenant Miyatake was the officer of the day, he found in the American officers' quarters in one of the spittoons given us by the Nipponese to use as an ashtray an ash. Lieutenant Miyatake first asked Commander Harrington who put the ash in the ashtray. Commander Harrington did not know. He asked the officers present if they had put it there. None of the officers or enlisted men confessed to putting the ash there. Just prior to the evening roll call, as was the custom, all, or I should say a good many of the enlisted men in Kobe Camp came up to the American officers' quarters to visit with them. It could have been one of these visitors who put the ash in the ashtray. In any event, all the American officers and enlisted men, a total of twenty-four, all together went down in front of the guardroom and were placed in two ranks, a glaring and bright light coming from the guardroom. At the completion of the evening roll call, Miyatake came back and met the officers in front of the guardroom. He placed all the men and officers in a strict position of attention. This was about 8:30 in the evening. He then called me down to the guardroom with the idea that me being an American officer I could plead with the officers and men to one of them to confess to the putting of the ash in the ashtray. I asked the officers and men if any of them had put it in the ashtray and I received a negative answer. Miyatake was not satisfied with the negative answer. Miyatake told me to continue asking them for one of them to confess. All of this time the officers and men were at a rigid attention. For a period of approximately forty-five minutes I asked the officers if any of them had put the ash in the tray and each time received the negative answer. Miyatake then called Corporal Hoblett, our interpreter, also Captain Houghton, the camp commander. In the two ranks there were twenty-four officers and enlisted men. Standing to one side was an American civilian, also a prisoner of war, taken with me in the Philippines and had come to Japan with me. This man's name is Frederick C. Frederickson. That afternoon Mr. Frederickson had been suffering from an abscessed impacted wisdom tooth. The Australian dentist attempted to pull it

without any form of anesthesia. He could not pull the teeth. As a result, Mr. Frederickson was in great pain with that afternoon of punishment. I complained to Miyatake about Frederickson. Miyatake refused any sympathy towards Frederickson and struck him in the corner near the guardroom. About 9:30 Mr. Frederickson fainted. As he went to the ground I went over and tried to raise him and pick him up. I could not lift him up. Miyatake told me to leave him and as a result Miyatake came over and kicked him three or four times severely in the ribs. Frederickson stayed on the ground for about ten minutes. He then came to and stood the best he could to attention in the corner. At each movement of Mr. Frederickson, Miyatake would swing on him with his fists. For this entire period I was present, standing in front of the American officers. All this time Miyatake was either walking up and down the ranks of the American officers or he was sitting in a chair in the open front guardroom. At approximately 10:00 Lieutenant Miyatake came down, starting with the righthand man who was Commander Harrington and going first down the front rank then down the rear rank knocking each man individually to the ground with his fists. As they went down and Miyatake moved to the next man to beat him if the man and officers could rise again they did so and took up the position of attention. If they couldn't rise, it only meant that they would get a severe kicking in the body. After he had completed the two ranks he then went to Mr. Frederickson and knocked him unconscious. By this time, all officers and men had been raised to their feet and were standing at a feeble attention. This was 10:30 in the evening. They were then told to stand to attention and they took up the position of attention and at approximately a quarter of twelve - midnight, they were then beaten again the same way by Lieutenant Miyatake. At about 12:30 in the morning they were dismissed and went back to their quarters. The next morning immediately after the men had gone to their working places, the officers - the American officers and the few enlisted men were called down again to the guardroom. They were ordered to find brooms and brushes and buckets to carry water with and go out into the main street running alongside our camp, get down on their hands and knees and scrub and brush the street. The order to bring them down to do this work was given by Miyatake to the guard commander. They worked in the street for about two and a half hours, washing and scrubbing the street on their hands and knees. This was done primarily for the humiliation attached to officers on their hands and knees doing that type of work. There were many civilians - Japanese civilians passing on the street at all times. Just one half block from our camp was the Kobe Naval Headquarters for that area and there were many naval officers, civilians, and enlisted men passing at that particular time of the morning going to work. After two and a half hours of this type of humiliation the officers and men were then ordered back to the quarters. That is all.

Q Was there anybody in that group that sustained any serious injury as a result of the beating by Lieutenant Miyatake?

A One officer, a Lieutenant Johnson of the Navy - United States Navy, received a very severe beating and abrasions from his chest up to the top of his head. Lieutenant Cotton also received a very severe beating of the legs. Lieutenant Cotton was under hospital care for about one week. That is all.

Q Did you know Warrant Officer Dudley Gore, a British officer?

A Yes.

Q Where did you know him?

A He was also a prisoner of war at the Kobe Branch Prisoner of War camp.

Q Do you know of any unusual experience that Warrant Officer Core had at Kobe Branch Prisoner of War Camp in or about June of 1943?

A Yes; around about between the 13th and 15th of June 1943, Dudley Core was then acting as the assistant work leader for one of the jobs, known as Takahama. When he was bringing his work party back, which consisted of approximately sixty men, as was the custom of all returning work parties, they had to go into the Japanese way of the goosestep. Just around the corner before coming in front of the camp Miyatake met the Takahama work party. Dudley Core was walking alongside of the party and for no reason at all, Miyatake pulled his sword scabbard off and started beating Core over the head with it. He also hit Core across the back and across the back of the legs with his sword scabbard. Core reported the incident to me immediately after the work party was dismissed. As was the custom, I was outside of the camp meeting the work parties as they came in. At that period we usually gave out any announcements which were of concern to the men. I saw Dudley Core being hit by Miyatake. By this time, Core was on the run and Miyatake was chasing him with his sword. I did not see the start of the beating as they were around the corner but I did see Core being hit at the particular time across the back and on the legs as he came in and reported his work party to me.

Q Did you see Lieutenant Miyatake kick Warrant Officer Core at any time?

A I saw Miyatake kick Warrant Officer Core only once in the shins.

Q As a result of this beating of Dudley Core by Lieutenant Miyatake did Core receive any injuries?

A His head was quite badly split - the top and rear part of his head. Also his back was very badly bruised.

Q Did he sustain any permanent injuries as a result of this beating?

A Not to my knowledge he received no permanent injuries.

Q Did you know James McDougall, a British prisoner of war at the Kobe Prisoner of War Camp?

A Yes, I knew James McDougall at the Kobe Branch Prisoner of War Camp.

Q Do you know his rank?

A He was a private of the Royal Scots Regiment.

Q Do you know of any unusual experience he had at Kobe Branch Prisoner of War Camp in or about June, 1943?

A Yes; during this period between June and August of 1943 James McDougall was beaten very severely by Lieutenant Miyatake. This particular beating happened on a Sunday morning at our regular Sunday morning inspection. McDougall lived on the third floor of one of the brick barracks buildings. On this floor there were approximately 110 men quartered. When the inspection party reached the third floor they held an inspection whereby you had to take down all the individual personal equipment and gear, looking for anything which they may find that we were not supposed to have. One of the inspecting party found two small lead pencils. Lieutenant Miyatake immediately started inquiring as to who owned these lead pencils. I might mention that lead pencils were forbidden for any enlisted man to own or have in their possession. All the men on the entire floor were stood to attention. Miyatake then started his usual questioning of who owned the lead pencil. No one offered or wanted to admit that they had owned the lead pencil. Being a Sunday and it was supposed to be a rest day for us, McDougall finally came forward and

and admitted owning the lead pencils. He knew that if someone didn't own up to the ownership that the entire floor and the prisoners of the entire camp would stand to attention throughout the entire day.

DEFENSE: If the Commission please, we are going to have to object to the answer as not responsive to the question; particularly, it is conclusion on the part of the Colonel.

PROSECUTION: Which part?

DEFENSE: This last part where he said that the reason McDougall came forth and admitted ownership was because he knew if someone didn't it would result in the entire camp standing to attention, or words to that effect.

PROSECUTION: No proper foundation has been laid for that and I ask it be withdrawn but reserve the right to question the Colonel in regard to that at a later time.

A (Cont'd) After McDougall came forward to face Lieutenant Miyatake he said, "I own the lead pencils". Miyatake did not wait for even thirty seconds but immediately raised up and kicked McDougall squarely in the stomach. McDougall doubled up in pain and fell to the sleeping mat, then Miyatake started kicking him with both feet, hitting him over the head and body with his saber and scabbard and then McDougall stood to attention. He was then kicked again in the stomach. This beating lasted for about fifteen minutes. McDougall was then ordered to go down in front of the guardroom and stand to attention there. This was approximately 11:00 on this Sunday morning. The rest of the men on the floor were dismissed then and McDougall stood to attention outside the guardroom until about 4:00 that afternoon when he was dismissed.

Q As a result of this mistreatment did McDougall sustain any injuries?
A No permanent injuries; however, he was under medical treatment from the hospital for about one week.

Q Was his face and head cut with the sword scabbard?
A His face was very badly cut up but his main punishment was the kicking in the pit of the stomach that caused his trouble.

Q Did you know Lieutenant John Fuller, an Australian prisoner of war at Kobe Branch Prisoner of War Camp?
A Yes, I knew Lieutenant Fuller at Kobe Branch Prisoner of War Camp.

Q Do you know of any unusual experiences he had between 10 June 1943 and 31 August 1943?
A Yes; Lieutenant Fuller was also beaten by Lieutenant Miyatake.

Q Did you actually see this beating?
A No, I did not see the beating.

Q How do you know he was beaten?
A Immediately after the beating - it took place first on the floor where he was group leader of a group of Australians and then it was continued in the passageway near the guardroom. Immediately after the beating John Fuller reported the incident to me.

Q Did you make any other investigation of the incident?
A Yes, I investigated it to a certain extent. Lieutenant Fuller was a group leader of 105 Australian prisoners of war. Lieutenant Fuller was the type of individual that stuck up and would do practically anything within reason for his men.

PROSECUTION: Pardon me, Colonel, the question was how did you conduct that investigation; explain what you did in making the investigation of the incident.

A I went over to the floor where the beating first started and asked several individuals about the beating. I also talked to Lieutenant Fuller after he had reported the incident to me. He was beaten primarily on the arms and the body by the sword scabbard.

Q Did these individuals that you talked to claim to be eye witnesses to the actual beating of Lieutenant Fuller?
A Yes, they all saw the actual beating.

Q How did they report Lieutenant Fuller being beaten?
A Do you mean in what manner he was beaten?

Q Yes.
A These enlisted men that I talked to who witnessed and saw the entire incident said that Fuller, for no particular reason - and this happened at evening roll call - was set upon by Lieutenant Miyatake. They reported he was hit primarily across the arms by a sword scabbard, and he was kicked in the shins by Lieutenant Miyatake.

Q As a result of this mistreatment did Lieutenant Fuller sustain any injuries?
A To my knowledge he received no permanent injuries from the beating; however, he did received medical treatment for a very bad arm.

Q Is it correct that Lieutenant Fuller reported this incident to you immediately after the alleged beating?
A Yes, he reported it immediately after the beating.

Q At that time did his face show any evidence of mistreatment?

DEFENSE: We object to that question. We try not to object at all because we want the witness to go along but these are leading questions. The witness has already testified to the particulars of the beating where the man was hit, he also testified to the injuries received and upon occasions he said the man was beaten on the arms and sustained injuries on the arm - he was also kicked in the shins. Now, the prosecution is suggesting something else to the witness and saying was he injured in the face. For that, we object.

PROSECUTION: I will amend the question by withdrawing "of the face". I do submit that otherwise it is entirely proper inasmuch as this witness testified that Fuller, immediately after the alleged beating, came and reported to him and this witness saw him so it is a proper question to put. At that time, did Fuller show evidence of mistreatment? As such I ask the question.

DEFENSE: No objection.

A Lieutenant Fuller, when he reported to me - -

PROSECUTION: Pardon me, I think there should be a ruling.

DEFENSE: I thought you withdrew the question.

PROSECUTION: I didn't withdraw the question, I withdrew "of the face".

DEFENSE: He withdrew the previous objection.

A (Cont'd) When he reported to me - Lieutenant Fuller - his head was not injured at all. His face carried bruises only. As I said before, his main injury was his arms and legs where he had been kicked by Miyatake.

Q Did you know Private W. K. Hall, an Australian prisoner of war?
A Yes, he was one of the prisoners at Kobe Branch Prisoner of War Camp with me.

Q Do you know of any unusual experiences that he had in August 1943?
A Private Hall on this particular day - I cannot remember the date - was working at his usual working place of sam pans. On this day, the job was the unloading of coal from the ship to the lighters in the water. On this job of sam pans Private Hall sustained an injury - he fell from one of the scaffolds on the ship into the hold and was rendered unconscious by the fall. Permission was asked by the work leader, the British work leader on the job, to bring Private Hall back into camp. Permission to bring him back was denied. As a result, Hall laid aboard the ship from the time of the accident until quitting time at 1430 hours in an unconscious condition.

DEFENSE: If the Commission please, we object to that unless the witness prefaces it by a statement to the effect that he was there and that the - - it seems to me that the refusal in no way connects the accused in this case with having anything to do with leaving the man on the ship. He is not connected with that incident up to this point so far as the testimony is concerned.

PROSECUTION: I submit after so doing we can bring on his testimony by questions and answers. I do think that the condition of this man is material to the issue before this Commission inasmuch as the accused is alleged to have neglected and refused to give Hall proper and adequate medical treatment, and it has also been stated and testified to in affidavits and by testimony of Colonel Flinion that the accused was the medical officer. Therefore, I think it is material to show what this man's condition was when he was finally brought back to camp, to show whether his condition was obviously bad, fair, good, or otherwise. I think it is material as to what that man's condition was. If necessary, I will bring it out by questions and answers.

LAW MEMBER: If the Defense objects to the fact that - - -

PROSECUTION: By that I meant I can go in and ask this witness to tell us how he knows that, whether it was told by persons there, and if there were reports, it would be admissible.

LAW MEMBER: I think the Commission would like you to have the witness bring out in detail the connection, together with any official reports which may have been made that connects the act with it.

PROSECUTION: The prosecution will state at this time that the prosecution has no intentions and does not think the testimony implicates the accused. It is being brought before this Commission mainly to show the physical condition of the man when he was brought in for medical attention. Only at the time when this man came into the camp does the accused have any connection with Hall. It is perfectly proper, I think, to show what Hall was suffering from - to show his condition at the time he was brought in.

DEFENSE: Well, if they want to bring out the condition Hall was in when he reached the camp, why don't they ask the question, but they have to put it into the record by their question and answer by the witness. He was refused medical attention is what the accused is charged in this specification with. It will have the implication, at least, that he had some connection with something happening on the ship.

PROSECUTION: I think testimony is they requested permission to transfer him from the ship back to the camp, which means only transfer. In no testimony has it been they refused to give him medical attention at the scene of the accident - just refusal by those in charge of the ship to transfer him back to camp.

DEFENSE: Is it admitted by the prosecution that the accused in this case had nothing to do with anything that happened on the ship, so far as refusing him medical attention?

PROSECUTION: So far as refusing medical attention, yes.

Q Colonel, then what happened at the ship, as a result of your personal observation?
A I was not aboard the ship at the time of the accident so I don't know from personal observation what happened. I only know from reports handed over to me back at the camp.

Q Who made those reports to you?
A The leader of the work party of the prisoners of war.

Q Was he an eye witness?
A He and several other Australian and British prisoners of war were eye witnesses to the accident.

Q Was it reported to you whether or not the accused was present at the scene of the accident?
A It was not reported to me that the accused was present; however, I knew that he was not on board the ship at the time of the accident.

Q Was it reported to you how the accident to Hall occurred?
A The way it was reported to me was that Hall was aboard this ship unloading coal. Evidently from fatigue, from lack of sleep - - -

DEFENSE: Now, if the Commission please, at this time I do object to the answer already in because he shows that he doesn't know of his own personal knowledge. This is a report and it said that it was evidently due to fatigue. Now I would like to ask him a question at this time, how he knows, or if he knows, the basis of that statement.

PROSECUTION: You are objecting as not being responsive?

LAW MEMBER: That is right; it is not within his own personal knowledge.

PROSECUTION: Let's make the question more definite by asking the witness to state only what was reported to him. Let the question stand that way. I think whatever was reported to him will be admissible because this witness was senior officer in that camp and as such he had the duty of making an investigation and as a result, his investigations from eye witnesses are admissible. That is the contention of the prosecution.

DEFENSE: Well, we don't feel that that is correct. For instance, he wasn't officially the spokesman for the camp and it depends upon the people who made the reports to the Colonel and their knowledge of what they were reporting to him about. Now, they are charging it was fatigue that killed him. I know if I were working up there, of course I would be tired - it was a tiring labor, but I know the purpose of this line of questions is - to get back where we were -- the day we interposed our motion in regard to this particular specification -- I don't think any of this is competent except it come from the lips or an affidavit of a man who saw this man fall and not through hearsay.

PROSECUTION: I submit to the Commission he was senior officer and it has been testified to he was the senior officer in the camp. It was his duty to investigate those things that pertained to the members under his jurisdiction. Now, it is true, in a sense, this witness was not the official spokesman for the camp in that Miyatake did not recognize him as such, but according to his rank he was due that respect whether the Japanese gave it to him or not and it has been testified to that the prisoners of war recognized him as their leader and he functioned with that so far as he was able to, the only thing being the Japanese refused to recognize him. I don't think the Japanese had the right to deny him that power, to make an accounting, to make a report to his own superior when released. I wish to refer the Commission to paragraph 5d, sub-paragraph b of Letter Order AG 000.5, General Headquarters, Supreme Commander for the Allied Powers, wherein it states, "Any report which appears to the Commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the Commission considers as possessing knowledge of the matters contained in the report" - That is Colonel Flinim, the senior officer of the camp who had the duty of investigating those things so that he could make a report to his superior officer when he had the chance. The mere fact it is hearsay does not make it inadmissible to this Commission. It is admissible. The Commission will recognize it as hearsay and will evaluate it as such but it is admissible for whatever probative value it may have.

LAW MEMBER: Anything further from the Defense Counsel?

DEFENSE: We call the Commission's attention to sub-paragraph b of paragraph 5d - "Any report which appears to the Commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer". Now, it is my interpretation of that clause that that means a report by an investigator who was authorized officially to obtain affidavits in support of charges. That is why that was put in there. That does not mean because I appoint myself as an official or in the capacity of the Colonel that that is what is intended under sub-paragraph b by an "investigator or intelligence officer" or any other person whom the Commission considers as possessing knowledge of the matters contained in the report." In trying to get it in under the last clause, "whom

the Commission considers as possessing knowledge of the matters contained in the report" - how does he get his knowledge? He wasn't there. He admits his knowledge is from what other people told him. He didn't reduce that to writing. Now, it is from hearsay repeated to the Commission - an incident that happened - - that is pure conclusion of the man - hearsay information from him. It is said of paste you can presume a bone in it. In other words, you can turn nowhere and you can't wind up anywhere. If a man who made the affidavit knew what he was talking about - but does he do that? As I understand his testimony the Colonel said he evidently fell from exhaustion and I submit in my opinion it isn't legal. This paragraph cited by the prosecution on the face of it applies to a written instrument and should not apply at all where a man is testifying in person as to reports made to him. The Commission may well determine under liberal interpretation of the hearsay rule that that is hearsay repeated to the Colonel, but that is conclusion on the part of the people - - if he will tell us facts as he heard the - - it is up to the Commission to draw reasonable inference from the evidence but not take speculation and conclusions which are second and third hand.

PROSECUTION: I think we are getting mixed up in what is involved. The question was what was reported to you? The witness started to make answer and used the term "evidently from fatigue" to which part the defense objected - that he was making conclusion. At that time I stated I would ask him to repeat only those things reported to him. I would like a rule as to whether or not this witness can tell us as to what was reported to him. I think the witness can. We all know that the witness was the senior officer. This Commission can take judicial notice that it was his duty as senior officer to make investigations. The mere fact it was not reduced to writing does not make it inadmissible. In fact, actual live testimony is far more valuable than any report this or any other witness might have had.

DEFENSE: If the Commission please, in making the ruling, we ask the Commission to take into consideration whether the reports made to the Colonel are statements of a witness as to facts and incidents that he saw with his own eyes or whether they are conclusions of the witness given to the Colonel. That is the point.

PROSECUTION: We have laid a foundation for that by asking if they are eye witnesses.

DEFENSE: But your theory is relying on whether it was supposition on the part of the witness.

PROSECUTION: I suggest to the Commission and to the defense, let's get the answer and then we can argue as to its admissibility. If the Commission decides that answer is not admissible, then on that ruling the members will be asked to disregard it.

PRESIDENT: The Commission will take a recess until 1315.

The Commission then recessed from 1135 hours to 1315 hours at which time the members of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

CAPTAIN GRANT McINTYRE, MX123650, appointed VOCC to assist the prosecution, was present and was sworn.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

PROSECUTION: I believe that the time we adjourned there was a matter up for ruling before the Commission. I ask that the prosecution be given a couple more minutes argument before the Commission makes its ruling. I ask this because this will be a very important ruling in this case. I ask permission of the Commission to make further statement.

PRESIDENT: Proceed.

PROSECUTION: I also ask that the witness be excused from the courtroom for the time being.

PRESIDENT: Permission granted.

(The witness was temporarily excused and withdrew)

PROSECUTION: As I understand the situation, the witness was asked "what did they report?", referring to eye witnesses to the accident which befell Private H. E. Hall in August, 1941. At that time the defense objected and as I understand it their objection consists of two parts. First of all that what was reported to Colonel Flinim would be hearsay and therefore inadmissible, and second, from the beginning of the answer of the Colonel that that answer might contain opinion evidence. I want to point out to the Commission that under SCAP rules and the ruling of previous Commissions, hearsay evidence is admissible at all times. In fact, any evidence that might have probative value is admissible by this Commission, the fact to be attached to the evidence is a matter to be decided upon by the Commission. However, it is admissible and should not be denied. That is by virtue of paragraph 2d of Letter Order AG 000.5 (5 Dec 45) issued by General Headquarters, Supreme Commander for the Allied Powers. That, I think, takes care of the objection as to any part of this report being hearsay evidence. The ruling clearly states, "The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge or such as in the Commission's opinion would have probative value in the mind of a reasonable man. The Commission shall only apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted". Under, that, sub-paragraph (h), also quoted to the Commission, reads "Any report which appears to the Commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person when the Commission considers as possessing knowledge of the matters contained in the report". Now, it has been testified that this witness, Colonel Flinim, was the senior officer and as such interviewed the eye witnesses, and the report is hearsay but it is admissible under these rules. Now, as to the matter of the defense's objection as to whether or not it is opinion evidence. I claim that the answer should be given first before any such objection be made or considered by the Commission. Inasmuch as the objection has been made I will cite for the Commission the manual covering Courts-Martial, U. S. Army, 1928 edition, on Page

111, "Opinion Evidence.—It is a general rule that a witness must state facts and not his opinions or conclusions. However, on matters within the common observation and experiences of men, a witness may express an opinion, that is, as to the speed of an automobile or as to whether or not a certain person was drunk at a certain time, or as to whether a voice heard was that of a man, woman, or child." I will state that this may be applied in many variations. In fact, it has even been brought out in the State of Michigan, particularly, a layman can testify as to whether or not in his opinion a person before a court is sane or insane because the courts consider sanity as matters of common experience and as such any person is competent to pass opinion upon it. The answer just beginning to be given was "evidently from fatigue" - if that is what was reported to this witness it is admissible. Fatigue is a matter of common observation. I wish to cite to the commission the affidavit of Campbell, admitted yesterday into evidence, subject affidavit dated 2 September 1946 in which he states, "I refer to my previous affidavit made the 21st day of August 1946 regarding war crimes in Kobe Camp Japan". Then on Page 3 of that affidavit, Paragraph 17e, he states "Miyatake frequently called unnecessary roll call parades during the night for the sole purpose of satisfying his sadistic impulses. On these occasions troops were made to stand stiffly to attention for periods up to one and a half hours whilst Miyatake and others egged on by him indulged in beatings and kickings. This resulted in loss of sleep, fatigue and nervous exhaustion among prisoners of war and after two such incidents on the nights of 5/6 August and 11/12 August 1943 a work accident occurred. . ." In other words, there is evidence before this Commission that because of the actions of this accused, men were fatigued. There is no foundation for inadmissibility of evidence of opinion. Under the rules of the Court-Martial Manual, and the rule of the civilian juries in the United States, and especially the rules of SCAP, this Commission should admit such evidence. I still submit, however, that the answer first be given by this witness before a ruling is made, and the defense at that time make their objections when the entire answer has been given because we cannot anticipate his answer and make a ruling in advance, but these matters should be considered by the Commission before they make their ruling.

DEFENSE: If the Commission please, it isn't an objection to hearsay evidence. We know that the rules laid down for the procedure here admits hearsay evidence but our contention is this hearsay is not only hearsay coming from the Colonel, it is hearsay from someone else to him - what someone else told him - - if it is obvious it is an expression of opinion, not a statement of fact by the man who testifies, it is incompetent. It is allowed that anyone can testify, as a layman, as to the condition of a man who is drunk or the speed of an automobile. That is practically recognized by all the courts but that isn't the question here. The fact that the Colonel said the report that was brought to him was that the man was evidently fatigued - now, that is purely opinion. Now, if the Colonel had testified that he was close to him, that he was standing beside the man and the man showed all signs of exhaustion and in his opinion he fell from the scaffolding, that would be admissible under the rules that we are governed by, but just a statement it was "evidently from fatigue", that is presumption of the greatest character, and it is prejudicial, if anything can be prejudicial, to the accused in this case.

PROSECUTION: I submit that the defense has more or less adopted the argument of the prosecution and that the things I pointed out is clearly illustrated by his argument. I pointed out no proper ruling can be made until that answer is in. We don't know how that was to be put. I further submit that if that eye witness can tell us that Hall fell from a scaffold as a fact, he can also tell us that in his opinion he was fatigued or drunk or wasn't drunk or wasn't fatigued, and it still is admissible.

LAW MEMBER: Do you have objection to the witness completing his testimony?

DEFENSE: No, sir, none at all. If he will explain to the Commission how the witness - what the witness who advised him of this so-called condition knew, it then would be admissible.

PROSECUTION: That is all the prosecution wants - the answer from the witness. What did the eye witness report to you? I think it is a serious ruling for both sides. It may be prejudicial to the accused - it may not be.

LAW MEMBER: Do you want to bring the witness in?

PROSECUTION: I do. If the Defense still has further objection after removing its objection we will renew our argument and ask the ruling of this Commission.

(The witness returned to the courtroom and was reminded by the prosecution that he was still under the oath previously taken)

Q Colonel Flinlen, referring back to the Hall incident on the deck and your investigation, tell us what these eye witnesses reported to you.

A The witnesses that reported the incident to me, and upon further investigation by me, said that Hall had fallen into the hold of the ship because of lack of sleep and fatigue. They further said that due to the lack of sleep that Hall had had it made him just that much weaker and the incident was one of those things, that as the sling came by, it knocked him and he fell into the hold, landing on a large pile of coal.

PROSECUTION: Now that the answer is in the Defense has their chance to make their objections.

DEFENSE: Before removing my objection may I ask the witness a question or two?

PROSECUTION: No objections.

DEFENSE: Colonel, what witness in particular made that statement to you that you have just incorporated in the record here?

WITNESS: The leader of the prisoner of war work party made that statement to me; also, I would say at least eight other Australians who were eye witnesses to the accident.

DEFENSE: Did they tell you how close they were to Mr. Hall at the time the accident occurred?

WITNESS: They did not say as to how close they were in feet or yards. They only said they saw the entire accident as it happened.

WITNESS: And did any of them tell you that just prior to the accident or shortly preceding the accident that Hall had talked to them and complained of extreme fatigue?

WITNESS: No, they did not tell me that they had spoken to Hall in reference to whether he claims was tired or not.

DEFENSE: I see; that is all.

LAW MEMBER: Do you still have objection?

DEFENSE: Yes, sir.

LAW MEMBER: You still want a ruling on it?

DEFENSE: Yes, sir.

LAW MEMBER: Subject to objection by any member of the Commission the Commission rules that in view of the fact that the Colonel here was occupying the position of senior officer of the American prisoners in Kobe Camp and as such, although not the authorized officer in command by the Japanese, but he was occupying that position in that he was preparing and expecting to prepare reports at the time of his release; therefore, the ruling is that any reports made to him in that capacity are admissible evidence before this Commission in that they were official on account of the position that he held so far as the opinions of any members or any person that made reports to him. The Commission is in such a position that it can determine within itself whether or not these opinions are of such value as to be considered as to the guilt or innocence of the accused in this case and we believe they are admissible in evidence to be considered by the Commission as such evidence.

Q Colonel Flinion, was it reported to you at what time Private Hall was taken from the dock to the camp?
A Yes; the work party, with Private Hall on a stretcher, was brought back to camp at the regular time of the party quitting in the evening. They returned to the camp at 5:00 - 1700 hours.

Q Was it reported to you at which time this accident took place?
A Yes, it was also reported to me the time of the accident, which was about between 14:00 and 14:30 hours.

Q Do you know where Private Hall was taken when they took him into the camp?
A Upon his return to camp, Hall was carried up to our hospital.

Q At that time, who was the medical officer in camp?
A Lieutenant Miyatsuka was medical officer of the camp.

Q Was there any other Japanese medical officer in the Kobe Camp at that time?
A No, there was no other medical officer at Kobe Camp.

Q Did you see Private W. K. Hall at the camp hospital?
A Yes; as soon as he was carried into the hospital I went into the hospital and saw him on the stretcher laying in the sickbay.

Q When was that?
A That was approximately 1715.

Q Was that the day he was injured?
A Yes, the same day.

Q Did Miyatake himself give any medical aid to Private H. E. Hall while you were there?

A No, Miyatake gave no aid whatever to Hall as he lay there. In fact, Miyatake issued orders to Captain Royce and to the medical orderlies present that Hall would not be touched.

Q At that time did Lieutenant Miyatake give any reason for such orders?

A I don't know of any reason why he should issue such an order as that.

DEFENSE: That answer is not responsive.

PROSECUTION: The prosecution agrees with the defense's objection and asks it be stricken.

Q Colonel Flinim, did Miyatake, at the time he gave these orders, give any reason to you or Captain Royce why such orders were issued?

A He gave no such reason to me or to my knowledge - at least Captain Royce did not tell me - he did not tell why he issued such an order.

Q Did you see Private Hall at any time subsequent to that time?

A Before the accident?

Q Describe to the Commission the appearance of Hall at that time.
A Hall, as he lay on the stretcher, to me and everyone that saw him was - - -

PROSECUTION: Just a minute; I wish to instruct the witness in testifying to confine his answers and statements to just what he himself saw and not what anybody else might have seen. You will tell what you saw or what was reported to you, that is all right, but don't take in somebody else.

A (Cont'd) I saw Hall laying in the hospital on the stretcher and to me he was unrecognizable as a white man for this reason: he was covered completely from head to toes with coal dust, his face was a mass of coal dust and coagulated blood. He was at that time in an unconscious condition. That was what I saw.

Q Was Lieutenant Miyatake present at the hospital at that time?
A Lieutenant Miyatake came up to the hospital a few moments or a few minutes after the arrival of Hall and saw Hall in that condition.

Q How long did you remain at the hospital at that time?
A I was in the hospital about twenty minutes.

Q Was Lieutenant Miyatake there at this time, during this twenty minutes you were there?
A Yes, he came in while I was there.

Q Did he remain there all the twenty minutes you were there?
A No, he was not there for the entire time. Miyatake came in, asked what the trouble was, he was told by Captain Noyes, the medical officer, and Miyatake probably stood watching Hall for about five minutes. He then left.

Q By subsequent to the time you have just described - subsequent to the time Private Hall was brought to the hospital and Lieutenant Miyatake coming in and giving the order - did you see Private Hall at any time after that?
A Yes, I saw Private Hall several times.

Q Will you state to the Commission when these times were?
A In the first place, I saw Private Hall in the hospital before Miyatake arrived; I saw Private Hall while Miyatake was there; I visited the hospital and I also saw Private Hall after Miyatake left; once before 8:00 of the same evening of the accident and once after 8:00 the same evening of the accident.

Q Will you describe Private Hall's appearance on those two occasions that you saw him just prior to 8:00 that same evening and after 8:00 that same evening?
A My visit to the hospital just before 8:00 and just after 8:00 of the same evening, at that time nothing had been done in the way of even cleaning up the appearance of Hall. He was still in an unconscious condition.

Q Was he bandaged in any way or manner?
A At these two visits no bandages of any kind were on Hall.

Q Did you see Private Hall on any other date other than those you have already testified to?
A Yes; I saw Private Hall on the first day - several times during the day - I don't remember how many - and that evening up until 9:00.

Q What was his condition on those times?
A The next day after the accident Captain Hayes and the medical orderlies took it upon themselves to make a minor inspection of the damage to Hall.

Q How do you know this?
A I happened to be in the hospital at the time Captain Hayes and three medical orderlies were washing Hall's face and cleaning a wound on Hall's head.

Q To your knowledge had Miyatake's order that Private Hall wasn't to be touched by Captain Hayes been changed?
A To my knowledge there had been no change in Miyatake's orders to Captain Hayes.

Q Did you see Hall at any other time?
A On the following day I again saw Hall; Hall at this time, his face had been cleaned up and the wound in his scalp had been dressed.

Q Do you know whether or not Lieutenant Miyatake had visited Hall since the time he first saw Private Hall on the day of the accident?
A The day following the accident I am positive that Miyatake did not visit Hall.

Q How do you know that?
A Captain Hayes told me personally that Miyatake had not visited Hall on the following day - the day after the accident.

Q How long was Hall ill in the hospital?
A I believe that Hall was in the hospital for about three days.

Q Then what happened to him?
A Hall eventually died at about 2200 hours of the third day.

Q Did Lieutenant Miyatake visit Hall at any time after that first day while Hall was alive?
A Lieutenant Miyatake visited Hall the evening of Hall's death.

Q How do you know that?
A I happened to be in the hospital just before roll call at 8:00. I was in the hospital just after roll call at about 8:30 that same evening and at that time, my second visit at 8:30, Miyatake came in.

Q Did Lieutenant Miyatake at that time make a examination of Hall?
A When Miyatake entered the hospital I left the hospital. A little later I went back into the hospital after Miyatake had left and talked with Captain Hayes for just a very few minutes, but stayed on and talked with the medical orderlies.

Q At that time did you check with anybody as to the treatment given Hall?
A The medical orderly that I talked to told me that Miyatake walked over to the bed of Private Hall. Miyatake then gave the order for Hall to stand to attention. Hall was unconscious. Miyatake then, according to the medical orderly, kicked Hall in the legs very severely; also about the lower abdomen and body.

Q Do you recall the names of these orderlies?
A Yes.

Q What were the names?
A Chief Petty Officer Flynne, L. .B.A. McGreen, Medical Orderly Joseph Denton, Medical Orderly, an Australian by the name of Burns (ph).

Q Were these medical orderlies all prisoners of war?
A Yes, they were all prisoners of war.

Q Did they make any report to you of any medical attention being given to Private Hall by Lieutenant Miyatake?
A They gave me no knowledge or they told me that no medical attention was given to Hall by Miyatake personally.

Q Do you know how long Private Hall lived after he was alleged to have been beaten by Lieutenant Miyatake?
A I believe that Hall lived about one and a half hours or two hours after the beating.

Q You do know that Private W. R. Hall died that same night; is that true, Colonel?
A I am absolutely positive that Hall died the same evening.

Q What is the basis of this belief of yours?
A In the first place I saw the body of Hall after his death.

Q At what time is this?
A This is before midnight of that same night.

Q Colonel Flinion, you have stated that Lieutenant Miyatake was the only Japanese Medical Officer in the Camp; was he assisted by any other Japanese in the medical administration of the camp?
A There was one Japanese NCO and one Japanese Private also on duty at the camp hospital.

Q Do you know whether or not Lieutenant Miyatake personally conducted sick call for the prisoners of war?

A Over the entire period of time that Miyatake was in Kobe Camp I have never personally seen him conduct sick call.

Q Who did conduct the sick calls?

A Occasionally the Japanese medical sergeant would conduct sick call but usually, probably 75% of the time, the Japanese private would hold the sick parade.

Q Do you know who had charge of the medical supplies at Kobe Branch Prisoner of War Camp during the period 10 June 1943 to 31 August 1943?

A Well, Miyatake had complete charge of the medical supplies in Kobe Camp.

Q Were medical supplies available for prisoners of war at Kobe Branch Prisoner of War Camp during the period 10 June 1943 and 31 August 1943?

A I personally saw quite a few or quite a large amount of Japanese medical supplies for the prisoners of war; however, the issue to the hospital for daily use was so small that it would do little or no good.

Q What was the issue, do you know?

A No, I am not in any position to know what the issue was.

Q Did you ever make any investigation of the medical administration of the Kobe Branch Prisoner of War Camp?

A Yes, I investigated the reason or I should say I investigated why we were not getting the supplies which were supposed to come to us as prisoners of war.

DEFENSE: The defense objects to that answer unless the prosecution and the witness will be a little bit definite as to dates because the colonel was there for a long time and the accused was there only for two and a half months. If the Colonel will state he made the investigation while the accused was in the camp we will withdraw our objection.

PROSECUTION: I will add, "to include 10 June 1943 and 31 August 1943".

A I am afraid I cannot answer that because I do not have dates.

Q Did you make an investigation at any time that you definitely remember when Lieutenant Miyatake was in camp?

DEFENSE: I object to that. I believe the witness answered and heard our objection and he said "I can't give dates". I think we are just repeating the same question.

PROSECUTION: I submit that the question is still proper. We added as to what dates. I submit that that incident or alleged incident would have taken place back in 1943 - this is now January, 1947. It is quite possible for a man not to remember exact dates and be able to state exact dates; however, he may remember an incident and by association be able to testify. For instance, he may be able to remember during a time the accused was there he did make an investigation whereas he might not be able to state it was a particular date.

LAW MEMBER: Suppose you rephrase the question so as to allow the witness to make a definite reply as to whether or not it was during a time that Miyatake was there.

PROSECUTION: I believe that - - -

LAW MEMBER: The Defense seems to object.

DEFENSE: We withdraw the objection; let him answer. If he says it was at a time Miyatake was there it is the same as saying it was between those two dates.

PROSECUTION: Yes; I mean that it is understood when Miyatake was stationed at Kobe Camp.

A There is only one thing I can say definitely in answer to that. At the time of Hall's death, Captain Boyce requested some medicine - I don't think I know the name of it - I can't think of it, it is some technical name - through me and through Captain Houghton we sent a request to Miyatake for the issuing of that medicine. Sergeant Usui, the Japanese-sergeant - medical sergeant, told Captain Boyce that this medicine which he wanted was available. The only thing that I can say is that I found out after Hall's death that they did have that particular medicine.

DEFENSE: We would like to object to that and ask it be stricken. It isn't responsive to the question asked which was did he make an investigation and until the question has been answered, it certainly implies a great deal. It is too indefinite. We don't know the name of the medicine or anything else and the witness has not stated either that the medicine requested was to treat Hall but the inference left is it was requested for him. I move to strike the answer as unresponsive.

PROSECUTION: It will be cleared up by further questions. It is not exactly responsive and I suggest the Commission disregard it.

LAW MEMBER: It will be stricken; rephrase your question on that.

Q Colonel Flinim, the question is: at any time during the time that Lieutenant Miyatake was stationed at Kobe Camp did you make an investigation into the medical administration of Kobe Branch Prisoner of War Camp?

A As to the administration of the Medical Section of Kobe Camp I did not make an investigation during that period; I knew the medical setup of Kobe Camp during that period. No investigation was needed.

DEFENSE: I move to strike the last part of that; it isn't responsive. May I say we are not making these to open things up but when a question is asked to which a definite answer can be given and the answer is given the prosecutor, we believe, ought to ask another question. If the witness is narrating something that has happened, that is all right - -

PROSECUTION: Technically the last portion wasn't responsive to the question. I agree with the defense counsel it can be stricken.

LAW MEMBER: The reporter inquired to strike it from the record.

Q How did you know about the medical administration of the Kobe Camp?
A Having been in Kobe Camp since it was first started and being without a medical officer at all up until the time Miyatake arrived, the entire medical staff was run by a sergeant and one and sometimes two privates.

Q Was that administration changed in any respect when Lieutenant Miyatake arrived at Kobe Camp?
A Lieutenant Miyatake, upon his arrival, presumably by many was the head of the medical department. However, he did not hold sick parades, he did not treat the sick, and he did not pay any attention whatsoever to the welfare of the hospital.

DEFENSE: We ask all that be stricken as not responsive to the question. It is just a voluntary statement.

PROSECUTION: The question can be answered yes or no.

Q Did it change during the time Lieutenant Miyatake came? Your previous answer was it was run by a sergeant. Now, at the time that Miyatake came was it changed?
A I cannot answer that question with a straight yes or no answer.

Q Will you describe to this Commission how medical attention was given to the sick prisoners of war from the time Lieutenant Miyatake arrived at Kobe Branch Prisoner of War Camp? That is, you actually saw the sick prisoners - what medicine - what was the regular procedure so that this Commission can have a picture of the way the prisoners of war were treated in Kobe Branch Prisoner of War Camp during the time Lieutenant Miyatake was there.
A The Japanese sergeant or the Japanese private held the sick call. Sick call was held after the men returned from the work places each evening. The procedure is as follows: the man going sick would come to the hospital and would report to one of the medical orderlies with his complaints. They would then be taken to the side and would have to wait until the entire sick call was completed. Usually the complaints at the sick call would take about one hour. The Japanese medical orderlies would then line up all men that went on sick call in two ranks. Sometimes it was necessary for four ranks. He would then march these sick men back and forth in the room. He would do that giving them numbers in Japanese, then halt them and then he would pick at random the men that were to be allowed to stay in from work the next day. Many times the sicker men were not allowed to stay in because of his method of choosing them as he saw fit. Only a certain number were allowed to stay in no matter how many sick men we had and there still could be only a certain number of men allowed in.

Q Do you know how many sick men were allowed to stay in?
A Fifteen men of the entire camp of seven hundred were allowed to stay in from work for any one day.

Q How do you know that only fifteen men were allowed to stay in camp in any one day?
A That order was given to Captain Naughton and myself by Lieutenant Miyatake to pass that order on to Captain Noyes.

Q Who was Captain Bayne?
A Captain Bayne was the Australian medical officer present at that time.

Q What happened to the men seriously ill who numbered more than fifteen?
A They were forced out to work - - they had to go. Many times I have seen their buddies carry them to work but they went to work.

DEFENSE: We object to the last question unless the witness will make it definite as to dates to link it up with the accused. We ask the Commission to make this ruling because the witness was present in this camp for many years here and the accused for only two and a half months. Things may have been different in the years he was there so that unless it can be pinned down to this accused we object to it.

LAW MEMBER: I agree with the defense. Phrase the question so that the answer can be pinned to the accused.

Q You stated an order was issued by Lieutenant Miyatake that only fifteen men were to be allowed to remain in camp any one day; is that true?
A That is right.

Q Was Lieutenant Miyatake on duty at Kobe Camp at the time he issued that order?
A Yes, he was the Japanese medical officer present during that period.

Q Was that order followed at Kobe Branch Prisoner of War Camp during the time Lieutenant Miyatake was medical officer?
A Yes, it was during the period that Lieutenant Miyatake was present as medical officer of the camp.

Q During the time that Lieutenant Miyatake was medical officer at Kobe Branch Prisoner of War Camp what happened to those sick men who numbered more than fifteen on any one day?

DEFENSE: We object to that question. It assumes that at some time there were - - - let the witness state if he can remember whether or not at any time there were more sick men than fifteen.

PROSECUTION: I will withdraw the question and ask the question suggested by the defense.

Q During the time Lieutenant Miyatake was medical officer in charge of Kobe Prisoner of War Camp was there any time that the sick number of prisoners of war numbered more than fifteen?
A During the period that Lieutenant Miyatake was medical officer at Kobe Camp there were many days that there were more than fifteen sick men. Sometimes there were as many as seventy-five men that should have been kept in.

Q Do you remember any dates of these times?
A I don't know any specific date.

Q Do you know the average numerical strength of Hoko Prisoner of War Camp during the time Lieutenant Miyatake was medical officer there?

A Yes; at that time there were 6[illegible] men in Hoko Prisoner of War Camp.

Q During the time Lieutenant Miyatake was medical officer at Hoko Branch Prisoner of War Camp what happened to the number of sick prisoners that numbered more than fifteen?

A During that period that Miyatake was medical officer of the camp and there were more than fifteen sick prisoners, all over fifteen went to work.

Q Did you yourself personally see sick prisoners go to work during the time that Lieutenant Miyatake was medical officer at Hoko Prisoner of War Camp?

A Yes; I personally saw sick prisoners going to work at their respective working places.

Q Was transportation furnished for the sick prisoners to be taken to work?

A No; there was no transportation of any kind furnished the sick prisoners on their way to work or coming home from work.

Q How do you know that these were sick prisoners that you saw going to work?

A Some of them were very obviously very ill. In the first place, I usually attended the sick parade and I would see them at the sick parade the evening before - they were refused to stay in so that they went to work the next morning.

DEFENSE: I move to strike the answer because the mere fact that the witness states the men were obviously sick does not state how he knew the men was sick. The fact that they were refused permission to stay in does not mean he was sick.

PROSECUTION: The defense is anticipating a lot of the testimony. If the defense will give the prosecution opportunity to bring that out. I suggest the prosecution be given the chance to at least bring that out. Now, we haven't been given that chance. The prosecution cannot anticipate the answers. If they come up and don't specifically apply to the accused we will try to bring them home to the accused. If we can't, that will be disregarded by the Commission.

DEFENSE: The question was how does he know these men were sick. If that answer is the full reply he is going to make, we don't think it is responsive at all. If he is going to tell us there were other ways he knew they were sick —

LAW MEMBER: The motion is denied; continue.

Q Other than these sick prisoners were at sick call in the evening and morning, how did you know that these prisoners were sick?

A I have personally, during the period that Miyatake was in camp, seen sick prisoners being carried on the backs of other men out to the working places. I personally saw that. If a man was being carried, he was obviously sick. I have seen the same prisoners carried out to work; I have seen them carried back from work - still sick.

Q Is there any other way that you could tell they were sick?
A No, I believe that is the best way - - -

DEFENSE: I move to strike everything after "No"; it is mere speculation.

LAW MEMBER: It is so ordered.

Q Was the sight of a prisoner of war being carried to and from work a common sight at Kobe Prisoner of War Camp while Lieutenant Miyatake was medical officer there?
A Yes, while Lieutenant Miyatake was the medical officer at Kobe Branch Prisoner of War Camp there was probably never a day while he was there that there wasn't someone carried or helped to their working place.

Q How was the issuance of medical supplies at Kobe Camp handled while Lieutenant Miyatake was on duty at Kobe Camp?
A During the period that Miyatake was medical officer at Kobe Camp the issuance of medical supplies was usually carried out by the medical private of the Japanese going to the storeroom and bringing back the daily allotment of the supplies.

Q Who had charge of that storeroom?
A Lieutenant Miyatake was in charge of the storeroom while he was there at Kobe Camp.

Q Who made the request of the sergeant for the medicines to be used for treating the sick prisoners of war during Miyatake's term at Kobe Camp?
A During the period Miyatake was present in the camp, Captain Boyce, the Australian medical officer present, would usually make the request for the medical supplies.

Q Do you know of any time that Captain Hayes made a request for medicines which request was denied by Lieutenant Miyatake?

A Yes, I know one particular case. Going back to the Hall incident - Captain Hayes made a request for medicines and for bandage for the treatment of Hall. The request was refused.

Q Who refused that request?

A Lieutenant Miyatake refused the request.

Q Will you state to this Commission how you knew that request was made and refused?

A Captain Hayes made that request through the prisoner of war officer, which was Captain Naughton, and myself. That request was taken down to Lieutenant Miyatake by Captain Naughton. Captain Naughton came back within five minutes and said that Miyatake had refused the request for medicines and bandage.

PRESIDENT: The Commission will take a recess for ten minutes.

The Commission then recessed from 1450 hours to 1500 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the prosecution:

Q Colonel Flinton, during the period that Lieutenant Miyatake was stationed at Kobe Branch Prisoner of War Camp what were the regular hours of tenko or roll call?

A We had two regular tenkos per day in Kobe - one in the morning, varying in the time - in summer time it was 5:00 and in the winter it was at 6:00. The second tenko was in the evening at 8:00.

Q During the time that Lieutenant Miyatake was at Kobe Camp were there ever any other tenkos rather than the regular tenkos which you have just testified to?

A Yes; during the time that Lieutenant Miyatake was in Kobe Camp, when he was orderly officer he would have special tenkos at his own convenience, usually at about two or three o'clock in the morning.

Q Do you know how these tenkos were conducted?

A Yes; Lieutenant Miyatake would notify Captain Naughton and myself and Corporal Noblett, the interpreter, that there was to be a special tenko. We would have to go around and arouse all the men to stand formation while Lieutenant Miyatake had this roll call.

Q How long would the average tenko last?

A These tenkos held in the early morning hours would usually last at least one hour and on one or two occasions lasted two hours.

Q Was there any other detail to these tenkos other than the mere calling of the men's names?

A The things which Miyatake would do on the tenkos, all the men as he came up to the respective sections would count off in Japanese and then Miyatake would go down the line checking every little point such as buttons unbuttoned on their blouses, not standing at proper attention, and things of that nature. Usually there was an awful lot of slapping and beating that took place at one of these tenkos.

Q How do you distinguish a slapping from a beating?

A A slapping to me meant one slap or two slaps on the face with the open hand; a beating is with the fists or club or sword scabbard and beating the man for over a period of time.

Q Do you know the names of any prisoners of war beaten during one of these tenkos conducted by Lieutenant Miyatake?

A Yes, I can name several people that received one of these beatings, namely, Master Sergeant Lefty Lucas, Private Morris, Warrant Officer Brown of the British Army, Private Whittaker of the British Army; that is all.

Q Were there any other prisoners of war beaten at one of these tenkos by Lieutenant Miyatake whose name you cannot now recall?

A Yes; I personally saw at one of those times where Section 15 of Kobe House which consisted of fifty-two men under the leadership of Servant Officer Harvey, all stand to attention for one and a half hours after the rest of the camp went to bed. The entire section of fifty-two men was beaten by Miyatake.

Q Approximately how often was Lieutenant Miyatake duty officer during the time he was stationed at Kobe Camp?

A He was duty officer while at Kobe Camp about once a week.

Q Were such late evening and early morning tenkos conducted by other members of the Japanese staff when they were duty officer during the time Lieutenant Miyatake was at Kobe Camp?

A Other than the late tenkos which Miyatake would hold there was only one other late tenko ever held and that was the pay sergeant - I don't know his name at the present time.

Q So it wasn't ordinary practice to hold late evening tenkos or early tenkos at Kobe Camp?

DEFENSE: We object to that question as a leading question and repetitious. It is a leading question and should never be allowed on direct examination.

PROSECUTION: I withdraw the question.

Q Were late evening tenkos and early morning tenkos the usual practice at Kobe Camp?

DEFENSE: We would like to object to that, too, for this reason. This witness testified this man was duty officer once a week approximately. That means about twelve times he was duty officer. Now these were unusual affairs. We don't need evidence or a question for something indefinite - something extending over a long period of time. He can't say definitely the reason this man had late roll calls.

PROSECUTION: That isn't the only thing material before this Commission. We contend that Miyatake was the only one who conducted roll calls and that they were unusual and only carried on by Miyatake with exception of one tenko carried on by a so-called pay sergeant. If they were unusual things, then they were matters of aggravation and I think this Commission is entitled to know whether such a thing was a common ordinary thing.

LAW MEMBER: I think the prosecution has already brought out that to the satisfaction of the Commission. The objection of the defense is sustained.

Q Will you describe for the Commission the sleeping quarters of the prisoners of war at Kobe Camp?

DEFENSE: We object to that on the ground it is irrelevant. This man isn't charged with having any responsibility for sleeping quarters. I can see the relevancy of asking about the roll calls late at night, all right, but I can't

see the relevancy of describing the sleeping quarters. It has nothing to do with this accused and nothing to do with this specification.

PROSECUTION: I submit this is a matter of aggravation. It is one thing to disturb the slumber of men who had adequate quarters but it is another thing to disturb the slumber of men who do not have adequate quarters. We do have entered here affidavits which say they were thus and so - in others they say it was bad. Here we have the opportunity of getting it from a live witness. We can find out just how bad they were and if these conditions were aggravated by the accused and I contend if these quarters were inadequate then it was an aggravated offense for this accused to conduct such trades as he did.

LAW MEMBER: The objection of the defense is not sustained. However, add to the phrase "during the time of Lieutenant Miyatake".

PROSECUTION: Yes, sir.

Q Will you describe for this Commission the sleeping quarters of the prisoners of war at Naka Branch Prisoner of War Camp during the time Lieutenant Miyatake was stationed at Naka Branch Prisoner of War Camp?

A Each man had approximately twenty-four inches width of his bed and six feet in length. They slept on mats - straw mats and on some of the floor they had some straw nothing underneath them; other floors decided they would rather sleep on the boards than to run the chance of the vermin that got into the straw. It wasn't adequate room for a peaceful sleep and the added tension just aggravated the sleep of the people.

Q Where were these quarters located?

A Our barracks consisted of two three story brick buildings, each building having a small floor you might say at the top where there were a few of the men quartered. Each floor held over one hundred men and in one of the buildings in the roof was housed twenty-one civilians of all nationalities.

Q What was the general health condition of the prisoners of war at Naka Branch Prisoner of War Camp at the time Lieutenant Miyatake was stationed there?

A Practically all the prisoners of war in Naka Camp that were there at the time Lieutenant Miyatake was present suffered from malnutrition, beriberi, acute diarrhea and dysentery.

Q Going back to the tenko, I would like to ask one more question; do you remember whether or not any tenkos were held at Naka Prisoner of War Camp in the month of August, specifically between 8 August 1943 and 16 August 1943, by Lieutenant Miyatake?

A The night of August 12th, Lieutenant Miyatake held an early morning tenko.

Q Do you know of any other tenkos held during that period?

A That is the only one I know of that would be out of ordinary.

PRESIDENT: The Commission will adjourn until 0900 hours tomorrow morning.

The Commission then at 1530 hours, 22 January 1947, adjourned to reconvene at 0900 hours, 23 January 1947.

John P. Langhma

JOHN P. LANGHMA
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
23 January 1947

The Commission met pursuant to adjournment at 0900 hours, all the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case being present, except the Court Interpreters. Mr. Torasu Fukuhara and Mr. Totsuo Nakasawa were sworn as Court Interpreters.

PRESIDENT: The Commission will be in order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the Prosecution:

Q Colonel Flinian, are you acquainted with the location of Headquarters Prisoner of War Camp in the Osaka Area, Honshu, Japan, as it existed between November 1, 1943 and 1 January 1944?
A Yes, I am acquainted with the Headquarters Camp of the Osaka District, Honshu, Japan.

Q Where was Chikko Camp located?
A Chikko camp was the same camp as the Headquarters Camp, the only difference being that Chikko was used more or less as the work camp.

Q Do you know the location of Hoincho Camp?
A Yes, I know the location of Hoincho Camp.

Q Where was that camp located?
A Hoincho Camp was located in the City of Osaka and was within a very short or near distance to the Chikko Camp.

Q Were Hoincho Camp and Chikko Camp regarded as one administrative camp?

DEFENSE: The Defense objects to that question on the ground it is incompetent, irrelevant and immaterial and it is absolutely irrelevant to the issue in this case. We ask that the prosecution make an offer of proof as to why he is bringing in all these different camps in asking for their locations, etc., because this accused is charged with specific acts occurring in two camps and we fail to see the relevancy of these other camps. He is not charged with command authority of a great many camps and we don't see its relevancy and ask it be stricken and the prosecutor be directed to give an offer of proof showing what bearing it has in this case.

PROSECUTION: The prosecution submits that specifications 12, 13, and 14 allege certain acts as having taken place in Headquarters Camp, Osaka Area, and the prosecution is attempting to show at this time the fact that Headquarters Camp was composed of two camps within itself, one known as Naimsho and one known as Chikko. Chikko was the same as Headquarters Camp - Naimsho was the same as Headquarters Camp. The term "Headquarters Camp" took in the administrative work of the two camps. Naimsho and Chikko, although separated by a distance were actually one prisoner of war camp. As such that is material because the prosecution will introduce affidavits with both Chikko Headquarters and Naimsho in the various affidavits. We believe for that reason this testimony at this time is material unless the defense is willing to state on the record that Headquarters Camp comprised Naimsho and Chikko administratively.

DEFENSE: Then what is the meaning of the term "Osaka Headquarters Camp"? Is that also the same camp?

PROSECUTION: If the defense will take the prosecution's statement for the record and for the benefit of the Commission I will state briefly just what the Osaka Area was. I have read reports on this and if it is agreeable to the Defense - - -

DEFENSE: We will withdraw our objection in view of the explanation and let the witness testify; is that satisfactory?

PROSECUTION: That is satisfactory.

DEFENSE: It is, but I think it will be clearer to us - - you stated it was known as the term "Osaka Main Camp" and then the Kobe Camp as I understand it was a branch working camp and now if the camps you have referred to are one and the same thing and closely adjoined and all known as Osaka Camp that clears it up in our mind. If these are the facts - - -

PROSECUTION: I would like to ask for a short recess to talk with the Defense.

PRESIDENT: We will recess for about five minutes.

The Commission then recessed from 0910 hours to 0915 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

PROSECUTION: At this time we wish to inform the Commission that the prosecution and the defense hereby stipulate that between November 1, 1943 and January 1, 1944, the Osaka Prisoner of War Area roughly contained this setup: there were approximately twenty-six prisoner of war camps in the area, which area was commanded by Lieutenant Colonel Maruta; also included in the area were approximately three prisoner of war hospital camps; that the main camp was located in the

City of Cooks. It contained administratively, two camps. One camp was known as the Meinsho Camp, which was the headquarters, the second camp or work camp was known as the Chikko Camp. Chikko was separated from Meinsho by approximately one hundred yards; they were both part of the Main Camp or Headquarters Camp; is that correct?

DEFENSE: That is correct.

PROSECUTION: In view of that, the prosecution has no further questions to ask this witness.

CROSS EXAMINATION

Questions by the Defense:

Q You testified as regards the incident alleged in the first specification and you stated on direct examination that Lieutenant Miyatake entered the kitchen in which Sergeant Burbridge was eating and that conversation took place and Miyatake ordered Burbridge to the guardroom.

LAW MEMBER: I suggest you make this a little more simple.

DEFENSE: I will withdraw that in its entirety.

Q Were you present in the kitchen when Miyatake had conversation with Burbridge?

A I was not present in the kitchen at that time.

Q So that whatever happened and whatever conversation took place you only knew by hearsay; is that correct?

A That is correct.

Q You stated that as a result of this beating, Sergeant Burbridge's ear was 'almost hanging off; did you actually see his ear personally severed from his head?

A I personally saw Sergeant Burbridge's ear; the upper part of the ear was not severed but hanging by pieces of flesh.

Q It is true, however, that there was no permanent injury to that ear, isn't it?

A It only left a bad scar; it did not impair his hearing.

Q How did you know that Sergeant Burbridge had two ribs broken?

A I was told that Sergeant Burbridge had two ribs broken by Dr. Clive Bayne, the Australian medical officer present; also by the orderlies of the hospital and I was present when Sergeant Burbridge had his ribs and chest taped up.

Q Can you explain to this Commission why Sergeant Burbridge himself, in a long

statement he made, did not mention that he had two broken ribs and did not mention that his ear was almost hanging off?

PROSECUTION: We object to that question; i.e. witness would have no way of knowing what Rutledge's state of mind was when the affidavit was taken. We don't know under what circumstances it was taken.

DEFENSE: Well, we believe the question is very pertinent and now the prosecution makes the same objection we made right along to all this affidavit testimony which has been introduced. We believe it is of extreme probative value to this Commission to have this witness explain, if he can, why the witness does not make mention of these aggravating circumstances which were witnessed by this witness - and I am referring to Exhibit No. 3 already before this Commission.

PROSECUTION: No. 3 speaks for itself - it plainly shows where it was taken and as long as this witness was not present and there is no indication that anybody made a report to him about it at the camp, therefore he cannot make testimony about it. The statement does not even show where it was taken. Now, if it were taken in Colonel Flinlan's presence then I think it is entirely proper for this witness to testify on cross examination how it was taken, but as long as there is no showing that Colonel Flinlan was present, no showing or evidence that he received any report about it while in camp as to how it was taken, therefore he can have no knowledge of it whatsoever.

LAW MEMBER: Does the defense desire to ask the witness whether or not he was present at the time this was taken, then follow it up?

DEFENSE: In view of the objection we will withdraw the question.

Q Colonel, why did Miyatake call you and Captain Naughton down to the guardroom at the time he had Sergeant Rutledge down there?

A It was usually the custom whenever a beating took place by the Japanese to always call Captain Naughton and Corporal Nobletts, the camp interpreter, and myself. Why they did this, I don't know, so far as calling me down. The reason that they called Captain Naughton and Corporal Nobletts was this: Corporal Nobletts was the interpreter, Captain Naughton was the Japanese representative, being camp commander.

Q So Lieutenant Miyatake called you, the senior officer, and the commanding officer, and the interpreter down in order that you would be present when he made an investigation of this alleged offense; that is correct, isn't it?

A As I previously said, Corporal Nobletts was called for one reason, to interpret; Captain Naughton was called because he was camp commander. Why he called me, I don't know. As far as me being present at any investigation that Miyatake made it would never make any difference as to what we said, it would never change his mind as to the beating the prisoner of war was to get.

DEFENSE: I ask the Commission to instruct this witness to answer the question put to him. We are handicapped here because of the necessity of interpreting all these questions and the last part of that answer is entirely gratuitous. It was a voluntary statement made by this witness and is highly

prejudicial. I think the Commission should disregard it - it wasn't responsive. We are handicapped here and we don't want to object to it.

LAW MEMBER: I suggest to the defense that you make the questions a little more simple, short, and direct on account of the fact that they have to pass through the interpreter.

Q Did Miyatake ask Burbridge any questions?
A No.

Q Did Burbridge answer those questions through the interpreter?
A No.

Q Did those questions relate to the purported breach of rules - the alleged breach of rules on the part of Burbridge?
A No.

Q So that Miyatake actually did investigate the affrancy is that true?
A No.

Q Did you accompany Burbridge to his sleeping quarters after the beating?
A No.

Q How long did you remain there with him?
A I remained with Sergeant Burbridge until I took him over to the hospital for treatment - approximately between twenty and thirty minutes.

Q Was there a rule against officers sleeping in the day time?
A No.

Q If an officer was sick was it customary for him to go on sick call?
A No.

Q Do you know if Captain Wooden went on sick call?
A I don't know.

Q Do you know if Lieutenant Baird went on sick call?
A Yes, Lieutenant Baird had been on sick call.

Q Are you positive that Lieutenant Baird was on sick call on the date that he was alleged to have been beaten by Hiyatsuka?
A I am not positive as to whether he was on sick call on that date or not.

Q If these two officers were sleeping and had not been on sick call, they were violating a rule of the camp; is that correct?
A Yes.

Q On the night that Hiyatsuka lined up all the officers, why were you called down?
A I was called down for two reasons. First, because I was the senior American officer present in the camp; second, because Hiyatsuka wanted me to plead with the officers and enlisted men for one of them to confess to putting the ash in the spittoon.

Q Was Captain Naughton there?
A Captain Naughton was also present.

Q Was the interpreter present?
A Yes, he was also present.

Q Did Miyatake ask questions?
A He asked no one question.

Q Did Miyatake direct you to question these officers as to who had put the ash in the spittoon?
A Yes.

Q Did you do so?
A Yes.

Q Did the interpreter also question the officers?
A No.

Q Was it a breach of the rules to have ashes in this particular spittoon at that time?
A Yes.

Q Did Miyatake strike you at that time?
A No.

Q Did Miyatake strike Naughton at that time?
A No.

Q Did he strike Schlott, the interpreter?
A No.

Q Describe this glaring light that is mentioned in the specification.
A The glaring light was located in an open front guardroom. This light at that time had no shade or cover over it. The officers and enlisted men were standing directly in front of the guardroom.

Q Was that light always there?
A Yes.

Q It was lit every night, was it not?
A Yes.

Q Do you know exactly how strong this electric light was - I mean in terms of watts, for example?
A No.

Q Did anybody else take part in this beating of these officers?
A Yes.

Q Who also participated?
A The corporal of the guard also participated.

Q Did you personally see Miyatake strike each officer?
A Yes.

Q Was Lieutenant Cotton one of the officers present?
A No.

Q Can you explain to the Commission why Lieutenant Cotton in his affidavit states that many of the officers were beaten in this fashion but does not state that all the officers were beaten?

PROSECUTION: We object to the question that is being asked; this witness can't possibly know.

LAW MEMBER: Sustained.

Q You have stated on direct examination that Lieutenant Cotton was hospitalized; is that correct?
A No.

Q Can you explain to the Commission why Lieutenant Cotton makes no mention of that and states no permanent injury resulted?

PROSECUTION: We object to the question; this witness can't tell us what was in the mind of Lieutenant Cotton when he made this affidavit in the United States.

LAW MEMBER: The objection is sustained.

Q Did you hear Miyatake order Captain Weedon and Lieutenant Baird to hold a pail of water over their heads?
A No.

Q Do you know whether one of the guards actually gave this order or whether it was Miyatake who gave it?
A I don't know.

Q How do you know that Lieutenant Miyatake ordered that the officers scrub the streets?
A The corporal of the guard then on duty and one other member of the guards told me that Miyatake gave the order.

Q Can you give this Commission any reason why this particular incident should not be mentioned in any of the affidavits of the victims?

PROSECUTION: Objection; this witness could not possibly know that.

LAW MEMBER: Sustained.

Q You stated on direct examination that Miyatake began to beat Core for no reason at all; were you present when he began to beat him?
A No.

Q What was the basis for your statement?
A Warrant Officer Gore told me as well as members of his work party that they did not know why Miyatake set upon Gore.

Q What was Captain Boyce's duty at this camp?
A Captain Boyce was the medical officer of the camp.

Q Did he spend the whole day at the camp hospital treating patients - prisoner of war patients?
A Is that during this period?

Q Yes.
A Yes.

Q Was Miyatake on duty everyday at Kobe Camp?
A I don't know.

Q Miyatake was the supervisor of Captain Boyce's activities, isn't that true?
A Yes.

Q Boyce was in charge of giving the actual treatment to prisoners; is that right?
A Yes.

Q When Hall was brought up to the hospital did you hear Miyatake order Boyce not to touch him?
A Yes.

Q Did he speak in English?
A Yes.

Q Are you positively certain that Miyatake might not have said, "Do not move him"?
A He said, "Do not touch him".

Q Was it Captain Boyce's understanding that he was not to have anything to do with Hall as a result of that order?
A Yes.

Q And that was your understanding?
A Yes.

Q Can you give any reason for such an order?
A No.

Q It was the normal procedure for Captain Boyce to treat sick patients, was it not?
A Yes.

Q So that this was a most unusual order; is that true?
A Yes.

Q Did Miyatake ever order Boyce not to treat any other sick patient there?
A I don't know.

Q Hall, how soon after?
A It was the same evening, I should say approximately 8:30.

Q You stated that the day after Hall was brought in you were positive that Miyatake did not visit Hall; were you in the hospital at all times on the next day?
A No.

Q Then how can you be positive that Miyatake never saw Hall?
A I was told that by Captain Royce and by the medical orderlies.

Q It is possible, however, that Miyatake might have been there, is it not?

PROSECUTION: I object to the defense arguing with the witness. He has asked the question and the witness has given his answer, and the defense can reserve his argument for the proper time and this cross-examination is no time.

DEFENSE: The witness has stated he is positive. He has given as the basis of that answer a mere hearsay report. Now, I want the witness to add to his previous statement to show that he isn't positive because he might have been there.

PROSECUTION: The defense cannot try to make this witness' testimony what they would like to have it. The purpose of cross-examination is to get at

Q Was Miyatake particular about his orders being obeyed?
A Yes.

Q You stated on direct examination that he never changed this order; is that correct?
A Yes.

Q You also stated that Captain Boyce did treat Hall, did you not?
A Yes.

Q Did Miyatake punish Boyce for disobeying that order?
A No.

Q When you were present when Hall was brought up there did you see Miyatake treat him in any way?
A No.

Q How long were you there at that time?
A I was there about fifteen minutes.

Q You stated on direct examination that the next day Captain Boyce made a minor inspection of Hall; what do you mean by a minor inspection?
A By minor inspection I mean that Mr. Boyce checked the abrasions on his hands; also he made a cursory examination of his body to find out if there were any broken bones.

Q Did Captain Boyce ask Miyatake to send Hall to the hospital?
A Yes.

Q Did he ask him that as soon as they brought Hall in?
A No, not immediately.

the truth as that witness knows it. Now, they asked their questions and if the answer is responsive to the question that ends it. We cannot argue with the witness.

LAW MEMBER: The objection is sustained.

Q Did Higutaki give any medical treatment to Hall?
A Higutaki gave no personal medical treatment to Hall.

Q Did Higutaki make a diagnosis of the case?
A To my knowledge he did not.

Q Did Higutaki prescribe any treatment for Hall?
A Higutaki prescribed that Dr. Hayes or the medical orderlies use to give Hall an injection, I think of glucose - I am not positive but it is in Dr. Hayes's report.

Q When did Higutaki prescribe that?
A I don't know when that was.

Q Do you know what the name of this particular medicine was that Captain Hayes wanted?
A No.

Q Can you describe it in any way?
A No.

Q Do you know whether it was a medicine to take internally or something to be applied to the wounds?
A I don't know.

Q Did Captain Hayes tell you what it was supposed to do for the patient?
A No, he did not.

Q Did Captain Hayes say that it would cure Hall?
A No.

Q Where was this hospital that Hayes wanted Hall to be taken to?
A There was supposed to be two Japanese military hospitals; one, I think in Kobe and I am positive there was one in Osaka.

Q Do you know how prisoner patients were transported from the camp to the hospital?
A I have seen patients transported by trucks and also by pleasure cars - taxis.

Q Was there an ambulance there in the camp?
A No.

Q Was there any X-ray equipment in this camp hospital?
A In the prisoner of war hospital?

Q In the prisoner of war hospital at Kobe.
A No.

Q Do you know if there was any X-ray equipment in the hospital in Osaka?
A I don't know.

Q Did Hall ever regain consciousness?
A No.

Q Did Bayes tell you what the cause of his death was - the actual cause of his death?
A Bayes told me what the cause was in technical phraseology but I cannot remember.

Q Did he tell you it was the injury to his head which caused him to die?
A No.

Q Did Bayes tell you that if Hall had been taken to a hospital his life would have been saved?
A No.

Q How many prisoners of war were in the hospital at Kobe as patients at the time Hall was sick?
A I would say that there were eight or ten patients.

Q Are you certain that the number of prisoners allowed to remain in the camp as sick was limited to fifteen?
A Yes; I am positive.

Q Did that include hospital patients and those in quarters?
A That included - - the fifteen were the men not as hospital patients but were barracks sick.

Q How many prisoners were allowed to be sick in the hospital?
A The number of prisoners allowed to be sick in the hospital varied, but I would say that there were about a ten or twelve limit.

Q You don't know definitely of any limit to the number of patients allowed in the hospital, do you?
A I know definitely there was a limit to the number of patients allowed in the hospital.

Q What was that limit?
A I don't know.

Q You stated on direct examination that the issuing of medical supplies - that the amount was so small that it did no good; do you know what the issue was?
A I can give you the figures - - -

DEFENSE: I move the witness - -

PROSECUTION: I submit that is responsive to the question.

DEFENSE: I withdraw the question.

PROSECUTION: The defense cannot argue. If he asks a question he is bound by the answer.

DEFENSE: Let him go ahead.

A (Cont'd) I can give you figures on a drug or medicine which is commonly known to the Australians and British as M & B Tablets. A daily issue of M & B Tablets to the prisoners in Kobe Camp was thirty tablets.

Q What were these tablets used for?
A M & B were used for dysentery and diarrhea.

Q Would Captain Hayes be in a better position than you to say whether the medical supplies were adequate?
A Yes.

Q Can you tell us how many times the accused made a surprise tenko?
A He made five surprise tenkos.

Q At what time did he tell you of his intention to have a tenko?
A He would be told in the office about ten minutes before the tenko would actually happen.

Q Do you know whether or not these tenkos were ordered by any superior of Miyatake?
A I don't know.

Q Do you know whether a superior of Miyatake was responsible for the limit of fifteen men allowed to remain in camp as sick each day?
A I don't know.

Q After the 8:00 tenko was a prisoner free to go to bed?
A Yes.

Q What time was the regular morning tenko then held?
A In the summer morning tenkos were held at 5:00; in the winter, the tenko was held at 6:00.

Q Do you know of any improvements that were made by Miyatake at Kobe Camp -- improvements pertaining to sanitation?
A No.

Q Wasn't it after Miyatake got there that prisoners were allowed to take showers everyday?
A No.

Q Do you know whether Miyatake provided a dental clinic for the prisoners after he got there?
A The dentist already was there and was doing dental work.

Q Do you know whether Miyatake improved the hospital by having windows put into it?
A Windows were already in the hospital when we first moved into it in 1942.

Q I will ask if you know whether Miyatake had additional windows put in?
A To my knowledge, no additional windows were put in.

Q Do you know whether at Miyatake's suggestion a preparation was available for prisoners at all times with which they might gargle?
A I don't know.

Q Was there available to Captain Hayes each day certain medicines and appliances with which to treat the prisoners?
A Yes.

Q Were these available at all times without having to call somebody to go to a storeroom?
A No.

Q Were some medicines available at all times or were the medicines locked up at all times?
A Some medicines only were available at all times.

Q Were the things that were locked up drugs such as morphine and cocaine?
A Morphine and cocaine were locked up as well as scissors and two scalpels which we had.

Q Were ordinary drugs such as mercurochrome, iodine, aspirin available at all times for the treatment of the sick prisoners?
A Mercurochrome and iodine were available at all times; aspirin tablets were not available at all times - only at sick parades.

PRESIDENT: The Commission will take a short recess.

The Commission recessed from 1035 hours to 1045 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the defense:

Q Colonel, isn't it a fact that on some occasions the accused as O.D. when it was his duty to hold the regular 8:00 tenko sometimes held it early for the accommodation of the prisoners?
A I can't remember that Lieutenant Miyatake ever held a tenko ahead of time.

Q Did he ever hold any of the five surprise tenkos except when he was on duty as OD?
A No.

Q Did you ever witness any acts of brutality on the part of the accused other than the times when he was on duty as O.D.?
A No.

Q And were any of these so-called acts of brutality ever evidenced except when there was at least a technical breach of the rules of the camp that you yourself personally witnessed?

A In that respect I can state this: going back to the Burbridge incident the cooks and staff before Miyatake arrived in the camp and all the time that Miyatake was in the camp up to that night of the beating of Burbridge had always eaten their meal, the evening meal at that time. To our knowledge, and I was in the camp office, there was no order out from the Japanese office as to the time the cook staff was to eat their meal.

Q I notice that the Burbridge incident is Specification No. 1 and it was about July, 1943 as the time of the alleged brutality; isn't it a fact that this incident happened after the first tour of duty that the accused had as O.D. after his arrival in Kobe?

A I can't remember whether that was his first tour of duty or not, but Lieutenant Miyatake arrived in Kobe in June - I believe the first part of June; I don't know whether that was his first tour of duty or not.

Q Did you know that those surprise tenkos that were held were held on the direct order of the camp commander?

A I don't know, but I don't believe that it was an order of the camp commander because none of the other tenko officers or NCO's held these late tenkos with exception of one pay sergeant.

Q About when did you arrive at Kobe?

A I arrived in Kobe the latter part of October 1942.

Q And you had charge of the detail, as I have it, who came with you.

A Yes; there were fifty American officers and enlisted men and one American civilian who accompanied me from the Philippines to the Kobe Camp.

Q And what was the general physical condition of the prisoners and yourself when you arrived at this camp - the general physical condition?

A The fifty Americans who arrived in Kobe Camp were in a very good physical condition.

Q What was the physical condition of the Australian prisoners of whom Hall was one?

A The Australian prisoners when they arrived on 8 June 1943, their condition to us, having been at Kobe House for five or six months, looked good.

Q In your opinion, what was their actual condition?

A I think that they were in good shape physically upon arrival at Kobe House.

Q Did Hall arrive in the June 1943 shipment of Australians or was it 1942?

A Hall arrived with the 250 Australians in June, 1943; there were no Australians in Kobe House prior to that time.

Q Isn't it a fact that the gram ration was reduced in June or July of 1943 from 780 to 570 grams for the prisoners of war?

A The ration was reduced, but as to the month, I don't remember.

Q Are the dates I mentioned approximately correct?

A Yes.

Q And was not the reduction in the ration due to the fact that there just wasn't any more food to be issued under those war conditions that existed in Japan at that time?

A That probably had something to do with it; however, upon a letter which Captain Naughton, Major R. A. Campbell of the Australian Army, and myself wrote to the camp commander requesting the ration to be brought back up to the 780 grams, the answer which we received was that during the summer months prisoners of war did not have to have as much food as they did in the winter months.

Q Isn't it a fact that the daily ration of the Japanese civilian population was reduced the same time that your ration was reduced?
A At that time, so far as I was concerned personally, I was never allowed outside the camp as were the other American, British, and Australian officers, so I cannot say whether the civilians' ration was reduced at the same time.

Q Are you familiar with the prisoner of war administrative setup of the Osaka District?
A I know the staff, etc. working out of the Osaka District.

Q It consisted generally of the main administrative camp which is in evidence and such as has been agreed upon before and then this particular Kobe Camp was known as the work camp, located adjacent to the factories and to the installations where the prisoners of war from your camp were employed as laborers; is that correct?
A Yes; Kobe Camp of which I was a member of was one of approximately twenty-six camps of the Osaka Prisoner of War District.

Q And all food supplies and all medical supplies furnished the work camps such as Kobe were issued and supplied by the main Osaka administrative camp; is that not correct?
A The food supplies of Kobe Camp was picked up locally at warehouses, docks, cold storage plants, etc. The medical supplies were, I believe, brought from the main camp at Osaka.

Q Is it your impression that the food supplies was decided upon or determined upon by the Kobe Camp and not under the supervision of the main Osaka Camp?
A I think that as far as the amount of food supplied to Kobe Camp was decided upon by the main camp; the purchasing and the getting of that food was done by the Kobe Camp.

Q And Captain Morimoto, the camp commander of Kobe Camp, made requisitions for both food and medicines; is that not right?
A The request for food evidently was through Morimoto's office; however, the requisitions and requests for medical supplies came direct from the hospital, during that time made out by a private in the Japanese Medical Corps, a sergeant of the Japanese Medical Corps, and Lieutenant Miyatake.

Q And all that the accused in this case could do so far as medicines being received was to put in the request and if he received them that was fortunate and if he didn't there was nothing he could about it, was there?
A Yes.

Q In addition to servicing Kobe Camp during the period that his term covers, didn't the accused have several other camps under his supervision which he serviced in the same manner in which he serviced Kobe?
A I don't know whether he would make calls to other camps or not; if he did, they were within two miles of Kobe Camp.

Q The prevailing custom in all prisoner of war camp that you are familiar with, including the one particularly in question, was, if there were Allied medical officers present, they personally administered to the sick Allied prisoners of war, didn't they?

A Yes; if there was an Allied doctor present, he would take care of the sick through the Japanese NCO or private whichever it may be, or, if there was a Japanese officer of the Medical Corps present, he would have been consulted.

Q The way the matter was handled in Niko was that Captain Hayes went to the PW sick call, didn't he?

A That is correct; however, any prisoner of war that was, in the opinion of Dr. Hayes, too sick to go to work the next day had to appear before the Japanese sergeant or private to get permission to be absent from work the following day.

Q Captain Hayes made this initial classification as to whether the man was marked hospital, sick quarters, or duty, and because of Japanese regulations the final classification had to be passed upon by the Japanese medical personnel; was that not the system?

A That is right.

Q And the only contact that the accused in this case had with any prisoner of war was when it came to classifying him as to whether he was sick enough to remain in the hospital or remain in quarters; is that not correct?

A That is right.

Q And when a man was injured out on a work job such as Hall and he was brought back at night with the work crew it was the duty of Captain Hayes to immediately take charge of the patient; isn't that correct?

A Yes.

Q The housing facilities for the branch camps were furnished by the company or factories that used the laborers, were they not? In other words, they weren't regular camps constructed by the Army, or as our Army would normally build?

A Kobe Camp was made up of those three story brick buildings or warehouses, formerly owned and operated by a British Shipping and Storage Company. This property was turned over by the Japanese Government at the outbreak of hostilities. The men of Kobe Camp worked on twenty-two separate and distinct jobs. I don't think that the companies they worked for paid the rent on the camp which we lived in.

Q Was the camp located in the approximate vicinity of the working places where the men were in the day time?

A Yes; we were two blocks from the docks where the bulk of the men were employed.

Q Was this camp later destroyed by bombing?

A Yes, it was later destroyed by bombing.

Q The distance of the hospitals serving Kobe was mentioned by you a few minutes ago; can you tell us at this time how far it would have been necessary to have sent Hall in order to hospitalize him and give him the proper treatment he should have had?

A The Osaka military hospital was roughly a distance of eighteen miles; the Kobe hospital which was pointed out to us as being a military hospital was no more than a mile and a half.

Q What type of cases, if you know, was the Kobe hospital prepared to take care of?
A I have no knowledge of this Kobe hospital.

Q The Osaka hospital was a large general hospital was it not?
A Yes.

Q The factory guards and factory representatives had charge of the PW's from the time they left the Kobe Camp gate until they returned from work in the evening, did they not? Would you answer that "yes" or "No" - did they or didn't they have charge of the prisoners of war from the time they left the gate in the morning to go to work until they returned from work in the evening.

PROSECUTION: Before the witness answers that, I would like to call the attention of the Commission to Page 186 of the Manual for Courts-martial which I think is a fair enough guide for the protection of both the accused and the prosecution's case - "A witness should be required to limit his answer to the question asked. He cannot, however, be required to answer categorically (e.g., by a simple "yes" or "no") unless it is clear that such an answer will be a complete response to the question. A witness may always be permitted at some time before completing his testimony to explain any of his testimony."

DEFENSE: We perfectly agree with that; if this can't be answered "yes" or "no" I will let the prosecution state the question for me.

WITNESS: It is impossible to answer that as a "yes" or "no" answer.

DEFENSE: Go ahead then.

WITNESS: The working places did not furnish the guards for the men. Kobe Camp had men employed as civilian guards who lived in Kobe Camp and who were in charge of the men from the time they left in the morning until they returned at night. From only two jobs of our entire number of jobs did civilians come from the factories to get the men.

Q Did Kobe Camp furnish the guards on the Hall detail on the day he was injured?
A I don't know.

Q If they did or if they didn't, would the accused in this case have anything to do with the supervision while they were at work and with Hall from the time he was injured and brought back to the Kobe Camp?
A After Hall was injured on the ship, the prisoner of war work leader had requested through an interpreter to have Hall brought back to camp.

Q And that request was made out on the job and nowhere near the camp itself where the accused was and where his place of business was; isn't that a fact?
A That is right.

Q Go ahead.
A This request was made to a ship which was nearby which was a German ship. The German ship agreed to go ashore in a small boat and report the incident to the closest Japanese police station who would telephone that to Kobe House.

This message was received in Kobe House because the medical orderly came to our office, Captain Naughton's and mine, and told us that a man had been injured aboard this ship at the working place Sam Pahn.

PRESIDENT: The Commission will recess until 1315.

The Commission then recessed from 1135 hours to 1315 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the Defense:

Q What, or about what time was this, if you remember, Colonel?
A That would be about 3:30 on that afternoon of the accident.

Q Was any action taken by the camp commander upon receipt of that message at the camp?
A Do you mean the Japanese camp commander?

Q Yes, the Japanese commander.
A I knew of no action which was taken so far as the Japanese camp commander was concerned.

Q Do you personally know whether or not this matter was called to the attention of the accused in this case at the time this message was received?
A I don't know.

Q What time was the injured man actually delivered into the camp?
A Approximately 5:00 in the afternoon.

Q Was he immediately attended to by Captain Hayes?
A Yes, Captain Hayes looked at him immediately upon his entry into the hospital.

Q Have you ever made any affidavit or form of official statement in regards to the matters and things to which you have testified to here on the stand?
A I made one affidavit upon arriving in Manila after the war was over only on one thing and that was the Burbridge incident.

Q And that was dated 23 September 1945, was it not?
A Somewhere around that date; I wouldn't remember the exact date.

DEFENSE: I ask this be marked for identification as Defense Exhibit A.

Q I will hand you what has been marked as Defense Exhibit "A" for identification and ask you to examine that and state whether or not that is the affidavit that you just referred to.
A So far as I know that is the affidavit.

Q Is there any question in your mind that that isn't the affidavit?
A No.

DEFENSE: At this time the Defense asks that Defense Exhibit A be received in evidence.

PROSECUTION: The prosecution will object at this time because it isn't the best evidence. The best evidence is the personal testimony of this witness who is now present. If in that affidavit this witness has made any statements inconsistent with his testimony on the stand he can be asked by the Defense if he made such a statement. If he denies making it then it can be used to attack his credibility, but if his credibility is not being attacked then the best evidence is the personal testimony of this witness.

DEFENSE: The Defense concedes that the prosecution is correct and we withdraw the offer.

Q Calling your attention to the last statement contained in the affidavit which reads as follows "I have nothing further to add to this statement"; does this contain the statement I have just read?
A Yes.

Q How long have you been here waiting to testify as a witness in this case?
A I arrived in Japan on 12 October 1946.

Q You came for the express purpose of appearing as a witness in this particular case, did you not, Colonel?
A No; when I first received orders in the United States I came over here only as a war crimes witness. I did not know at that time who I was to testify against or as to how many I would testify against.

Q Since the commencement of this case there has been introduced and received into evidence on behalf of the Prosecution the affidavits of some twenty-five or thirty witnesses - the written affidavits, and the first affidavit was that of H. Burbridge of whom you have testified as to his incident. Have the affidavits of Burbridge, Campbell, Quinn, Weedon, Carrick, Byrne, Baird, Bayly, Joynes, Montwell, Fitzpatrick, Elbourne, Royce, Campbell, Inall, Grey, Holt, Bird, McIntyre, Norr, Olsen, Brown, Lucas, Cotton, Horney, Gordon, Collins, and Tite been examined by you since your arrival from the States in this country?

PROSECUTION: In other words, have these twenty-nine affidavits been examined by this witness?

DEFENSE: That is correct.

A I have read some of the affidavits; I did not read all of the affidavits.

DEFENSE: That is all.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q Colonel Flinlam, have you testified in any other war crimes cases?
A I testified at the International Military Tribunal in Tokyo; I have not testified in any other cases here in the Yokohama courts.

Q In your cross-examination just a few minutes ago you testified that when Private Hall was brought back to camp on the day of his injury, Captain Hayes immediately looked at him. Was Miyatake there at that time?
A Miyatake was not in the hospital at the immediate time of Hall's return to camp.

Q When did Lieutenant Miyatake arrive at the hospital on that date?
A Lieutenant Miyatake came into the hospital probably ten or fifteen minutes after the arrival of Hall.

Q Up until the time that Lieutenant Miyatake arrived at the hospital had Captain Hayes given Private Hall any treatment?
A No; up to the time that Lieutenant Miyatake arrived, Captain Hayes had done nothing to Hall except get him in the space allotted for him in the hospital.

Q Approximately how much time did that take?
A Do you mean for the examination or do you mean from the time that Hall was brought up that Miyatake - - -

Q You stated that Captain Hayes had given Hall no medical attention except to get him ready for the space he was to occupy; my question had reference to how long did it take to get him ready for the space he was to occupy?
A It took about five minutes.

Q You stated in answer to a question on the part of the defense concerning your statement of the 23rd day of September 194[illegible] that you did make a statement, "I have nothing further to add to this statement"; what did you mean by that?

DEFENSE: The Defense will object to the question, if the Commission please, on the ground that the statement speaks for itself. It is perfectly plain.

PROSECUTION: True it speaks for itself but the defense itself asked about that isolated statement. For that reason the prosecution on redirect examination - inasmuch as it was brought out on cross-examination they have the right to ask this question - to ask this witness what he meant by such a statement.

LAW MEMBER: As long as the witness identified the paper that he is familiar with it - - -

PROSECUTION: I will withdraw the question; the statement is not in evidence.

DEFENSE: I think we are a little confused as to whether or not the statement is in evidence. I read the statement.

PROSECUTION: But the complete statement is not in evidence.

DEFENSE: Not more than —

PROSECUTION: The affidavit is not in evidence.

DEFENSE: You objected to the introduction.

PROSECUTION: We withdraw the question.

Q You stated on cross-examination that a medical orderly came to tell about a phone call being received relative to Private Hall's injury. What nationality was that medical orderly?
A He was a Japanese medical orderly.

Q Do you remember whether it was the sergeant or the private Japanese medical orderly?
A I wouldn't want to make a definite statement as to whether it was the sergeant or the private but I wasn't present when he came in and it was about the accident which had occurred on San Pablo.

Q You testified that Captain Bayne treated the sick prisoners of war under the supervision of the Japanese medical personnel; will you name what personnel supervised Captain's Bayne's work?
A Usually the medical private on duty would supervise Captain Bayne.

Q Was that medical private a medical doctor?
A No.

Q Do you know that medical private's background prior to the time he came to Moko Camp?
A The medical private was a laborer.

Q Do you know where he worked before he came to Moko Camp?
A He was supposed to have worked on the docks and also in freight yards.

Q Will you explain to this Commission what this medical private's supervision consisted of? That is, to what extent did he supervise Captain Bayne?
A Any case which Dr. Bayne had and wanted that particular sick man to stay in, Dr. Bayne would have to take that man to the medical private and the medical private would pass as to whether that man would stay in the following day or not. They did not take the word of Captain Bayne.

Q Do you know of any occasions wherein this medical private changed the treatment as prescribed by Captain Bayne?
A On many occasions when Captain Bayne brought a sick man to the private to get it passed on as to whether he would be kept in the following day, the medical private would take the stethoscope away from Dr. Bayne, put it to his ears and test the sick man himself. Thus, he would have final word as to whether that man would stay in from work or not.

Q Do you know whether or not that medical private ever received any training in the use of a stethoscope?
A I don't know.

Q You testified on cross examination that the average daily issuance of M & B tablets during the period that Miyatake was there was approximately thirty tablets a day and that such tablets were used for the treatment of dysentery and diarrhea; is that right, Colonel?
A That is right.

Q Can you give an approximate average of the number of patients that were ill in Kobe Camp during the time that Miyatake was there who were ill in camp from diarrhea and dysentery?
A There were approximately one hundred cases of diarrhea and dysentery every day during the period that Miyatake was in the camp.

Q Did Captain Boyce ever complain to you about the shortage of any specific medicine in the Kobe Camp during the time Lieutenant Miyatake was stationed there?

DEFENSE: If the Commission please, I believe that is improper redirect examination and it would be irrelevant if the answer was "yes" because it is a conversation between the witness and Captain Boyce and in passing it on to the Commission by a witness who is present and who is testifying from that, it is hearsay.

PROSECUTION: I submit this matter was covered by the defense on cross-examination, referring the Commission in that line of questioning wherein they asked about what medicines were available - iodine, and they asked for about three - iodine, mercurochrome and aspirin. As long as that mesh was touched upon we feel we can go further and ask what other medicines. The defense objects on the ground that this is hearsay. We remind the Commission that under SCAP rules hearsay is admissible before this Commission. Furthermore, this isn't the usual type of hearsay. We have the testimony of a senior officer in that camp. He has laid a foundation for that by saying he had investigated the conditions in and around the camp because it was his particular concern because sometime he expected to answer for it to his country.

LAW MEMBER: And that is hearsay?

DEFENSE: Yes, sir; in our opinion.

LAW MEMBER: The objection is overruled.

A Boyce came into my office and complained on many occasions of the shortage of specific medicines.

Q Do you know the names of any of those medicines?
A Yes; sulfa guanidine, sulfanilamide, sulfa thiazole, also aspirin.

Q Do you know which ailments those first three medicines were used to treat?
A Yes; sulfa guanidine was used in the treatment of diarrhea and dysentery; sulfa thiazole and sulfanilamide were used in the treatment of boils and open lesions of the body.

Q Do you know whether or not these three drugs were available in the camp?
A Yes.

Q How do you know they were available?
A There was two sources of these drugs available in that camp at the time that Miyatake was there. The first source was that when the American officers and enlisted men arrived from the Philippines we came with a very large supply of all of those drugs. Those drugs were taken away from us by the Kippenese upon arrival in the camp and were kept in one of their storerooms. The other supply present was the Japanese Army - all those three or four drugs were in their own supply room which I saw practically every day that I was in Tokio Camp.

Q Were those American supplies still in the warehouse at the time that Lieutenant Miyatake was in Tokio Camp?
A Yes, they were there at that time.

Q On cross-examination you testified that there were two tenkos usually held during the day, one in the morning and one in the evening; were there any other regular roll calls or checks of you prisoners of war made during the day or evening?
A Yes; there was a bed check by the guard every night and once every hour during the night.

Q During Mr. Nash's cross-examination, Colonel, you were asked about the light into which Lieutenant Cotton and Commander Harrington, etc, were forced to stare while standing at attention. Will you indicate to the Commission the size of that light?
A That globe was approximately this size.

PROSECUTION: I would like to have the president state for the record the approximate size.

PRESIDENT: I would say about ten inches up and down with a diameter of about six inches. A large size globe, though.

WITNESS: It was a very large size globe.

Q About how far away from the face of Cotton, Harrington, and the rest was this light?
A They were standing approximately seven feet from where the light was hung.

Q In your cross-examination this morning, you testified that you did not know whether or not Lieutenant Miyatake ordered Weedon and Baird to hold water in their out-stretched arms; do you know who had given that order?
A Captain Weedon and Lieutenant Baird both told me after the incident that Miyatake gave the order for them to hold the water over their heads.

Q In cross-examination this morning you stated that most of these beatings alleged to have been committed by Lieutenant Miyatake, the beating was inflicted after some rule had been broken; is that true?
A Yes.

DEFENSE: I object on the ground that now the prosecution is cross-examining his own witness.

PROSECUTION: I submit that wasn't meant as cross-examination. It was meant to remind this witness of the testimony and it has to be done sometimes because it has to be kept more or less simple for the interpretation.

DEFENSE: I withdraw my objection then.

PROSECUTION: It is just to carry back.

Q Will you explain in reference to that testimony what you meant by saying that Lieutenant Miyatake made investigations of the infractions of camp rules?

A The investigation which you speak of is the Burbridge incident - is that the one?

Q Yes; that is right.

A In the investigation that Lieutenant Miyatake made in front of the guardroom of Sergeant Burbridge the investigation was something of this nature: Miyatake asked, "Why you eat?", the answer then from Sergeant Burbridge was the same as is in the court record which I gave yesterday, that it was because in the past it was the custom for them to eat at that time and that the reason for that was that the cleaning up of the kitchen and the policing of it ready for the evening roll call and inspection. Lieutenant Miyatake's answer to Burbridge's remarks were, "You lie". Captain Haughton and I explained to Lieutenant Miyatake through Corporal Hobbest the interpreter that it was the custom and had been the custom in the past for the cooks to eat at that time. Miyatake paid no attention to what we said but again he asked Sergeant Burbridge, "Why you eat?" The answer from Sergeant Burbridge was the same as before. The answer from Lieutenant Miyatake was the same - "You lie". The same questions and answers between Lieutenant Miyatake and Sergeant Burbridge were fired back and forth between the two of them for the entire investigation.

PROSECUTION: That is all the questions that the prosecution has to ask on proper redirect examination. We would like permission to ask a few that should have been asked on direct examination and on the basis of that we cite the Manual for Courts-Martial, on Page 127 - - -

DEFENSE: We have no objection.

Q Was Lieutenant Miyatake known by any other name in Hobe Branch Prisoner of War Camp?

DEFENSE: Just a moment now. If the commission please, we object to that question. The record shows what this accused legal name is and reference to him by nickname is more or less derogatory. At times it prejudices the accused before the Commission. I cannot think of a bunch in camp or just in places like that that weren't given nicknames.

PROSECUTION: May I ask that this witness be excused during the course of this discussion while we make this argument?

PRESIDENT: The witness is excused.

(The witness was temporarily excused and withdrew)

DEFENSE: He has been referred to as the "Mad Doctor". I take it it was merely for the purpose of identification and the record shows that these identities are one and the same.

PROSECUTION: If the defense will stipulate that the reference in the exhibits already presented wherein they state they are not too sure about the name but they know him as the "Mad Doctor" - if they will stipulate that the Mad Doctor is Kunio Miyatake we will stipulate.

DEFENSE: We will stipulate that because it is a fact.

PROSECUTION: It is just a purpose of identification.

LAW MEMBER: I don't see what the argument is about; there are several instances in these affidavits where it refers to the accused as the Mad Doctor anyway.

PROSECUTION: That was the testimony of a live witness and he can identify him as Kunio Miyatake; he can also, I think, identify him as the man at Hoko Camp known as the "Mad Doctor". But you will stipulate?

DEFENSE: I will stipulate he was known - - - that he and the Mad Doctor where the matter is mentioned here is one and the same accused.

PROSECUTION: The prosecution has no further questions to ask of this witness.

LAW MEMBER: Has the Defense any further questions?

DEFENSE: No, sir.

PRESIDENT: The Commission will take a short recess for about ten minutes.

The Commission then recessed from 1410 hours to 1420 hours at which time the personnel of the Commission, prosecution and defense, and the interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

RECROSS EXAMINATION

Questions by the Defense:

Q I refer to your affidavit of 23 September 1945 and I ask you whether that affidavit is made in question and answer form?
A Yes.

Q I refer to Page 2 of that affidavit, reading the following question, "Will you state all facts in detail pertaining to atrocities, war crimes, violations of Rules of Land Warfare and human decency at Nuremberg, the dates thereof, the perpetrators, giving their names, ranks, units, and other identifying information". Did you answer that question?
A I answered that question on one perpetrator only.

Q Did you understand the question at the time you answered it?
A Yes.

DEFENSE: At this time the defense renews its offer in evidence of this affidavit on the ground that it is inconsistent with the witness' testimony in court today and yesterday. In this affidavit in answer to the question, to a general question asking this man to list all crimes and perpetrators of violations of Rules of Land Warfare he mentions this one incident.

PROSECUTION: I object; the prosecution has no objection to the introduction of this affidavit, but the affidavit speaks for itself without arguing with this man.

LAW MEMBER: It will be entered.

Defense Exhibit "A" was received in evidence and read by the Defense.

DEFENSE: We have no further questions.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q Colonel Flinlom, referring to Defense Exhibit "A", just introduced, will you state under what circumstances that affidavit was taken?

DEFENSE: We object for the reason that this affidavit is plain and unequivocal and explains itself. They may try to get around on it that this witness may explain the circumstances but he said he understood the question and it is our contention that is sufficient.

PROSECUTION: I refer the Commission to Page 126 of the Manual for

Courts-Martial, "A witness may always be permitted at some time before completing his testimony to explain any of his testimony". This affidavit, by the statement of the defense himself, is entered to test the credibility of this witness. As such, this witness should be given a fair chance to explain under what circumstances that was taken. Now, the circumstances may change or alter the meaning of anything. These circumstances are material to the issue now before this Commission and before this Commission can evaluate that affidavit in light of this witness' evidence they must and should know the circumstances under which it was taken because that may change the entire picture.

LAW MEMBER: What was the basis of your objection?

DEFENSE: That this affidavit - - first the witness has testified that he understood the question asked him in this affidavit. The affidavit is plain - in other words, it speaks for itself. It is just as plain as it can be as to the conditions of this affidavit and he understood the question he was to answer. Now, if he made a mistake in any question answered that is what is meant by this Courts-Martial Manual - that he may have a reasonable opportunity to explain any discrepancy. It isn't the things he left out - it is what he actually said that he can explain. If there is anything different now than what he intended to say in that - - -

PROSECUTION: That is just what we are getting at right now. Did he intend fully what he said or was there something else placed upon it? This Commission is entitled to have the entire picture.

LAW MEMBER: The defense has entered this as one of their exhibits and I fail to see why objection should be raised of any explanation the witness cares to give.

DEFENSE: That is correct, but they aren't after discrepancies in it; they are getting to the parts as to what it was he didn't say in there and it is our contention that isn't the meaning of the rule read. Now, he is intending to - - not impeach his own witness - - but when an instrument is unequivocal, when it is plain, the meaning is obvious and there is no discrepancy unless he made a misstatement in what he included in the affidavit.

PROSECUTION: I submit to the Commission in the testimony itself what is apparently a misstatement because the question read was "Will you state all facts, etc.," This witness made a statement in answer to that question. He made that statement in reference to one perpetrator only, but that answer shows that there was a mistake in it. Now, from then on, based on that, the defense entered this instrument. Now, with that mistake clearly appearing in the record, I maintain this witness can explain that mistake. Second, going back to the citation in the Courts-Martial Manual, it states in plain, simple language "a witness can explain any of his testimony—" - that is on Page 125. It doesn't qualify —"A witness may always be permitted sometime before completing his testimony to explain any of his testimony". There is no qualification or restriction in that at all.

DEFENSE: It is our contention that this is not an explanation of his testimony. It is an explanation as to why he didn't go ahead and tell those other things. His testimony is what is in this written instrument.

PROSECUTION: I submit his testimony is his entire testimony.

LAW MEMBER: I am overruling the objection; go ahead and answer the question.

A The circumstances of me personally making this affidavit is as follows: We made, or I made no affidavit here in Japan after the end of the war. When we arrived in Manila and the investigation officers requested us to be present at a certain place to enter affidavits, they told us at this place of making the affidavits that we would have to make the affidavit before we would be allowed to go home. In many cases, well I will say all prisoners of war, after being away from home for a period of four to six years, your first thought is to get home - it was good enough to be a free man. After completing that portion of the affidavit of questions and answers the person who interviewed me said "Do you know of any specific atrocities?" I knew of many specific atrocities but I was not going to impede or stop my journey home to the United States by staying over in Manila an additional few weeks or months and even appearing before maybe a court-martial against the perpetrators - my one thought was to give one specific beating which I saw and let it go at that. My testimony against Lieutenant Miyatake and on the beating of Sergeant Partridge was one of the beatings that stood out in my mind as one of the worst. I could have chosen other atrocities but I didn't. I wanted to give them one specific beating. They were satisfied. The last sentence on the affidavit, the reason that was put on the affidavit was because the majority of the investigation officers who interrogated me asked me "Is there anything else on this case?" I said, "No." That is the reason for the last sentence.

Q I show you Defense Exhibit "A" and ask you, Colonel Flinton, if this printed form could contain all that you knew about atrocities in detail of war crimes, violations of Rules of Land Warfare, dates, their perpetrators, giving their names, ranks, units, and other identifying information as is requested in the printed question on that form?

DEFENSE: We object to that. We will wait until it is interpreted but is seems so ridiculous on the face of it. Really, we don't think it should be interpreted. This form stands to reason that no form is going to be given to you that you can't add riders to. It is a loose leaf form to begin with. The first page is formal questions; the second and subsequent pages - you may add as many as a thousand if you want them to fill in all the details. This isn't a printed form - it is two forms - Page 1 and other pages, 2 to 2,000. We think that should be withdrawn.

LAW MEMBER: Do you want to withdraw it or change it in any way?

PROSECUTION: I will withdraw the question.

Q At the time you made this statement did you intend this to be a complete recital and a full answer to the question "Will you state all facts in detail, etc."?

A No; that form is not complete in any way but the investigating officer was satisfied. I wanted to go home and everybody was happy.

PROSECUTION: No further questions.

RECROSS EXAMINATION

Questions by the Defense:

Q No threats were used by the investigation officers when they obtained that statement from you?
A No.

Q Correct me if I am wrong but did I understand your testimony yesterday to be in effect that the reason you made the examination with particularities as to the different matters and things and atrocities you testified to was because you knew as the ranking American officer in the camp you would at some further time be called upon to testify before some American official; in substance was that your testimony?
A No, sir; my testimony yesterday wasn't that I was to appear before an American group and testify as to the conditions of the camp but rather to make some written reports to the Australian Government and the British Government and my own government. It wasn't that I was to testify in front of anybody.

Q But the purpose of the investigations you made was that it was to be an official report of some kind, whether it was before a court, it was to be official?
A Yes, sir.

Q And this was the report you made?
A No; this is not the report I made. I made reports to the Australian Government, I made reports to the British Government; I made a report to the United States Government in Washington of general conditions, including food, clothing, housing, location of the camp, perpetrators, individually and members of the camp staff collectively. I made a complete written report to the three governments. This, I had no knowledge of ever going to any government agency.

Q Were those reports written or verbal?
A Written reports.

Q To whom were the reports sent, Colonel, that covered the American incidents?
A The report, so far as the American phase went, went to the Recovered Personnel Bureau, Washington, D.C.

Q Colonel, you stated that this Exhibit "A" of the Defense covers only one incident and one perpetrator; is that right?
A That is right.

Q The reason why you have this statement at the end, "I have nothing to add to this statement" - the reason or meaning of that is you had nothing to add to the Burbridge incident; is that correct?
A At the time that statement was written that was all I had to say of the Burbridge incident.

Q I refer you to Paragraph 2 on Page 3 and ask you whether that deals with the Burbridge incident or with this accused?
A No.

DEFENSE: That is all.

PROSECUTION: The prosecution has nothing further to ask of this witness and asks if any member of the Commission has any proper questions to ask?

PRESIDENT: Is the Defense through?

DEFENSE: We are through.

PRESIDENT: Are there any questions that any Member of the Commission wants to ask this witness?

EXAMINATION BY THE COMMISSION

Questions by the Members:

Q Referring to the Dorbridge Incident when Lieutenant Miyatake came into the kitchen and found him eating supper, was he making an inspection or was he going through the kitchen generally?
A No, that was not his usual inspection trip or roll call trip. This was just a casual visit to the kitchen.

Q You had occasion to know Lieutenant Miyatake very well, did you not?
A Yes; I knew Lieutenant Miyatake quite well for several reasons. Would you care for me to give them?

Q Well, you saw him say, every day, several times a day?
A I did see him probably every day he was in the camp. He would come into the office which was the office and the living quarters and would sit down and talk.

Q In your opinion, did you ever see Lieutenant Miyatake when he was intoxicated?
A No, I don't believe he was ever - - I didn't see him in an intoxicated condition.

Q Did you ever see him when you thought he was under the influence of drugs?
A No.

Q In connection with the Gore incident, you have said that Gore was struck by a scabbard, was the sword in the scabbard at the time or was the scabbard empty when Gore was struck with it?
A The sword was in the scabbard.

Q Now, in Specification 4, "Twenty-four men were stood up for an hour or so", you testified that Lieutenant Miyatake knocked each of the twenty-four men down with his fists at approximately 10:30 and again knocked each of the twenty-four men down at approximately 12:00.
A Yes, that is true; he worked the group over on two specific occasions.

Q My personal opinion is that a man would seriously injure his hand before he had knocked that many out in one evening; did it take a very strong blow to knock them down?
A In that particular case it didn't seem to bother Miyatake whatsoever so far as injuring his hand.

Q Hall, in connection with specification 9, referring to Hally you knew Hall before the day of the accident, did you?
A Yes, sir.

Q Was he apparently in good physical condition the day before the accident?
A His physical condition the day before the accident was as good as any other man in the camp.

Q This light, Colonel, that has been mentioned as shining in the eyes of these men - about what level was that from the ground? Eye level or higher?
A The light was at a higher level than the eyes of any one of the officers.

Q About how high off the ground?
A The light was in this open guardroom which was up three steps from the level on which the officers and men were standing and the light was six feet from the floor of the guardroom, so it should have been about eight feet from the floor or ground where the men were standing.

PRESIDENT: The Commission has no further questions.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q What was the general health conditions of Commander Harrington and Lieutenant Colonel Fitzpatrick and the other men set forth in that group in Specification 4?

A They were in a rather run down condition from general malnutrition but that was their only illness. They were not sick at that particular time.

Q Did those officers receive the same rations that the enlisted men did in the camp at that time?

A Not at that particular time the officers were on a different ration scale than the working scale.

Q In what way did it differ from the working man's ration scale?

A The officers at that time were receiving 520 grams of rice per day.

Q Can you tell the Commission how many canteen cups of cooked rice that would make?

A It would just be under one canteen cup per meal of cooked rice.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:

Q In answer to a question by a member of the Commission in regard to Hall's

condition immediately prior to his accident, I believe you stated he was in about the same condition as the other men in the camp; now, will you explain what the general condition of the men physically was, relative to being normal or subnormal?

PROSECUTION: Do you mean physically or mentally subnormal or normal?

DEFENSE: Physically.

A Every one of the men in the camp did a very hard day's work every day. Muscularly they looked fine but they all had lost a great amount of weight.

Q Does that conclude your answer?
A Unless you would like me to give figures so far as I am concerned.

Q I wish you would, yes. I think it would be of importance in the record.
A When I first arrived in Japan, the latter part of October 1942, I weighed 205 pounds. From that time on to the end of the war my weight gradually went down - during the summer months of 1943, the period in which Lieutenant Miyatake was in camp, my weight was approximately 166 pounds; it went down more - at the end of the war I weighed 119 pounds.

Q And what happened to you was practically common and prevalent among the other American prisoners was it not, Colonel?
A Yes, the weight was a gradual decline.

Q And your strength decreased with the loss of weight as a rule, did it not?
A Yes.

Q Did Miyatake ever show you pictures - snapshots of his home and his family and himself when he was at the university on any occasion when he visited you in the office?
A On one occasion Lieutenant Miyatake brought to my office and showed us his college yearbook. I don't recall seeing any pictures of his family - only of himself - pictures taken in college in the yearbook.

Q Miyatake had just graduated from medical school the September before; isn't that correct?
A I don't know exactly when he graduated but it was very recently.

Q On the occasions such as the one you have mentioned when Lieutenant Miyatake would visit you, did he converse with you about general subjects - on general subjects?
A Usually Lieutenant Miyatake would converse on general subjects but usually it would be with Corporal Hoblett. However, I was present and was sitting in on some of the conversation.

Q Corporal Hoblett was the interpreter, is that correct?
A Yes, that is right.

Q Would you say that these conversations were carried on in a relatively free fashion?
A Yes.

DEFENSE: That is all.

PROSECUTION: The prosecution has no further questions. Does the Commission have further questions of this witness?

PRESIDENT: The Commission has no further questions. The witness is excused.

(There being no further questions the witness was excused and withdrew)

PRESIDENT: I take it that the Defense is ready to present witnesses beginning from now on?

PROSECUTION: Pardon me, the prosecution has about seven or eight affidavits.

PRESIDENT: You haven't completed your case?

PROSECUTION: No, sir; we still have three specifications to cover in detail - Specifications 12, 13 and 14. The prosecution has entered no evidence whatsoever pertaining to 12 and 13. We have a couple that might be introduced. I would at this time like to ask for a recess until tomorrow morning to see definitely which further affidavits we want to introduce.

DEFENSE: No objections.

PRESIDENT: The Commission will recess until tomorrow morning at 0900 hours.

The Commission then at 1520 hours, 23 January 1947, adjourned to reconvene at 0900 hours, 24 January 1947.

John P. Langhan

JOHN P. LANGHAN
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
24 January 1947

The Commission met, pursuant to adjournment, at 0915 hours, all the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case, being present, except the Court Interpreters. Mr. Sato, the Court Interpreter at the beginning of the case, was again present and was reminded that he was still under the oath previously taken.

PRESIDENT: The Commission will come to order.

PROSECUTION: At this time the prosecution submits as its proposed Exhibit No. 32 the affidavit of WARREN CUSHON, referring to Specifications 10 and 11.

Prosecution's proposed Exhibit No. 32 was read by the prosecution.

PROSECUTION: At this time, subject to objection on the part of the defense, the prosecution offers this as Prosecution's Exhibit No. 32.

DEFENSE: The defense objects to the introduction of this affidavit - Paragraph 15, beginning "The conditions of the camp were awful" and it goes on to describe the conditions of the camp. It has absolutely no connection with this accused. No dates are mentioned; it has no probative value as against this accused and the defense believes this should be stricken, and disregarded by the Commission. It contains ambiguities - he doesn't state or refer to what they were supplied with. He says, "We were never supplied with any more. ." It is impossible for a person reading this to draw no inference at all as to medical supplies. And even if that were allowed, there is still no connection with this accused. This man was at Kobe Camp for a long period of time. The accused is charged with accusations - omissions only, occurring in two and a half months in the summer of 1943. We believe it is absolutely irrelevant as to this accused and should be stricken from the affidavit.

PROSECUTION: I just wish to refer the Commission to evidence that has been presented here before. The testimony has been there were a group of Australians that came into Kobe Camp in June 1943, bringing the strength up to approximately six hundred men. So that would trace this testimony down to the approximate time that the accused was at Kobe Camp. He states "Later, in December 1943, they provided us with hot baths once a fortnight." Now, as we have said so often, the lack of food and the inadequate quarters, the inadequate clothing, cannot be charged against this accused. Such evidence is not being offered by the prosecution with the intent of charging him with the responsibility of these conditions. They are offered as background material and are proper because with that situation in that camp we contend that it was an aggravated matter for this accused to carry on his general mistreatment towards all prisoners in that camp and as such this

material is pertinent and is chargeable in that respect against this accused. For that reason we believe it is admissible.

LAW MEMBER: Subject to objection by any member of the Commission, although the accused is not mentioned by name in Paragraph 15 the paragraph does tend to give a picture at the camp at the time when these prisoners were incarcerated and for some of the time in which the accused was also on duty because he is mentioned in paragraph 17 as one of the Japanese who were responsible for the beatings and conditions therein. Therefore, the objection is overruled.

DEFENSE: The defense objects to paragraph 16 on the ground it is entirely without probative value because it is absolutely ambiguous. I think the person making the affidavit states he saw twenty-four men beaten. He states that the Japanese responsible were ten - and then only names nicknames. He doesn't state any particular Japanese beat any particular Australian or American prisoner of war. It is entirely up to the Commission or anybody also reading this to draw such inferences as to which may or may not be correct. The word used, "responsible". We don't know from that what he means. It might be for the actual beating or it might be their duties. It is so ambiguous that no court would be justified in drawing any inference against any particular accused. For that reason we ask it be stricken from the affidavit and disregarded by the Commission.

PROSECUTION: The prosecution will agree with the defense to a certain extent. That the accused cannot be charged with all of these beatings. This we do believe that the entire paragraph should remain in as it is because it is practically impossible to strike out parts and have it still make sense. This should remain in as corroboration as to beatings. Also as to the beating of an Australian, Jeynes, on which we have introduced a number of affidavits and which incident was testified to by Lieutenant Colonel Flinim and also was mentioned in the affidavit of Elbourne, heretofore introduced in evidence. Those are the only names that I recall having been definitely mentioned by this testimony. This statement is plain in saying "And the Japanese responsible for these beatings were" and then names a number of them. All that can be chargeable against this defendant or the others specifically named and I think this Commission is competent to disregard the immaterial parts inasmuch as the evidence before this Commission of necessity, it being affidavits, there is bound to be a certain amount of immaterial and perhaps irrelevant evidence brought in but it has to be that way in order to make sense. The Commission should receive it in its entirety so it makes sense and so far as the accused is concerned, disregard the immaterial parts. The prosecution will state that all of this paragraph so far as the accused is concerned is corroborative of the beating of Jeynes and Fitzpatrick but if you step and cross off a word here and a phrase there it makes it almost impossible and destroys the sense and we would have a lot of meaningless phrases.

DEFENSE: We have no objection if the Commission considers this solely in relation to the two beatings referred to.

LAW MEMBER: Subject to objection by any member of the Commission that will stand.

DEFENSE: The defense objects to paragraph 17. This is entirely irrelevant to the issue in this case. The accused is not charged with responsibility for the insufficiency of the food and the lack of proper quarters or lack of proper laboratories, or lack of proper recreation facilities. Paragraph 17 deals with these matters and it is highly prejudicial to the accused - no dates are mentioned

and there is nothing to link this accused. We believe this Commission has already before it sufficient background material in the various affidavits to realize what the general conditions were. The introduction of this matter will be prejudicial to the defendant and that is why we want this stricken out.

LAW MEMBER: The Commission does not feel this is prejudicial to the accused in any way. We feel it is a good picture of the conditions at the camp at the time the man making the affidavit was there. There is no mention of the accused in the thing and as the defense said there is no testimony connecting the accused with poor food, lack of clothing and what other things were mentioned but this is a picture of the conditions within the camp and merely that. There is no prejudice to the accused in this case.

DEFENSE: The defense objects to certain portions of Paragraph 20. The third sentence, "If a man was feeling ill with a high temperature and went to him, he was just as likely to stand the man to attention for one hour or more and then perhaps punish him". We feel that is entirely too general and ambiguous - too speculative on the part of this witness. He makes conclusion and we feel that because he assumes matters it lacks probative value. It's very simple for a deponent to make a general statement, giving no basis for it, giving no example of it ever taking place and consequently it is impossible for the accused to defend properly against it. We feel it is highly prejudicial to allow such general ambiguous statements to be put in there. Consequently, we ask that particular sentence be stricken. And the conclusion following, "Therefore, the man would not parade before him for illness at all".

PROSECUTION: We feel that the defense is now arguing weight of evidence, not the admissibility of evidence. How much weight is to be attached to any particular bit of evidence is a matter for the Commission to decide. We feel that this does have probative value. The man has testified that he was in Kobe Camp, stating general conditions as pertained to various things - it was his opinion. He was there and presumably he must have seen it in order to make a statement of this kind. But these are matters to be determined by the Commission. It has definite probative value and should be admitted under the SCAP rules.

LAW MEMBER: The Commission feels it should remain because it is more or less corroborative of the witness on the stand all day yesterday - Colonel Flinlon's testimony is in very similar words to a similar situation.

DEFENSE: Continuing on Paragraph 20 we come to the sentence, "There were a number of deaths in the camp due to malnutrition and failure of medical attention". We ask that that be stricken and disregarded by this Commission because it is decidedly speculative - it is general - no dates of examination are given - it contains medical opinion and on the face of it this deponent is not competent to render medical opinion. It is prejudicial - it is irrelevant because no dates of examination are given and it should not be considered as such because it lacks probative value. We are also objecting to the following sentence, "One man had his leg broken, etc" That is entirely prejudicial. The accused has no means of meeting such an accusation. No dates are given at all; the man's name is not given, consequently we feel that it is utterly irrelevant. We don't know whether this man's leg was broken six months after the accused reached the camp or it might have been broken when he was there but the chances are it was done long after he left. We feel this sort of thing is highly prejudicial and being irrelevant it lacks probative value.

LAW MEMBER: The Commission feels that this entire affidavit is a general picture of the conditions at the camp. It gives the general picture of things and does not pin a particular act on the accused or anybody else in the camp. It is a general picture. Also you will remember that one of the specifications against the accused is he permitted a man to die because he did not have medical attention which more or less ties in this sentence.

PROSECUTION: We will in all fairness to the accused so far as "One man had his leg broken etc" - there is no date and probably in all fairness to the accused that should be stricken out because I don't recall any affidavit heretofore introduced that specifically puts that specifically within the period of the accused. At this time the prosecution would like to state again that in order to keep the sense of the affidavits sometimes immaterial and irrelevant sentences will occur. The prosecution has allowed those to remain in not because it is against the accused but to keep the sense of the paragraph being read and we ask the Commission to disregard anything in there which does not pertain to the accused.

DEFENSE: I have just one more objection to this paragraph. "Our own medical officer's opinion was always overruled". And the next sentence, "He was only allowed to have a certain number of sick men in the camp each day." These two do not agree and are obviously contradictory and they lack probative value. How could the medical officer always be overruled if he was allowed to have a certain number of sick men in each day? Consequently, we feel these two are meaningless and should not be admitted.

PROSECUTION: I submit that the defense is again arguing weight of evidence and not the admissibility of evidence. I submit again that is a matter of evaluation by the Commission - it isn't a matter of admissibility. Furthermore, it is admissible because it is entirely corroborative of the evidence heretofore presented and also set forth by Colonel Flinion in our direct and cross-examination before this Commission.

LAW MEMBER: The ruling on that is the objection is overruled. The Commission will evaluate the evidence.

PROSECUTION: The prosecution, therefore, offers this as Prosecution's Exhibit No. 32.

LAW MEMBER: It will be entered in evidence as Prosecution's Exhibit No. 32.

Prosecution's Exhibit No. 32 was received in evidence.

PROSECUTION: The prosecution proposes to submit and read to the Commission an affidavit made by WILLIAM THOMAS DEEN as Prosecution's Exhibit No. 33, as it refers to Specifications 3 and 11.

Prosecution's proposed Exhibit No. 33 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense, the prosecution offers this as its Exhibit No. 33.

DEFENSE: No objections.

LAW MEMBER: There being no objections the affidavit will be entered as Prosecution's Exhibit No. 33.

Prosecution's Exhibit No. 33 was received in evidence.

PROSECUTION: The prosecution proposes to submit and read the affidavit made by OTTO G. MAYDEN as Prosecution's Exhibit No. 34, referring to Specification 11.

Prosecution's proposed Exhibit No. 34 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as its exhibit No. 34.

DEFENSE: We object to the introduction of any part of this affidavit with exception of the last paragraph and the paragraph preceding the last paragraph. The others are generalities of conditions in the camp which this man isn't even charged with as having anything to do with. The last two relate to specific instances connecting the accused with certain atrocities and we believe these are absolutely competent.

PROSECUTION: With reference to that the prosecution will stipulate with the defense relative to this affidavit. We don't think the matters on Page 1 are proper inasmuch as they are introductory and merely serve to identify the witness.

DEFENSE: That is right.

PROSECUTION: On Page 2 we will stipulate that the answer beginning "From 27 October 1942" down to the sentence "There were no medical supplies there until about August, 1944, when the Red Cross sent some," by striking that and the Commission will disregard that so far as this affidavit is concerned. Is that satisfactory with the defense?

DEFENSE: That is satisfactory.

LAW MEMBER: That portion just mentioned will be stricken and that will not be regarded by the Commission.

PROSECUTION: That stipulation is just as regards this one affidavit.

DEFENSE: That is correct.

LAW MEMBER: As amended it will be entered as Prosecution's Exhibit No. 34.

Prosecution's Exhibit No. 34 was received in evidence.

PROSECUTION: If the Commission please, the prosecution proposes to submit and read to the Commission an affidavit made by LAWRENCE GORDON MOSHYFORD as Prosecution's Exhibit No. 35, referring to Specification 11.

Prosecution's proposed Exhibit No. 35 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as Prosecution's Exhibit No. 35.

DEFENSE: No objections by the Defense.

LAW MEMBER: It will be admitted in evidence as Prosecution's Exhibit No. 35.

Prosecution's Exhibit No. 35 was received in evidence.

PROSECUTION: As Prosecution's proposed Exhibit No. 36 we offer the affidavit of PHILIP E. SANDERS, pertaining to Specifications 12, 13, and 14.

Prosecution's proposed Exhibit No. 36 was read by the prosecution.

DEFENSE: We object to the introduction of paragraph 5 for the reason it is conclusion on the part of the deponent.

PROSECUTION: I submit to the Commission this man stated how long he was in the camp. He tells of the medical officers and one was the accused and he stated also he was the prisoner of war commanding officer in that camp and as such I think he has qualified himself to make such observation.

DEFENSE: If the Commission please, as yet the reputation of the good character of the accused has not been put into evidence nor attempted to be by the defense. His reputation, generally, is not in question up to this time in this case. Now, if we attempt to put his good reputation in then this would be competent, but his reputation isn't in issue.

PROSECUTION: I call the Commission's attention to Specification 14 which reads "That between 1 September 1943 and 15 August 1944, at Headquarters Prisoner of War Camp, Cochin Area, Manchu, Japan, the accused, Eunio Miyatake, did willfully and unlawfully mistreat and torture numerous American and Allied Prisoners of War by making unnecessary inspections in the late evening and early morning hours, thereby depriving the prisoners of needed sleep, by beating them with fist and sword scabbard, by kicking them and by otherwise abusing them." That bears on that allegation and is in substantiation of Specification 14.

DEFENSE: I call the Commission's attention to the generalities of that specification but, of course, I suppose that in view of the fact that that specification has remained as a part of the charges I guess this paragraph 5 would be admissible. I withdraw the objection on that theory.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this into evidence as Prosecution's Exhibit No. 36.

DEFENSE: We have no objections.

LAW MEMBER: It will be admitted in evidence as Prosecution's Exhibit No. 36.

Prosecution's Exhibit No. 36 was received in evidence.

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1025 hours to 1040 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: The prosecution proposes to submit and read the affidavit of NORMAN ARCHER as Prosecution's Exhibit No. 37, referring to Specification 12.

Prosecution's proposed Exhibit No. 37 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this affidavit in evidence as Prosecution's Exhibit No. 37.

DEFENSE: No objections.

LAW MEMBER: It will be admitted in evidence as Prosecution's Exhibit No. 37.

Prosecution's Exhibit No. 37 was received in evidence.

PROSECUTION: The prosecution proposes to submit and read to the Commission an affidavit made by W. TAYLOR as Prosecution's Exhibit No. 38, referring to Specification 12.

Prosecution's proposed Exhibit No. 38 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as Prosecution's Exhibit No. 38.

DEFENSE: We object to the introduction of this as an affidavit. It has not been subscribed or sworn to before any officer and consequently if it is admitted at all it should be admitted as an unsworn statement. We make specific objection to paragraph 2 because it contains no connection with this accused in this case and it is entirely general. We contend this is conclusion and speculative as to disgraceful medical care, without telling us in detail what he means.

PROSECUTION: I submit this is a statement - not an affidavit. As to the objection to paragraph 2, it is conclusion - it is the conclusion of E. Taylor - it is his characterization of what this medical care was. It is properly admissible as such, as evidence of what he saw. It does have slight probative value.

LAW MEMBER: The objection is overruled. The paper will be admitted as a statement as Prosecution's Exhibit No. 38.

Prosecution's Exhibit No. 38 was received in evidence.

PROSECUTION: The prosecution proposes to submit and read to the Commission an affidavit by DALCOMOTE W. THOMPSON as Prosecution's Exhibit No. 39, referring to Specification 12.

Prosecution's proposed Exhibit No. 39 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this affidavit as Prosecution's Exhibit No. 39.

DEFENSE: No objections.

LAW MEMBER: There being no objections it will be admitted in evidence as Prosecution's Exhibit No. 39.

Prosecution's Exhibit No. 39 was received in evidence.

PROSECUTION: The prosecution proposes to submit and read to the Commission an affidavit made by WALTER G. MEAN as Prosecution's Exhibit No. 40, referring to Specification 14.

Prosecution's proposed Exhibit No. 40 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this affidavit as Prosecution's Exhibit No. 40.

DEFENSE: No objection.

LAW MEMBER: The affidavit will be entered as Prosecution's Exhibit No. 40.

Prosecution's Exhibit No. 40 was received in evidence.

PROSECUTION: The prosecution proposes to submit and read to the Commission an affidavit made by CHARLES ALLAN COMBS as Prosecution's Exhibit No. 41, referring to Specification 14.

Prosecution's proposed Exhibit No. A1 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this affidavit as its Exhibit. No.A1

DEFENSE: No objection.

LAW MEMBER: It will be admitted as Prosecution's Exhibit No. A1.

Prosecution's Exhibit No. A1 was received in evidence.

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1120 hours to 1115 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: At this time the prosecution submits its proposed Exhibit No. A2, the affidavit of ERNEST ROBERTSON, referring to Specification 12. I wish to call the Commission's attention to the fact that Paragraph 2 is not crossed off on the copies submitted to the Commission but the prosecution does not intend to introduce paragraph 2 and requests the Commission to disregard it.

Prosecution's proposed Exhibit No. A2 was read by the prosecution.

PROSECUTION: Subject to objection on the part of the defense the prosecution offers this as Prosecution's Exhibit No. A2.

DEFENSE: No objections.

LAW MEMBER: It will be entered as Prosecution's Exhibit No. A2.

Prosecution's Exhibit No. A2 was received in evidence.

PROSECUTION: The prosecution at this time rests its case against this accused, Kanio Miyatake.

PRESIDENT: The Commission will recess until 1315 hours.

The Commission then recessed from 1120 hours to 1330 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: Just before the Commission recessed, the prosecution rested its case and it is now up to the Defense to make or waive its opening statement.

DEFENSE: Before the Defense opens its case we wish to make a motion at this time towards Specification 9 and Specification 11. The defense moves that Specification 9 be dismissed on the ground that the prosecution has failed to make a prima facie case. The defense moves that Specification 11, that portion thereof which refers to W. E. Hall be stricken for the same reason, that the prosecution has not made out a prima facie case, that any acts on the part of the accused contributed to the death of Private Hall. In support of that motion we would like just briefly to comment on the evidence produced. In the first place, the only evidence that this accused beat Private Hall is hearsay evidence. We have Colonel Flinlen's testimony that somebody told him that this accused beat him; then we have one affidavit, Prosecution's Exhibit No. 29, in which Private Collins says he was told that Miyatake beat him, but we don't have one affidavit in which it is stated that the deponent saw the accused beat Private Hall. Now, we contend that under the circumstances such a charge is so far fetched and so ridiculous on its face that in view of the fact that it is only supported by hearsay it should not be considered by this Commission. There we have a medical officer whose duty is to take care of the sick and we have evidence showing that he did oversee the prisoner of war doctor and was in contact with the sick prisoners every day; we have testimony that Private Hall was unconscious from the time he was injured until the time of his death, and the prosecution asks this Commission to believe that a medical officer would ask an unconscious man to come to attention and for no reason whatsoever would beat that unconscious man. We submit that the evidence is so unreliable that it has no probative value whatsoever under the circumstances.

The second thing that is charged in connection with the death of Hall is lack of proper medical treatment. Now, we have in support of that Exhibit No. 15, an affidavit of that doctor - the prisoner of war doctor, and I submit that this affidavit as it pertains to Hall's case is ambiguous. To begin with he lists the Hall death along with several others which, of course, have not been offered because they are immaterial and irrelevant in this case. However, in this particular paragraph where he describes the death of Hall he makes no definite charge against this man except that he refused the request for hospitalization and the request for X-rays. He does not say anywhere here that if the man had been hospitalized he might have had a chance to live; he doesn't say if he had been X-rayed he might have lived. He only makes the charge that his requests for removal to a hospital and for X-rays were refused. This, too, on its face and in view of the evidence that has been presented before this Commission is contradictory. All the evidence shows that Noyce's job was to treat sick prisoners of war. Here we have Noyce seeing this most serious case in the camp, he is brought in and he is forbidden to touch him. On the face of it, that is a charge that is really ridiculous because it was Captain Noyce's job to treat a prisoner of war. This medical officer, the accused, would have no reason in the world for telling him not to. And the affidavit itself goes on and says in the next breath "We did treat him - we did actually administer treatment. We cleaned his wounds and dressed them and gave him general treatment". Now, that negates the first part of the affidavit because he says they were forbidden to treat him and they did. Colonel Flinlen in his testimony indicates

clearly that if there was any misunderstanding at the beginning about whether or not to treat him it was only a misunderstanding because Colonel Flinism himself sent a message to Miyatake asking for medicines to treat Hall. Also, the charge that he neglected to give him treatment in this same paragraph of Captain Boyce. In that same paragraph he says that the accused did diagnose the case and he also says that the accused did prescribe treatment - the injection of glucose and camphor. Now, we maintain that the treatment prescribed by this man is shown by this one affidavit. If one portion says he was not ordered to treat him, the rest of the affidavit clearly indicates that that order was a misunderstanding. Especially in view of Colonel Flinism's testimony.

There is one more allegation and that is the lack of sleep. Here again we have Colonel Flinism's testimony that when the Australians came in in the first part of June "they looked in good shape to us" - that is the sense of what he said. The record shows they could sleep from 8:00 at night until 5:00 in the morning if they desired. All right - if their sleep was interrupted at night for an hour or so they still had plenty of sleep. Now, there has been other evidence shown that Hall for one reason or another was in bad shape - especially bad shape. This Commission has no right to draw such inference. If the prosecution had shown that Hall was in bad physical condition and especially needed sleep and that his sleep was interrupted there might be some basis for this charge. The defense correctly asks this Commission to dismiss this specification against this accused because we believe that the prosecution has not made out a sufficient case on any of the three causes stated.

LAW MEMBER: That is No. 11?

DEFENSE: No. 9, and that portion of 11 which refers to the death of Hall due to his lack of sleep.

PROSECUTION: I wish to call the attention of this Commission to the gist of Specification 9. The accusation is that Kunio Miyatake did willfully and unlawfully mistreat and abuse W. K. Hall. The manner in which he mistreated and abused Hall is set forth. That is, by beating and kicking him and neglecting and refusing to give him medical treatment, thereby contributing to his death. As to the kicking of Hall, that was stated and testified to by Collins. That medical doctor came in and kicked him for not standing to attention. This was verified, as the defense said, by the testimony of Colonel Flinism, who, upon making check into the treatment of Hall was so advised by the medical orderlies in the hospital. I will admit such an act is beyond my understanding as to how a man can kick and mistreat an unconscious man. However, that is not the question before this Commission; the question before this Commission is did he do it? We say there is evidence before this Commission to be considered saying this accused did kick and abuse Hall. For that reason and that reason alone the motion should be denied. Going further, the defense says that the Boyce statement is contradictory. I don't think it is. In his statement Boyce states, "His wound a vertical incision on the left temple one and a quarter inches long was not seen at all by the Med Doctor and we were forbidden to touch him". Colonel Flinism on the stand stated he was present and heard Miyatake give this order. It is true that Boyce goes on to state that in violation of those orders he did treat Hall. However, Colonel Flinism stated for more than a day Private Hall lay in that hospital covered with dirt, coal dust, and coagulated blood, and he stayed in that condition because Miyatake had ordered that he wasn't to be touched, and finally Captain Boyce could stand it no longer and treated him in spite of those orders. The whole picture truly and accurately depicts Lieutenant Miyatake as a man who would not tolerate violation of any order. Therefore, it is

all the more credit to Hayes that he treated him and he does state what little treatment Hall did get - just a mere injection, and from the other testimony there is fair presumption that that is all that was available to Captain Hayes to treat Hall. True, Colonel Flinism did state that Captain Hayes requested further medicine, which request was refused by Miyatake, but the mere fact that that request was made does not show that Miyatake consented that Private Hall be treated. He was acting at that time in violation of Miyatake's orders. However, in addition to the statements of Collins and Colonel Flinism, numerous affidavits have stated -- no, I am sorry about that. I think just for those reasons, Specification 9 has been proved more than by a prima facie case and the defense's motion should be denied.

Now, as to 11, we have introduced affidavit after affidavit showing that this accused did conduct these tenkos. Colonel Flinism testified that in addition to morning and night regular tenko and the hourly bed check, I think Colonel Flinism stated that besides these hourly bed checks this accused was in the habit when he was duty officer to come in those barracks and conduct another little private tenko of his own wherein he flailed the men with sword scabbards, kicked and beat them with fists. These men were half starved, undernourished, doing hard stevedore work on the dock. Anybody knows that men in those conditions, if forced to lose a few hours sleep would feel the loss of that sleep. In addition, we have the statement of Brian Gordon "as a result of one of these tenkos, an Australian lost his life". In a second statement he identifies that soldier as Private Hall. Campbell also states that in the one week just prior to Private Hall's death there were two tenkos conducted by the accused Lieutenant Miyatake, and he, as a major, states in his opinion those tenkos contributed to the cause of Private Hall's injury, because of fatigue. This evidence mentioned, the prosecution contends, sustains the allegation and the motion should be denied at this time.

DEFENSE: At this time the defense moves that Specification 13 be stricken on the ground that the prosecution has failed to make out a prima facie case. The only evidence in support of this specification is Exhibit No. 36, the affidavit of Philip E. Sanders. In this affidavit Sanders states that Miyatake came around after being asked to examine Knutsen, that he forced Knutsen to leave his bed and struck him in the face. Now, up to that time, according to this affidavit, Miyatake knows nothing about this man except that he has been asked to check his condition. Then Sanders goes on to say "He explained to him he was too weak to stand and then Miyatake left". The affidavit goes on to state that Miyatake ordered Knutsen transported to the hospital in an open truck and concludes by saying that in the opinion of the deponent, death was caused by the unnecessary exposure to the cold and the rain. The death certificate of Knutsen, Exhibit No. 2, shows that the date of his illness was 23 December 1943, the date of his death was 8 January 1944. Now, it is the contention of the defense first of all that death occurring after such a period of time from pneumonia could not have been caused by these blows in the face and we contend that if the prosecution wished to prove that point it should have introduced competent medical evidence to show a possible connection. Pneumonia is not caused by being struck in the face nor, for all we know and because we have no evidence on it, can the disease be accelerated by such action. Now, the Commission cannot draw inference that the beating caused the death when the death certificate shows that the death occurred approximately eighteen days later from pneumonia. This affidavit on the face of it again shows that even if the allegations contained therein are true this accused is in novise to blame for the death and the needless exposure part is unfounded because the deponent states

that the hospital was several miles away and the deponent states "we were going to carry this man on a litter". In the open they were going to carry him. Now, it is obvious if you carry a man on the litter on a cold and rainy night he is going to be exposed to the elements much longer than if you put him in an open truck and send him there. It is obvious on the face of the affidavit that whoever gave that order - Miyatake or anybody else - whoever gave that order to send this man to the hospital on an open truck exercised good judgment, as the accused had the best interest of that patient, therefore had him transported in the truck rather than have him carried on an open litter, so here again the prosecution's evidence is contradictory - charging the man with needlessly exposing a man to the elements by transporting him in an open truck and implying that he should have been carried in a litter and exposed for a much longer time. The opinion rendered is utterly incompetent - it is opinion of a layman and this man has no right to make such a statement in any court and no court should accept such a statement especially in view of the fact that on the face of it he states "in his opinion" and he was told that the man died the same night, and the death certificate shows that he died eighteen or so days later. Incidentally, this sort of thing shows the unreliability of such hearsay evidence. The last sentence in that paragraph is again utterly without probative value. We don't know who Dr. David Hochman is; we don't know how he was acquainted with Knutson's condition. For all we know Sanders probably told Hochman this man was transported in an open truck and the same night he died and Hochman may have said, "Well, that may have caused his death" - we don't know. Consequently, this is another opinion, and we say from the one paragraph in here, which is contradictory, it shows that whoever gave that order exercised good judgment rather than have him carried on the open litter. We contend that the prosecution has made out no case whatsoever linking the death of Knutson to this accused.

PROSECUTION: I don't believe the defense has fully read the affidavit. Sanders states this: "We then prepared Knutson for the trip, so that he would be protected from the weather, expecting to carry him ourselves on a litter. After we wrapped him well so that he would be warm during the trip, we carried him to the gate. There the guards told us that Lieutenant Miyatake had ordered that Knutson be transported to the hospital in an open truck which was then standing near the gate. It was raining and bitter cold so we protested to Lieutenant Miyatake that Knutson was too ill to be transported in such a vehicle. Lieutenant Miyatake overruled our protests, ordered Knutson placed in the open truck among some boxes of provisions with one blanket and sent him on his way to the hospital several miles away." I submit to this Commission that a man well wrapped with blankets carried on a litter by his own fellow prisoners would be far better taken care of than placed on an open provision truck with one blanket. It is true the death certificate states that the illness of Knutson began on November 23. The prosecution is not attempting to dispute that. The death certificate does not state, however, that that is the date Knutson entered the hospital. Sanders states it was reported back to him and this Commission should remember that Sanders was the senior American prisoner of war man in that camp as camp liaison for the prisoners of war and the Japanese and in functioning as such he received such a report. He said, "It was reported back to me that Knutson died the same night he was taken to the hospital". I think that alone would establish a prima facie case. It is true that kicking a man and beating him in the face will not cause pneumonia. That is not the contention of the prosecution. The contention of the prosecution is that this man was weakened by an illness which had lasted for some days, suffering from pneumonia, and this accused beat and struck him. I submit that as a matter of common observation and knowledge that a man seriously ill with pneumonia is going to have his death hastened if he is beaten; that particularly is not the usual treatment for pneumonia.

Then, too, this was a doctor giving this beating. To support his opinion, Sanders states "This opinion was verified to me several times by Dr. David Heckman, U.S. Army Medical Corps who was acquainted with Knutson's condition". He doesn't state that he told Heckman of Knutson's condition. He states plainly that Heckman knew Knutson's condition and said this treatment by Miyatake hastened his death. We submit that the case is proved and proved definitely. Matter of guilt is not determined by the number of affidavits, necessarily. One good witness is worth one hundred poor witnesses. We submit we have one good witness here - Sanders - who has given complete details in his affidavit and that affidavit in and of itself is enough to sustain a conviction on that count and for that reason the Defense's motion should be denied.

LAW MEMBER: Is there anything further?

DEFENSE: No, sir.

PRESIDENT: The Commission will be closed.

The Commission was then closed from 1355 hours to 1410 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order. The motions made by the defense are denied. Proceed with the case.

DEFENSE: The defense wishes to make a very brief opening statement. This Commission has heard the prosecution's case in its entirety. At the outset the prosecutor characterized the term that Lieutenant Miyatake spent at Camp Nobe as a "reign of terror". Now, it is the turn of the accused to put on his case. The defense will show by competent evidence he was a good man - the accused was a young medical officer just out of school - that he had no command authority, that he was under his superior officers who interfered with his operations and who also directed him to do many things that he is charged with in these specifications. The Accused himself will take the stand later and he will tell everything he knows about these specifications, and we intend to prove that where the accused has resorted to any corporal punishment the accused did not act willfully and unlawfully as he is charged in these specifications but that he acted in accordance with his own principles and with practices then current in the Japanese Army and whenever he did strike prisoners he thought he was absolutely justified in striking him and that that act was legal from every point of view. We shall also show by competent medical evidence that the deaths which are charged to this accused cannot possibly be sustained - these charges. We will call as our first witness, Yasuji Morimoto.

YASUJI MORIMOTO, a witness for the defense was sworn and testified through the Interpreter as follows:

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q What is your name?
A Kenji Morimoto.

Q Were you formerly a member of the Japanese Army?
A Yes, I was drafted.

Q Where were you on duty between 10 June 1943 and 31 August 1943?
A I performed my duty as branch camp commandant at the Kobe and Kawasaki branch camps, a period from June 1943 up to July. From July to October 1943 I was transferred to Amagasaki branch camp as branch camp commandant.

PROSECUTION: I think it is only fair to the witness that the Commission instruct him as to his rights as a witness. That is, he cannot be compelled to testify as to matters which might tend to incriminate himself. I think in all fairness to the witness he should be so instructed and the Commission should instruct him through the interpreter.

PRESIDENT: That is so ordered.

INTERPRETER: Will the regular procedure of instructions be sufficient?

PROSECUTION: That will be entirely satisfactory.

(The interpreter then instructed the witness as to his rights)

WITNESS: I understand.

INTERPRETER: I told him that if there was any question put to him that might incriminate him he has the right that he does not have to answer the question.

Q Do you know the accused Kunio Miyatake?
A Yes, I do.

Q Was he the medical officer at Kobe between 10 June 1943 and 31 August 1943?
A Yes.

Q Did he serve under your command during that period?
A The accused Kunio Miyatake not only performed his duty as a medical officer at the Kobe Branch Camp but he performed his duty at all branch camps in the district of Miyagi Prefecture.

Q How many camps were in this prefecture?
A There were five branch camps in this district - Marina, Hirohata, Kawasaki, Amagasaki, and Kobe.

Q What rank did you hold at the time Miyatake served under you?
A First Lieutenant.

Q What was the highest rank you held in the Japanese Army?
A Captain.

Q What were the duties of Miyatake?
A He was assigned as a medical officer to the camps and his duties pertained to the sanitation of prisoners of war.

Q Was Miyatake on duty in Kobe everyday?
A As I mentioned in my previous statement, he worked in these five different branch camps. He segregated his attentions according to the dates.

Q Do you remember a prisoner of war by the name of Captain Hayes?
A If you would tell me what nationality he is I may be able to recall.

Q Captain Hayes was an Australian.
A Was he a medical officer or a regular field officer?

Q Well, Captain Hayes was a medical officer.
A If it is this captain who was an Australian, I remember his face very well.

Q Was this Australian Captain the medical officer of the prisoners of war at Kobe?
A That is correct.

Q What were the duties of this Australian Captain?
A Being that he was the prisoner of war doctor medical officer his duties were to render medical attention to the prisoners of war.

Q Who decided whether a prisoner of war was too sick to go to work?
A The prisoner of war medical officer would confer with the Japanese medical officer; the final decision would be on the Japanese medical officer.

Q Did you ever receive a complaint saying that Lieutenant Miyatake had sent a sick prisoner of war to work?
A No.

Q When Lieutenant Miyatake was not at Kobe who classified patients as too sick to work?
A Whenever Miyatake was absent from the camp a medical sergeant by the name of Usui made the decision.

Q Would Sergeant Usui always consult with Captain Hayes before deciding that a man was well enough to go to work?
A Pertaining to Sergeant Usui or Lieutenant Miyatake, they both consulted with the prisoner of war medical officer and made a decision.

Q Did you ever receive any complaints that a sick prisoner of war was sent to work between the 5th of June 1943 and the First of September 1943?
A No.

Q Who was the commanding officer of the prisoners of war at that time?
A There wasn't any such personnel; as to the title as prisoner of war commanding officer there wasn't any; however, we did have a prisoner of war by the name of Major Haughton who was assigned as the controlling officer for the prisoners of war.

Q Did you have conversation with Haughton from time to time?
A Yes.

Q Did you speak to him everyday?
A As pertains to simple conversation it would occur everyday.

Q Where did you obtain medical supplies for Kobe Camp?
A From the main camp in Omuta.

Q Do you know if there was available at Kobe while Lieutenant Miyatake was there a large assortment of medicines?
A Yes.

Q Did you personally inspect the hospital and see these medicines?
A I have inspected the medicines that were received every month.

Q Can you name some of these medicines?
A There are various that I could name.

Q Name some of these medicines.
A Aspirin, vitamin pills, anesthetics, disinfectant medicines, alcohol, mercurochrome, gauze and bandages, and various others.

Q Were these items which you have mentioned available to the prisoner of war doctor?
A Yes, whenever it was mentioned to the Japanese medical officer they were available.

Q Was there any limitation on the amount of these particular medicines which could be issued each day?
A No.

Q Did you ever receive any complaints from Captain Naughton that enough medicines were not available?
A No.

Q Did you ever receive such a complaint from Captain Hayes?
A No.

Q Do you know whether Lieutenant Miyatake ever made any special effort to get medicines for the prisoners of war?
A There was a time that a special type of medicines were demanded so Miyatake came over to me for permission to obtain such medicines.

Q Did you give Miyatake that permission?
A Yes.

Q Did Miyatake then buy this medicine?
A Yes.

Q What money did he use to buy it with?
A I think the money was furnished by the prisoner of war officers who made the request.

Q Do you remember a man falling on his head into the hold of a ship while Miyatake was medical officer at Kobe?
A On August on a very warm day there was a big accident that occurred.

Q Do you remember the name of that prisoner?

PROSECUTION: At this time I would like to ask this witness the nature of the material he has in his hands and is constantly referring to.

PRESIDENT: I have been curious about that myself.

DEFENSE: We have no objections and we don't know what it is at all.

PRESIDENT: Will you inquire as to what it is?

WITNESS: I was told that I will take the witness stand concerning Kunio Miyatake so to refresh my memory I took down notes and I am using them so that I can give definite answers.

PROSECUTION: I would like to ask the witness a couple questions on the notes he has.

DEFENSE: No objections.

PROSECUTION: Did you use any reference in making these notes?

WITNESS: No, I did not use any reference. These notes the I have in my hand are when I received several investigations at Sugamo concerning this Miyatake incident I took down the notes at that time and kept them.

PROSECUTION: Are these notes all in your own handwriting?

WITNESS: Yes.

PROSECUTION: No further questions.

PRESIDENT: Any objections to his using them?

PROSECUTION: No; they apparently are notes made to refresh his memory and if that is all that they are they are permissible; however, if he continues to read entirely from the notes before answering the question I think we will have to enter an objection at some point. In other words, I want this witness to testify as he knows it rather than testify from written statements entirely. In that case, such statements are not permitted to be used.

PRESIDENT: I suggest that this being a defense witness you either caution him or - - -

DEFENSE: I will explain to him. As a matter of fact I saw him take the papers out to refer to but I wasn't conscious of the fact he was looking at them.

PROSECUTION: We have no objections to his referring to the notes as to names or things like that, but other matters we will have to object to.

DEFENSE (to Interpreter): Please tell this witness he may use this paper just to refer to it on question of names or dates but he must not read it; that he should testify as to the best of his recollection on all these things, but he can look up a date or a name, or something of that sort.

(This was then explained to the witness by the Interpreter)

WITNESS: I understand.

Q Do you remember the name of that prisoner?
A His name was Ali (ph)

Q Did this man subsequently die?
A So far as I can recall I think this man died around five days after the accident occurred.

Q At any time after this man was injured did you receive a complaint that Lieutenant Miyatake had failed to give him adequate medical treatment?
A No; Miyatake put an effort to this injured person. I did not see this injured prisoner of war. At the day that this Australian prisoner of war received this injury I was absent from the camp for the reason that I was over at the main camp. Around 4 PM of the same day I received a telephone call from Sergeant Ueno relating that an Australian prisoner of war fell from the scaffold into a ship's hold while working on that ship - - -

DEFENSE: I will continue to question the witness; please instruct him to answer my question and not to go on further; I think it will clarify matters considerably.

(This was then explained to the witness by the Interpreter)

PROSECUTION: I also think it fair to instruct the witness that he is not restricted to any "yes" or "no" answer. As the question strikes him, he should give his answer in response to that question.

(This was then explained to the witness by the Interpreter)

WITNESS: I would like to finish this statement I just started. The next morning I saw this injured prisoner of war. He had a bandage on his head. His face was very pale and he was breathing with his shoulders. I advised Miyatake to put him in the hospital. However, Miyatake told me that the injured person was unconscious at the present moment and the sickness was very acute - he had a brain hemorrhage and also a broken bone and if he was to be moved at the present moment it would just hurry his death. So he related that it would be better to leave this prisoner of war here until his condition was improved. And he stated he would try his best to give him the treatment here at Kobe so I took the doctor's word and let him do as he wished. About three days after he was injured his condition improved and we thought the crisis had passed. However, approximately four or five days later I received a report that he died.

Q Were you in Kobe Camp everyday following the injury until he died?
A Yes, I saw this injured prisoner of war everyday. During my time as branch

camp commandant at Kobe, this is the only big accident that occurred. At that time I called all the company officials and related to them that they should be more careful so that future accidents would not occur.

Q Where was the nearest hospital for prisoners of war?
A The nearest hospital from Kobe Branch Camp for the prisoners of war was at Osaka, a place called Ichioka. It was approximately eight ri, which would be equivalent to twenty-one miles.

Q At that time was there another hospital near Kobe about one and a half miles away?
A The Ichioka Branch Camp was moved to Kobe Hospital. The hospital in Kobe was first opened in June of 1944.

Q Was there an ambulance at Kobe at the time Hall was injured?
A We had a taxi which was used only on occasions which was the acute sickness such as appendicitis.

Q Did Captain Noyce ever complain to you that Miyatake had not given Hall adequate medical treatment?
A Absolutely not.

Q Did Captain Haughton ever make such a complaint?
A No.

Q Do you remember a prisoner of war by the name of Colonel Flinian?
A When he was at the Kobe Prisoner of War Camp he was a lieutenant colonel.

Q Did Lieutenant Colonel Flinian ever make such a complaint?
A No.

Q At any time did you hear from any one of these three officers that Lieutenant Miyatake had forbidden Captain Noyce to give medical treatment to Hall?
A No.

PROSECUTION: I don't want to damper the defense but I think they are getting more into leading questions. I make the request that they continue their investigation according to the principles of direct examination, otherwise the prosecution will be forced to object.

DEFENSE: We will endeavor not to make or ask any leading questions.

Q Do you know whether this was Lieutenant Miyatake's first assignment as an officer in the Japanese Army?
A So far as I know, he came from the Himeji Army Hospital.

Q Do you know whether shortly before Miyatake arrived at Kobe there had been an attempted escape of prisoners of war at a nearby camp?

PROSECUTION: I object; I don't see the materiality nor the pertinence of that question.

LAW MEMBER: I will sustain the objection unless you can lay a little more foundation on that.

DEFENSE: I will withdraw the question temporarily.

Q Is it the custom in the Japanese Army for a medical officer to perform the duties of officer of the day or duty officer?
A As for the regular army outfit medical officers will not pull the duty as the duty officer; however, in the prisoner of war camp, being that officers were very scarce it was ordered from the main camp that medical officers would pull that duty.

Q Did you instruct Miyatake before he performed his duties as duty officer?
A The regular instructions to the duty officer were given him which were as follows: to see that the prisoners of war did not escape, and fire hazards, and to see that the prisoners followed the regulations of the camp.

Q Was there any particular reason for extreme vigilance at the time that Miyatake first came to Kobe Camp?
A During the summer there were quite a number of prisoners escaped. In the latter part of June 1943 a prisoner of war escaped from the camp in Osaka Area. Therefore, there were orders from Colonel Maruta that the particular attention should be given to see that the prisoners of war should not escape. In doing this the order was to take a roll count of the prisoners of war from time to time.

Q How was the food for the prisoners of war obtained?
A We received the food from a merchant who would sell it to the Army.

Q Where did the prisoners of war work?
A Most of the prisoners of war worked at the port in Kobe; however, there were a few that went to Nishi No Miya City at Showa Electric Company and Tayo Steel and Yoshima Oil Refinery Company.

Q Who had supervision of the prisoners of war from the time they left camp for work until they returned?
A From the time the prisoners of war left the camp to the time they returned back to the camp the Army Guards and also the company guards had the responsibility of the prisoners.

Q Who fixed the gross ration of food that was allotted to the prisoners?
A The ration was fixed by the War Ministry.

Q Was Kobe Camp a regular Army Camp?
A Yes; from the beginning to the end it was the Army camp.

Q What was it before the war, if you know?
A It was the building that was owned by the American Company who were manufacturing various watches and fountain pens.

Q Did you have any power to alter the living conditions or the number of prisoners of war stationed at Kobe Camp?
A I did have a little power.

Q Explain what power you had.
A That power that I had was to improve the buildings where prisoners of war were living. For instance, cleaning the house they were sleeping in or fixing and

improving the facilities of latrines and kitchen.

DEFENSE: We have no further questions.

CROSS EXAMINATION

Questions by the Prosecution
Answers through the Interpreter:

Q In addition to taking care of the sanitation of the prisoners what other medical duties did Lieutenant Miyatake have at Kobe Camp?
A In addition to the duty of sanitation at the camp Lieutenant Miyatake had the following duties: being that he was one of the camp personnel he was obligated to guard prisoners of war and as to instructing the prisoners of war, even though he was a medical officer he still had these duties to perform.

Q Was he supposed to conduct daily sick call for the prisoners of of war?
A In Kobe Branch Camp the sick call was performed just twice a week and the other days Miyatake performed his duties in those other camps I have mentioned in my previous statement.

Q Did Lieutenant Miyatake conduct a sick call at Kobe Camp twice a week during the time he was stationed there?
A While Lieutenant Miyatake was in the Kobe Camp he gave the call for sick call morning or afternoon or whenever it was necessary to have a sick call.

Q Did you ever see Miyatake conduct a sick call?
A Various times; it was my duty to see that he performed these sick calls.

Q Is it true that the final decision as to whether sick prisoners would remain from work rested with the Japanese medical staff?
A That is correct.

Q Who made that order?
A Whenever Miyatake did the examination he would make the final decision.

Q Did you ever issue an order to the effect that the final decision as to whether or not sick prisoners would remain from work would rest with the Japanese staff?
A The answer to that would be it is the duty of the prisoner of war camp medical officer to make the decision.

Q How about the times that Lieutenant Miyatake was not at Kobe Camp, who made that order? Who made the order that the final decision rested with the Japanese staff?
A The temporary decision would be made by Sergeant Usui.

Q Who gave Sergeant Usui authority to make that temporary decision?
A That, too, is one of the duties of the medical sergeant.

PROSECUTION: Tell the witness to answer whether he himself ever authorized Tsui to overrule Captain Bayes's decision.

DEFENSE: If the Commission please, we object to that for several reasons. I believe the witness is confused as to order and decision. In the first place I don't think he can be pinned down - this witness - I think there is a confusion there and this witness is trying to say it was the natural practice for the Japanese medical authorities to have the final say but so far as any other order I don't think he clearly understands the distinction.

PROSECUTION: I submit that this is not being interrogated in English; it is in Japanese and I do think there is a distinct and definite Japanese word for order and decision. This man was the camp commander and I think it is pertinent to pin down the responsibility as to who made this order - whether it was this witness or the accused Miyatake and it is my opinion that I don't think it is confusing.

DEFENSE: We have no objection to the question which will follow, that the order was issued by somebody but - - -

PROSECUTION: This is cross-examination and I can ask such a question.

DEFENSE: Absolutely.

PROSECUTION: The question is proper.

DEFENSE: Absolutely; we have no objection if you will clarify that between order and decision.

PROSECUTION: He is being interrogated in Japanese and there is a definite Japanese word for order and decision. I will ask the official interpreter to state to the commission whether there is a definite word for that. If not, we will change the question.

COURT INTERPRETER: The words order and decision you might say are like black and white. There is a definite equivalent to order and decision.

PROSECUTION: Therefore, we submit that in view of that that the question is entirely proper and if that is so this witness cannot be confused.

PRESIDENT: I see what the prosecution is trying to get at and I can sympathize with you. Let's see if the interpreter can't get it over to the witness what you are trying to get at.

(The question was then repeated by the Interpreter to the witness)

DEFENSE: I object because it contains more than one question. I don't believe that the record will show that Sergeant Usui ever overruled Captain Bayes and I think proper foundation should be laid before that is asked.

PROSECUTION: I submit that affidavit after affidavit stated that Captain Bayes was overruled by the Japanese staff. This witness has testified to the fact

that the final decision was with the Japanese staff. The defense cannot offer a witness and have him testify in part and say "That's enough; you are restricted from the rest of the subject." He is subject to cross-examination including the entire subject.

LAW MEMBER: See if you can't simplify the question.

PROSECUTION: I think it is simple. Did Lieutenant Miyatake give that order? The answer will be "yes" or "no". Then we are going on to somebody else and we will see who did give that order.

PRESIDENT: Suppose you withdraw the question and submit this again tomorrow morning. I see what you are trying to get at and sympathize with you. However, there is some difficulty either in interpretation or on the part of the witness and I think with a little thought it can be reworded.

PROSECUTION: That is agreeable to the prosecution.

INTERPRETER: If I am permitted I would like to state that as for the interpretation of the word "order" there is a definite translation for it in the Japanese language and, therefore, there shouldn't be any difficulty.

PRESIDENT: You mean "order" as a military man knows it?

INTERPRETER: In the Japanese language even though it is an order in the Army language or in the civilian language, it still is the same.

PROSECUTION: This might help - is there any difference in the Japanese language between a military order and an order as is ordinarily given in ordinary everyday life? Is there a definite Japanese word for a military order?

INTERPRETER: There is.

PROSECUTION: Is that the word being used by you in translating that question to the witness?

INTERPRETER: Yes, sir.

PROSECUTION: That is all I wanted to know.

PRESIDENT: The Commission will adjourn until 0900 hours Monday morning.

The Commission then at 1535 hours, 24 January 1947, adjourned to reconvene at 0900 hours, 27 January 1947.

John P. Laughlin
JOHN P. LAUGHLIN
Chief Prosecutor

(The witness was reminded by the prosecution that he was still under the oath previously taken.)

Questions continued by the Prosecution:

Q Did you yourself ever authorize Sergeant Tsui to overrule Captain Hayes's decisions?

A What type of request would that be?

Q Was it a camp rule that gave the Japanese medical staff authority to overrule Captain Hayes's medical opinions?

A Hey just a minute -- the regular procedure we followed in our camp was that whenever the prisoners of war had any requests they wanted to make they would refer it to Captain Naughton and in turn Captain Naughton would extend to me.

Q Did Hiyatsu have the authority to overrule Captain Hayes's requests that sick prisoners remain away from work?

A Lieutenant Hiyatsu had a duty to give a physical examination to the person who was sick.

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
27 January 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case, being present, except Captain McIntyre, temporarily delayed.

PRESIDENT: The Commission will come to order.

DEFENSE: At the time we adjourned I believe there was an objection before the Commission on one of the questions.

PROSECUTION: There was no objection; the defense suggested that the witness misunderstood the question.

DEFENSE: We can have the question read back and I believe - -

(The question was then read by the reporter)

DEFENSE: I withdrew my objection to that question and I want to state for the record that my objection had nothing to do with the fact that these witnesses are being interrogated in Japanese but the reason I suggested the witness might have been confused is because I myself was somewhat confused and as I said, it had nothing to do with the interpretation. I withdrew my objection and perhaps further examination will clear up the difficulty.

Q Did Sergeant Usui have the authority to overrule Captain Hayes's requests that certain sick prisoners of war be kept from work?
A If the request was for a physical examination he would have to give the examination.

PROSECUTION: Will you tell this witness to answer the question asked.

WITNESS: Yes.

Q Did Sergeant Usui have the right to refuse Captain Hayes's requests that a sick prisoner of war be kept from work?
A No.

LAW MEMBER: Clear up whether Lieutenant Miyatake had that right or not.

Q Did Lieutenant Miyatake have the right to refuse Captain Hayes's requests that a sick prisoner of war be kept from work?
A As for the medical officer, if he received a request stating that a captain prisoner of war wanted a rest he would have to give a physical examination then decide whether to send out to work or give him quarters.

Q Were you in the habit of watching the prisoners march off to work?
A Yes.

Q Did you ever see any prisoner of war being half-carried to work by his fellow prisoners?
A No.

Q What was the general health condition of the prisoners of war in your camp during the time Lieutenant Miyatake was there?
A During the time Lieutenant Miyatake was in this camp the general health condition of the prisoners of war was good; compared with the other prisoners of war that were in Osaka, they were out of the best.

Q Did the prisoners of war gain or lose weight during the time Lieutenant Miyatake was there?
A Their weight gained accordingly.

Q What do you mean by accordingly?
A Prisoners of war arrived in this camp on October 1942 and from then on they gained weight as time went by.

Q As officer of the day did Lieutenant Miyatake have the authority to strike prisoners of war with his hand?

DEFENSE: We object to that on the ground it isn't proper. We didn't go into any of the matters pertaining to the duties of the officer of the day on direct examination. Therefore, we don't believe it is proper cross-examination.

PROSECUTION: I submit that they did on direct examination bring out that Lieutenant Miyatake was officer of the day. That being the term, the military term, I think it is entirely proper to bring out on cross-examination what the duties of the officer of the day were. What the term means in the Japanese Army, but more in particular what it meant at Kobe Branch Prisoner of War Camp.

LAW MEMBER: You say it was in direct examination?

PROSECUTION: Yes, sir; they asked a question of the witness as to whether or not Lieutenant Miyatake was ever officer of the day and he said ordinarily medical officers did not pull officer of the day but because of the shortage of officers in camp, Lieutenant Miyatake did; is that right?

DEFENSE: Yes, I asked if he was the officer of the day but I don't see how that opens up the duties of the officer of the day because this witness if he is forced to testify along that line may say something that might incriminate himself. Now, the reason we object here is because we don't think that is such that the duties of the officer of the day and any orders or directions this man may have given his subordinates was covered on direct examination. Therefore, it can't be covered on cross-examination. Now it isn't that we don't want the matter covered but the prosecution had the chance to put on its own case as it so desired. This witness was available to the prosecution and he could have called him at the time they put on their own case. He is available after we finish our case and can then be called in rebuttal and we only ask the same privileges as the prosecution asked - that we be allowed to put on our witnesses as we see fit and not elicit the testimony we feel might incriminate the witness. It is plain - it is an elementary rule that has not been changed by the rules of the Commission that no witness can be examined on cross-examination on any subjects not covered on direct examination.

PROSECUTION: I agree with the defense; the scope of cross-examination is the scope of direct examination but I submit to the Commission that we cannot be restricted merely because the defense missed it. We can repeat word for word the questions of the defense on cross-examination. However, I repeat again that when they bring forth the term "officer of the day" which they brought forth clearly on direct examination, then it is properly within the scope of cross-examination to bring out what is meant by that term "officer of the day" and what is meant by it includes the duties of the officer of the day and the authority of the officer of the day.

LAW MEMBER: The witness has already been advised that he doesn't have to testify to anything which might incriminate himself.

PROSECUTION: That is correct and we submit that is his personal privilege. It isn't up to the defense nor the prosecution to again remind the witness of that privilege. He has been fully advised of his rights and I am sure he clearly understands that from that time on it is only he who can claim that right.

LAW MEMBER: The objection is overruled.

A No; he did not have the authority.

Q To refresh your memory of your testimony Friday you stated on direct examination that Lieutenant Miyatake was on duty at several other prisoner of war camps during the time he was on duty at Kobe Camp; will you name these camps, please?

A He wasn't on duty at those other camps. He only went to give physical examinations. The camps were as follows: Marina, Nawasaki, Hirohata, Amagasaki, and Kobe.

Q How often did Lieutenant Miyatake go to these camps to make his physical inspections?

A It depended on the order from the main camp.

Q Can you give an approximate idea of how many days a month Lieutenant Miyatake was absent from Kobe Camp on his visits to other camps?

A Two or three days out of the week Lieutenant Miyatake would perform his duty at Kobe Camp from morning to night.

Q Did Colonel Flinian ever make any complaint to you about inadequate medical supplies?

A No.

Q Was Colonel Flinian the senior Army officer in Camp Kobe?

A Prisoners of war who had the rank of lieutenant colonel in this camp besides Lieutenant Colonel Flinian were Commander Harrington who was in the army and Lieutenant Colonel Stuart who was Army personnel of England; Lieutenant Colonel Stuart entered the hospital in Ichioka because of a sickness and passed away. After him Major Haughton took over as the leader of the prisoners of war. Major Haughton came to the camp when he had the rank as a captain. However, during my period there he received a promotion to a Major.

Q Why was not Lieutenant Colonel Flinian made commanding officer of the prisoners of war?

A In Kobe we received five hundred prisoners of war who were English and later on fifty prisoners of war that were Americans entered this camp. Being that the English prisoners of war were there first and their number being greater than the American prisoners of war we appointed an English officer as the prisoner of war commanding officer.

Q Do you remember Major W. H. J. Pitt?

A Yes.

Q Was he senior to Captain Haughton?

A Major Pitt was a sick prisoner of war; he was in Ichioka hospital for a long period of time.

Q He was a British officer and senior to Captain Haughton was he not?

DEFENSE: If this is going to lead somewhere to serve a useful purpose we have no objection but I would like an intimation. In regards to the setup we are all familiar with it. Colonel Flinian was accorded a separate - and definitely he had an office downstairs and he was given consideration when these alleged beatings took place - he was called to witness that. Now, where is this leading to as a matter of law?

PROSECUTION: It has two purposes, but actually the prosecution does not have to state what the purpose is but we have no objection to doing so. First of all it was brought out by this same witness on direct examination that Captain Naughton was the commanding officer of the prisoners of war. He stated he received no complaints from Captain Naughton as to food and medical supplies. I want to bring out that Captain Naughton was not the senior officer and in bringing that out he said the reason Captain Naughton and not Colonel Flinian was the senior prisoner of war officer was because the British were there first. Getting down to the British I am now showing that Captain Naughton was not the senior officer there and the Commission can take judicial notice of the fact that it is a custom of the Army that the senior officer of any local theater commands the troops. I am trying to get it out of this man that the Japanese didn't take cognizance of that universal custom.

DEFENSE: Well, is it the contention of the prosecution in this case that - - -

PROSECUTION: Second, I want to test his credibility in view of the other testimony.

DEFENSE: Is it the contention of the prosecution that the accused in this case had anything to do with appointing either a British or an American as the senior prisoner of war officer?

PROSECUTION: No, none whatsoever. Just to get back - that no request was made to the prisoner of war commanding officer - - -

DEFENSE: The prosecution is supposed to make out their case through their own witnesses and go in on cross-examination to things that have been introduced by the defense. Now, if he is going to be permitted to make out certain portions of his case from witnesses - a witness who is a defense witness when we didn't touch on it, it could go on forever.

PROSECUTION: I think you are misquoting - in direct examination by the defense you did touch on it. You asked a question and he stated that Captain Naughton was commanding officer of the prisoners.

DEFENSE: Is there any contention that he wasn't? It makes no difference in this trial whether I was the authorized commanding officer, or whether Y was appointed commanding officer - it doesn't make any difference what he was. It is this before this commission now, who actually was? Not who should have been. Certainly you can't charge the accused for being derelict for failure to appoint the right man but a man was appointed, a man actually acted and we have the undisputed testimony on both sides - from Colonel Flinian on behalf of the prosecution and this witness on behalf of the defense that Captain Naughton was the commanding officer.

PROSECUTION: If the Defense will wait one more question I will bring it down to the accused and who Major Fitt was by this witness. The next question will pertain directly to the accused.

DEFENSE: Go ahead.

PROSECUTION: Do you withdraw your objection?

DEFENSE: Yes, I will withdraw the objection as Pitt may have been mentioned heretofore.

PROSECUTOR #1: Yes; in Exhibit No. 16.

DEFENSE: Yes.

Q Did Major Pitt ever send you a written protest as to Lieutenant Miyatake's conduct as officer of the day?

DEFENSE: We object to that because as stated twice before we didn't go into that on direct examination. This witness has been warned of his rights but still we feel he shouldn't be subjected to this sort of thing when it isn't proper. He was available to the prosecution before the trial and he could have been put on as part of their main case but this wasn't covered by direct examination and we feel we have a perfect right to keep it out. It has been stated that a witness may not be examined on cross-examination by anything not touched on in direct examination. SCAP rules say only an accused may be cross-examined on matters not brought out on direct examination. We have evidence in this case that a protest was made but this witness didn't testify to any such question and consequently we feel it is improper cross-examination and under the rulings of this Commission it should not be allowed.

PROSECUTION: I submit that the statement of the defense is true about the scope of direct examination and cross-examination. I do think that this is within the proper scope of cross-examination. The defense themselves put this witness on the stand and asked if Lieutenant Miyatake was ever officer of the day and he went on to state "Yes, he was" and stated why he was under the circumstances of that camp - even though he was a medical officer. They asked what his duties were; this witness stated they pertained to sanitation and also the accused had the duty of rendering medical attention to sick POW's etc. Also he further amplified it by saying he had to perform duties of the officer of the day and went on to state he was to see that no prisoners escaped, check for fire hazards, and see that the prisoners of war followed the regulations. In other words, he brought out the subject to some extent as to the accused's conduct as officer of the day and I can't see why the prosecution then in cross-examination cannot go further and add further details as to the accused's conduct.

LAW MEMBER: What was your question?

PROSECUTION: Did Major Pitt ever make a written complaint to you as to the accused's conduct as officer of the day.

DEFENSE: We didn't go into the accused's conduct as officer of the day; we went into his general duties in the camp. That has nothing to do with the officer of the day. We did go into the duties of the officer of the day -- not this officer of the day but we asked if this man had given instructions before he took over the duties as officer of the day. We can go into generalities but we asked no question pertaining to Miyatake's conduct as officer of the day. And this witness, I say again I don't believe that we should be prejudicing if we might be prejudicing him for the prosecution to go beyond the scope of cross-examination and apart from that and apart from our rights to put on our case as we see fit this witness should not be asked a question which might incriminate him. Still I think it is within the province of this Commission to force the

prosecution to confine himself to the scope of cross-examination - the proper scope. Not only to protect the accused, but to protect the witness.

PROSECUTION: We submit that if the defense brings forth a subject of their own volition the prosecution has a right to explore that subject.

DEFENSE: Now, if the Commission please, just one more word. And we goes ahead and asked this witness "Did you as camp commander ever receive a complaint from any Allied officer in regards to the conduct of the accused when he was officer of the day" and regardless of how he answers, "yes" or "no", then it would have been within the proper scope of cross-examination for the prosecution on cross examination to go into that subject and enlarge on it. That subject has never been touched on from this witness - the subject is divided into different sides and we keep in it as officer of the day but not this man - he is in contrast, keeping with the other side. Now, this question will lead to this and that is - - I am going to say it could in the future. This witness is a prisoner; he has not been tried. Now this may seem far fetched but it could happen. If he is asked if he received any objections or protests from Major Pitt and he said he did, then "What did you do about it?" and "I didn't do anything about it". All right, then here comes another charge - will he refused to go ahead and perform his duties as camp commander. It can lead to that. That is within the limits of possibilities and that is another reason why these things are excluded. We are strenuously entitled to a favorable ruling because the rules are clear, the Courts-Martial Manual is clear, and the Commission has already ruled that no subject may be touched on cross-examination that hasn't been brought out on direct examination.

PROSECUTION: I can cite to the Commission from Page 127 of the Manual. "When the accused testifies in denial or explanation of his guilt or innocence of that offense, any fact relevant to the issue of his guilt of such offense or relevant to his credibility as a witness is properly the subject of cross-examination. The accused cannot avail himself of his privilege against self-incrimination to escape proper cross-examination. In other words, if the witness, even the accused, testifies to any fact in denial or explanation of any fact he can be cross-examined upon the whole subject. I think the same thing applies to an ordinary witness.

DEFENSE: If you have an accused in a courts-martial charged with several offenses and you examine him on only one the prosecution has no right to come back and examine him about the others. That charge the prosecution just read supports our point absolutely. Of course, if he does testify to one crime and testifies just to part of it, where something has not been brought out on direct examination no cross-examination can bring it out.

PRESIDENT: The Commission will be closed.

The Commission was then closed from 0955 hours to 1005 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

LAW MEMBER: The Commission sustains the objection of the Defense.

PRESIDENT: The Commission will take a ten minute recess.

The Commission then recessed from 1005 hours to 1015 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the prosecution:

Q On the day that Private Hall was injured who called you at Headquarters Camp in regards to that injury?
A I received a telephone call from Sergeant Usui.

Q At that time did you talk with Lieutenant Miyatake on the phone at all?
A I talked to Lieutenant Miyatake the next day.

Q Was Lieutenant Miyatake on duty at Camp Kobe the day that Private Hall was injured?
A Yes, during that time Lieutenant Miyatake had an athlete's foot so he was resting in Kobe Camp.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q If there was a disagreement between the prisoner of war doctor and the Japanese medical doctor as to whether a prisoner was too sick to go to work who made the final decision?
A The Japanese medical officer.

Q Was that true at Kobe Camp only or was that true at all prisoner of war camps?

PROSECUTION: We object to the question. What was true at other camps had no bearing on this - what existed. It is not pertinent or material.

DEFENSE: That is a question having reference to the prosecution's question on cross-examination where I stated the witness was confused. I believe that the record is not clear on that one point and it might indicate that Lieutenant Miyatake had something to do with this policy. Therefore, I want to

show by this witness and we will show by other witnesses that Lieutenant Miyatake had nothing to do with that - it was a general ruling throughout the Japanese Army.

LAW MEMBER: Subject to objection by any member of the Commission the objection is not sustained.

A That is correct.

Q Please qualify your answer; do you mean it was a general policy or only at this camp?

A Yes, it was a general principle in all camps that the Japanese medical officer has the last say in making decisions of the sick prisoners of war.

Q Do you remember whether or not Lieutenant Miyatake was duty officer on the day that Hall died?

A Knowing that Lieutenant Miyatake has developed athlete's foot during that period so I could not state whether he was on duty as duty officer or not. And in this Kobe Prisoner of War Camp Lieutenant Miyatake pulled the duty as duty officer once in ten days.

Q Do you know whether the number of sick prisoners of war decreased or increased after Lieutenant Miyatake's arrival in Kobe Camp?

A When the prisoners of war arrived at the Kobe Prisoner of War Camp their general physical condition was good; however, after Miyatake resumed his duties at this camp the condition was getting even better.

Q Do you know whether Miyatake planned a new prisoner of war hospital for that area?

A Yes, he did.

Q Please tell us what he planned.

PROSECUTION: This will be immaterial; redirect examination is in the scope of cross-examination and there was no cross-examination about the plans of a project of this accused - what was planned and was not accomplished is not material. If he wanted to bring it out it should have been done on direct examination. Even so, I don't see where this line of inquiry will be material to the issue. It isn't material and not within the scope of cross-examination and the prosecution objects.

DEFENSE: We think it is very material because this man is charged in general with neglecting the welfare - he was the medical officer and this particular question - - -

INTERPRETER: I would like to correct my last interpretation. Instead of plan it should be "he put forth an effort".

DEFENSE: He made an effort to have a new hospital established?

INTERPRETER: Yes, sir.

DEFENSE: Well, we think it is very material and while we agree with the prosecution as to the general statement that we shouldn't bring out new material on redirect examination, still we don't think that has the same force as our objections had because we believe in circumstances where our witnesses speak a different language and where we have a Japanese counsel who is suggesting things - - -

PROSECUTION: If the Defense feels this is material the prosecution will withdraw its objection.

DEFENSE: As a matter of fact we do feel it is material to show anything we can that this man did for the prisoners of war.

PROSECUTION: The prosecution will withdraw its objection.

DEFENSE: However, we will withdraw our last question in view of the interpretation of the second last answer and I believe we have covered the point.

Q Did you ever have any conversation with Major Pitt?
A Yes; a little.

Q Did Major Pitt ever make any complaints to you about the insufficiency of medical supplies?
A No.

Q Did Major Pitt ever complain to you about prisoners of war not receiving proper medical attention?
A No.

Q Did any officer, any prisoner of war officer ever complain to you about the lack of medical supplies or the lack of medical attention?
A Not even once.

Q After Miyatake arrived at Kobe was there any improvement made by him in the manner of treating the patients who had dental trouble?
A Miyatake arrived at this camp in June; also the Australian prisoners of war in the number of two hundred arrived in June. In this Australian group there was a dentist. Any minor trouble concerning the teeth was handled in the prisoner of war camp. However, if there was to be any heavy cases, upon request the prisoner of war was sent to the civilian dentist outside of the camp.

DEFENSE: That is all.

RECROSS EXAMINATION

Questions by the Prosecution:

Q In August of 1943 did Major Pitt send you a written complaint pertaining to the actions of Lieutenant Miyatake as tenko officer affecting the health of the prisoners?

DEFENSE: We renew our objection. It was the ruling it is irrelevant and we don't believe it is proper cross-examination.

PROSECUTION: We call the Commission's attention to Paragraph 2 of Exhibit No. 16 and submit to the Commission this counsel has examined this witness as to complaints made by Pitt as to medical attention given by the command.

DEFENSE: That is correct, as to the medical supplies and the general medical treatment given to sick prisoners of war. That has nothing to do with speculation such as is intended in this - mere speculation on the part of a layman and a non-expert, and consequently we believe that the ruling of the Commission should apply to this case. We wouldn't open up a subject we have spent all morning trying to close. We definitely limited the scope to medical supplies - a general question as to medical treatment. We asked if he had complaints in Kobe Camp about these two things - medical treatment given prisoners of war who were sick and also what were the medical supplies.

PROSECUTION: I wish to cite Exhibit No. 16 of the Prosecution, paragraph 2. "As this interruption to rest, if continued, at frequent intervals, will have a bad effect on the working capacity and health of the man. . ." Whether the counsel intended to open this up or not the fact is they did when they specifically asked this witness, "Did Major Pitt make a complaint to you as to medical attention and supplies?". They have opened up the subject of complaints pertaining to the medical situation at Kobe and as such we should be given opportunity to explore it. That was ruled on before, but at that time the defense had not been specific. Now they have been specific and we feel it has been opened.

LAW MEMBER: Anything further?

DEFENSE: No, sir.

LAW MEMBER: Will the Reporter read back the question?

(The question was then read by the Reporter)

LAW MEMBER: I see nothing wrong with that and the objection is overruled.

A I did not see or receive any written notice; however, I have heard about this from the non-commissioned officer who is my interpreter.

DEFENSE: The defense moves to strike the second part as not responsive so that the record will show only the first part, that he did not receive any such communication.

LAW MEMBER: The last part of that answer will be disregarded.

PROSECUTION: No further questions by the Prosecution.

DEFENSE: No further questions.

EXAMINATION BY THE COMMISSION

Questions by the Members:
Answers through the Interpreter:

Q While you were Lieutenant Miyatsho's superior officer did you ever have occasion to reprimand him?

DEFENSE: We don't like to object to any question the Commission wishes to ask but we suggest this is not proper examination for the Commission. It opens up an entirely new subject which may or may not be prejudicial to the accused. We don't know, but we suggest that the Commission is bound by the same rule as applies to the prosecution on cross-examination. I don't know what this man's answer might be, but it is opening up a new subject and might be very prejudicial to the accused.

LAW MEMBER: Any other questions by the members of the Commission? Apparently not; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

PROSECUTION: Let the record show that that question was withdrawn.

PRESIDENT: The question was withdrawn. The Commission will take a short recess.

The Commission then recessed from 1035 hours to 1045 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: At this point, in view of the last objection by the Defense to a question asked by a Member of the Commission, should the matter come up again I wish to cite from the Manual for Courts-Martial, Page 127. "The court and its members may ask a witness other than the accused any questions that either side might properly ask such witness. If new matter, not properly the subject of cross-examination of such witness on his previous testimony be elicited by question of the court or its members, both parties will be permitted to cross-examine the witness upon such new matter. In questioning an accused the court and its members must confine themselves to questions which would have been admissible on cross-examination of the accused by the prosecution".

I believe that is self-explanatory and we suggest it serve as a guide for the Commission. Not so far as the accused is concerned, but so far as any other witness is concerned the Commission may ask the witness anything it so desires.

DEFENSE: We agree that the reading is correct and with what is in the Manual in complying with these court proceedings. However, it isn't so broad that any question could be asked. The word "properly" is used which means among other things the question must be relative to the issue in the case. Consequently, if questions are asked we reserve the right to object on that point. The defense calls as its next witness INOJIRO OHASAKI.

INOJIRO OHASAKI, a witness for the defense was sworn and testified through the interpreter as follows:

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

DEFENSE: The Defense suggests this witness be warned by the interpreter of his rights as a witness - not to answer any question which might incriminate him.

(This request was complied with)

Q What is your name?
A Ienjiro Umezaki.

Q Were you a member of the Japanese Army?
A Yes.

Q What was your highest rank?
A Superior Private.

Q Were you ever stationed at Camp Kobe?
A Yes.

Q When were you stationed there?
A I started from March 10, 1943 up to September 17, 1943.

Q What was your duty at Camp Kobe?
A Medical private.

Q Do you know the accused, Kunio Hiyatsuka?
A Yes.

Q Was he your superior officer between 10 June 1943 and 1 September 1943?
A Yes.

Q Do you remember a prisoner of war named Captain Noyes?
A I cannot remember the names.

Q Will you explain just what your duties as medical private at Kobe were?
A Being a medical orderly my duty was to the extent of looking after the medical supplies and the dispensary.

Q Explain the sick call system for prisoners of war at Kobe.
A The regular sick call was performed after supper when the prisoners of war returned back from their work. At times the prisoner of war doctor performed the sick call; whenever Lieutenant Miyatake was in Kobe Camp he performed the sick call around 8:00 P.M. for the regular sick patients. Sick patients that were left in the camp site, a sick call was held for them at 9:00 A.M.

Q When Lieutenant Miyatake was in the camp did he make the examination of sick prisoners of war with the prisoner of war medical doctor?
A Yes.

Q Who determined whether a prisoner of war was too sick to go to work?
A Lieutenant Miyatake.

Q Did Lieutenant Miyatake consult with the prisoner of war doctor before making a decision that certain prisoners of war were to go to work?

PROSECUTION: I submit this is direct examination and we object to that question as leading.

DEFENSE: We will withdraw the question and rephrase it.

Q Who was the first doctor who examined the prisoners of war?
A The prisoner of war doctor.

Q Did you have charge of the medical supplies at Camp Kobe?
A I did handle the medical supplies; however, I did not have the responsibility.

Q Who had the responsibility for the medical supplies?
A Sergeant Usui.

Q Were the medical supplies available at all times for the prisoner of war doctor?
A Yes.

Q Were some of the medical supplies locked up?
A Yes.

Q Were there some medical supplies which were not locked up?
A Yes; the only medicine that was locked up was the type that was poisonous.

Q Was the prisoner of war doctor on duty in the camp hospital everyday?
A Yes; he was in the camp everyday.

Q Did he treat sick prisoners of war everyday in the hospital?
A Yes.

Q How did he obtain his medical supplies?
A The medical supplies were kept in one of the rooms in the dispensary; the prisoner of war doctor usually went in and took out the amount that was needed and later put in a report to the Japanese medical orderly. As for the prisoners medicines or drugs the request would have to be made to Sergeant Usui or myself before we could give it to him.

Q Did you ever refuse any request by the prisoner of war doctor for any medicines?
A No.

Q Do you know of any occasion where a sick prisoner of war was sent to work?
A No, I could not remember such an incident.

Q Do you remember Sergeant Ochiai?
A Yes.

Q What was his duty?
A Sergeant Ochiai was in the General Affairs Section.

Q Did he work in the hospital?
A No.

Q Was Lieutenant Miyatake on duty at Kobe Camp everyday?
A No, he did not perform his duty everyday in this camp because he went to the various other camps to give physical examinations.

Q Did Sergeant Ochiai ever visit the barracks where the sick men were resting? I mean by that where those who were too sick to go to work and were allowed to remain in camp ill - I don't mean those who were sick enough to be in the hospital - - sick in quarters.
A He may have visited those barracks because he performed his duties inside the camp.

Q Do you know of any occasion when a prisoner of war who had been excused from work was forced to go to work - - excused from work by Lieutenant Miyatake?
A Yes, I have heard once or twice.

Q Do you know who was responsible for sending such prisoner to work?
A The responsibility would fall on Sergeant Ochiai.

Q On those occasions?
A Yes.

Q Did those incidents occur when Lieutenant Miyatake was in the camp or when Lieutenant Miyatake was away from the camp?

PROSECUTION: I submit to the Defense that is a leading question. The prior question was "Do you know of any occasion when a prisoner of war was excused from work by Lieutenant Miyatake and made to go to work?" and the answer was given. Now, he is leading the witness.

LAW MEMBER: See if you can't phrase the questions so they will not be leading.

Q Where was Miyatake on the occasion you have mentioned?
A Such an incident occurred at a time when Miyatake was not present in the camp.

Q Do you remember a prisoner of war named Hall?
A Yes.

Q Do you know of any unusual occurrence in connection with this prisoner of war?
A So far as I can remember this prisoner of war went out to work and received an injury and died.

Q Were you present when Hall was brought back to camp?
A Yes, I was there.

Q Describe what you saw.
A Around 4:00 P.M. or a little after, Hall was brought in on a stretcher. He was brought to the second floor of the dispensary. Soon thereafter Sergeant Usui went out to call Lieutenant Miyatake and Miyatake performed an examination and he found that Hall had a hemorrhage so he told the prisoner of war doctor and the medical orderlies not to move Hall. And to places where Hall received cuts we administered first aid. Lieutenant Miyatake instructed Sergeant Usui to give glucose and camphor both to Hall. From that day on, myself and the prisoner of war medical orderlies attended Private Hall.

Q Was the prisoner of war doctor present when Lieutenant Miyatake examined Hall?
A Yes.

Q Was the prisoner of war doctor present when Lieutenant Miyatake gave you instructions as to the injection of glucose and camphor?
A Yes.

Q Did you follow the instructions given you by Lieutenant Miyatake as to the injections of camphor and glucose?
A Yes.

Q Did Lieutenant Miyatake give you any other instructions as to treatment?
A I received instructions as to ice packs on places where Private Hall received bruises and injuries.

Q Did Lieutenant Miyatake actually treat any of these wounds himself?
A Yes; seen upon Miyatake reaching this point where Private Hall was brought in he disinfected the bruises and cut area with mercurochrome, then put a medicine called livinal (ph) and bandaged the cuts.

Q Can you tell us where these cuts or wounds were located on the body of Hall?
A In back of his head and he had a bruise on his jaw.

Q Was the prisoner of war doctor present when Lieutenant Miyatake treated Hall?
A Yes; the prisoner of war doctor and the prisoner of war orderlies were both there.

Q Did the prisoner of war doctor help to treat Hall?
A Yes.

Q What did he do at that time?
A He helped in bandaging Hall and used a stethoscope in looking over Hall.

Q On the following days what attention did Hall receive - what medical attention, if any, did Hall receive?
A He received glucose and camphor shots the next day and changed the bandages.

Q Did any doctor treat Hall or examine Hall on the day following his accident ?
A Lieutenant Miyatake performed an examination.

Q Was the prisoner of war doctor present at that time?
A Yes.

Q Did the prisoner of war doctor also examine Hall?
A Yes.

Q How soon after did Hall die?
A I think it was four days after.

Q Tell the Commission what medical attention he received from the doctors during that four day period, in addition to what you have already told us.
A In addition, we changed the bandage every day and we gave a camphor shot to Hall every hour or every two hours according to Lieutenant Miyatake's order. The shots were performed by the prisoner of war doctor. Miyatake came into the ward from time to time to feel the pulse of Private Hall. This is about all I can remember.

Q Was the prisoner of war doctor on duty every day in that hospital from the time Hall was injured until the time he died?
A Yes.

Q Did Hall ever regain consciousness?
A No.

Q When Hall was first brought in did this prisoner of war doctor ask Lieutenant Miyatake to send Hall to the hospital?
A That, I cannot remember.

Q Where was the nearest hospital for prisoners of war?
A The prisoners' of war closest hospital was in Osaka, called Ichicha Hospital and was around eight ri, which is about twenty miles.

Q Did you have an ambulance at Camp Kobe?
A No.

Q How were prisoners transported to the hospital at Ichicha?
A Generally they were transported on a truck.

Q At the time Hall was sick did anyone ask you for some particular medicine with which to treat him other than those medicines you have mentioned?
A No, I have not.

DEFENSE: That is all.

PRESIDENT: The Commission will recess until 1315 hours.

The Commission then recessed from 1130 hours to 1315 hours at which time the personnel of the Commission, prosecution and defence, interpreters and the accused, and the reporter resumed their seats. Captain McIntyre of the Prosecution was also present.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

CROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q What drugs were available for the treatment of diarrhea and dysentery during the time that Lieutenant Miyatake was at Kobe Branch Prisoner of War Camp?
A For diarrhea we gave them sulfa diazine, aluminum silicate, and castor oil; and for the dysentery we gave them emetine, magnesium sulfate, and castor oil.

Q Did you use aspirin for the treatment of diarrhea?
A No; we did not use aspirin for any diarrhea.

Q Did you ever use an Australian drug called H & B Tablets?
A I cannot remember.

Q Was there any limitation on the amount of drugs you just named that was made available to the prisoners of war?
A There was no limitation.

Q Approximately what was the average number of prisoners at Kobe Camp during the time Lieutenant Miyatake was there who were suffering from diarrhea and dysentery?
A During the time when Lieutenant Miyatake was there at the Kobe Camp there wasn't any such patients who had dysentery.

Q Were there any patients who had diarrhea?
A Yes, there was.

Q What was the average number that had diarrhea during Lieutenant Miyatake's term of duty?
A Figuring for the average of one day about four or five patients had diarrhea.

Q How could prisoners of war be excused from gain to work when Lieutenant Miyatake was not in camp?
A The prisoner of war doctor would consult me and in turn I would ask permission from Sergeant Usui.

Q Could Sergeant Usui overrule Lieutenant Miyatake's recommendations?
A No.

Q Then explain your statement that Lieutenant Miyatake excused one or two prisoners of war from work and they were forced to go to work by Sergeant Ochima.
A This is Sergeant Ochima.

Q Explain your statement that Lieutenant Miyatake excused sick prisoners of war and Sergeant Ochima forced them to go to work - by what authority did Sergeant Ochima do that?
A It may have been that when Lieutenant Miyatake was not present in the camp when Sergeant Ochima might have sent sick prisoners of war out to work; however, even a medical officer or medical sergeant would have to receive permission from camp commandant Captain Morimoto before they could excuse a prisoner of war from work.

Q When you first saw Private Hall was he covered with coal dust?
A Yes; he was blackened with coal dust.

Q Did Lieutenant Miyatake order him washed at that time?
A That I don't remember.

Q Do you remember when Private Hall was first washed?
A I think he was washed the same day when he entered the hospital.

Q Could it have been he wasn't washed until the next day?
A I could not remember.

Q Isn't it usually the case that when a prisoner is brought in seriously injured covered with dirt and dust he is immediately washed and cleaned up?
A That is correct; I think the medical orderly was doing it all the time.

Q When were the bandages first applied to Private Hall?
A I think the bandage was administered to Private Hall on August 12, a little before 5:00 P.M. - - the same day when he entered the hospital.

Q Are you related to the accused, Lieutenant Miyatake?
A No relation.

Q Are you very friendly with Lieutenant Miyatake?
A No.

Q Where do you live?
A At the present I am in Suyano.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q Were you ever convicted of any crime at all in civil life before you entered the Army?
A No.

Q Was there a supply of Vitamin B^1 tablets available for the prisoners of war?
A Yes; we received it from the main camp.

Q Did you mention on cross-examination that there was a drug called sulfa thiazole available to the prisoners of war for treatment of diarrhea?
A Yes.

Q Was there any other drug having a different term than thiazole?
A Yes, there was; there are various types of sulfa drugs used.

Q Were those sulfa drugs available to the prisoner of war medical doctor?
A Yes.

Q Were those sulfa drugs used for the other diseases other than diarrhea?
A I don't know all these various names for the drugs so I could not explain in detail.

Q When is the last time you talked with Lieutenant Miyatake?
A I think it was around October, 1943.

Q When was the last time you saw Lieutenant Miyatake?
A At Omaha main camp on the date I just specified.

Q Didn't you see Lieutenant Miyatake this morning when you came from Sugamo?
A Yes, I did.

Q Why did you say the last time you saw Lieutenant Miyatake was in October 1943?
A I made a mistake.

Q Have you made any other mistakes in your testimony?
A No.

Q Have you ever been arrested and convicted of any felony?

DEFENSE: Let's have it convicted?

PROSECUTION: All right, if you want it.

Q Have you ever been convicted before any court of a felony?
A I am now convicted for two years.

DEFENSE: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q How much medical training have you had?
A I did not receive any particular medical instructions or did not attend any school. I just merely learned while I was working in the hospital.

Q What did you do before you came into the Army?
A I worked in a factory where they were making paper bags and gunny sacks - just as a laborer.

PROSECUTION: No further questions.

PRESIDENT: Are there any questions by the Commission? Apparently none, the witness is excused.

(There being no further questions the witness was excused and withdrew)

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1350 hours to 1355 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

DEFENSE: The Defense calls as its next witness Sakuro Matsumuro.

SAKURO MATSUMURO, a witness for the Defense was sworn and testified through the interpreter as follows:

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

DEFENSE: Please warn the witness he need not answer any question which he thinks might incriminate him.

(This request was complied with)

Q What is your name?
A Sakuro Matsumura.

Q Were you a member of the Japanese Army?
A I was inducted in the Japanese Army on February 1, 1942.

Q What was your highest rank in the Army?
A First Lieutenant.

Q Were you ever stationed at Ocana Headquarters Camp for prisoners of war?
A Yes, I was.

Q When were you stationed there?
A From August 10, 1943 up to the termination of the war I performed my duties at this camp.

Q Do you know the accused in this case, Kunio Miyatake?
A Yes.

Q Did he serve at Headquarters Camp at the same time you were there?
A So far as I can remember I think he came to the Ocana Headquarters Camp before I resumed my duties there. However, he left earlier and was transferred to another outfit.

Q What were your duties at the Ocana Headquarters Camp?
A I was in charge of the Prisoner of War Labor Section.

Q Did you formulate any general policies as to the use of prisoners of war on labor projects?
A No.

Q Who made these policies with respect to prisoners of war working on various projects?
A I could not state definitely; however, the policy may have been drawn up by Captain Kunada.

Q In the course of your duties did you receive a directive from the War Ministry?

PROSECUTION: I submit that this line of questioning is entirely immaterial and incompetent. There is no charge against this accused as to any of the work policies at Headquarters Camp. There is no charge whatsoever which touches upon labor parties in the camp.

LAW MEMBER: Is the defense trying to lay a foundation for something that will pertain to the accused?

DEFENSE: We are trying to show through this witness that any policy which effected the working conditions of the prisoners of war came from above, there being implications heretofore that this accused could not have had anything to do with the work conditions, etc., of the prisoners of war.

PROSECUTION: I submit that wouldn't be pertinent as regards Kobe Camp. This is Headquarters Camp he is talking about. If the defense wants to bring out such pertaining to Kobe Camp he should bring a man from Kobe Camp.

LAW MEMBER: I think the Commission will take judicial notice of the fact that orders of any prisoner of war camp are put out by higher authority, not only in the United States but in Japan as well. What we are coming down to is how that particular camp was run. The Commission will take judicial notice of the fact that the policies for the treatment of prisoners of war were furnished the accused by the Japanese Government - the War Ministry.

DEFENSE: Well, the only thing we had in mind was there is definite testimony that there was a certain quota of sick prisoners of war for examination at Kobe Camp and the implication is that it is still in evidence that maybe Miyatake had something to do with that. We don't admit that it is true but it is in evidence. We want to show by this very evidence that a second lieutenant medical officer would have nothing to do with such a system. However, we won't pursue this any farther in view of the Commissioner's statement that judicial notice will be taken of the fact.

Q Do you know what the sick call system for prisoners of war was at the Osaka Main Camp Headquarters?

PROSECUTION: We object to that as it isn't material. Under the Charge and Specifications there is nothing as to the sick call at Headquarters Camp. There is as regards Kobe Camp but not at Headquarters Camp. The charges against this accused pertaining to Headquarters Camp are Specification 12, the accused willfully and unlawfully mistreated Seaby, Archer and approximately sixty others by beating them with a sword scabbard and by otherwise abusing them; Specification 13 is that the accused willfully and unlawfully mistreated Thomas Knutson, an American prisoner of war, by forcing him when ill with pneumonia to leave his bed and stand at attention, by then beating him and ordering him transported to a hospital in an open truck in the rain and cold, thereby contributing to and accelerating his death; and Specification 14, the general specification, that the accused did willfully and unlawfully mistreat and torture numerous American and Allied prisoners of war by making unnecessary inspections in the late evening and early morning hours, thereby depriving the prisoners of needed sleep, by beating them with fist and sword scabbard, by kicking them and by otherwise abusing them.

DEFENSE: Well, we will withdraw the question and won't pursue that line of questioning any longer and we are finished with this witness.

PROSECUTION: The prosecution has no questions.

PRESIDENT: Are there any questions by any member of the Commission? Apparently not; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1406 hours to 1410 hours at which time the personnel of the Commission, prosecution and defense, interpreters and the accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

DEFENSE: We call as our next witness Kenichi Kondo.

KENICHI KONDO, a witness for the defense was sworn and testified through the Interpreter as follows:

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

PROSECUTION: Will you instruct this witness as to his rights as a witness and also that anything he says in this court can be used against him at any time.

(This request was complied with)

Q What is your name?
A Kenichi Kondo.

Q Were you a member of the Japanese Army?
A Yes.

Q What was your highest rank?
A I was First Class Private during the war and after the termination of the war I received a rank of Superior Private.

Q What branch of the service did you serve in?
A I was in the medical outfit.

Q Were you ever assigned to Headquarters Prisoner of War Camp, Osaka Area?
A Yes.

Q When were you assigned there?
A From January 21, 1943.

Q Until what date?
A I performed my duties at the Osaka Main Camp from January 21, 1943 until June 8, 1945; however, from May 8 of 1945 up to June 1, I went to Naruo Dispatch Camp to help clean up the camp.

Q Do you know the accused, Kunio Miyatake?
A Yes.

Q Was he on duty at Headquarters Camp at the same time you were?
A Yes - not all the time.

Q How many doctors - Japanese doctors were stationed at Headquarters Camp?
A Three doctors.

Q Who were they?
A The three doctors were as follows: First Lieutenant Nosu, First Lieutenant Miyatake, and Second Lieutenant Maruo.

Q Who was the senior medical officer among the Japanese doctors?
A First Lieutenant Nosu.

Q Do you remember a prisoner of war named Knutson?
A No, I cannot remember the name.

Q What hospital were sick patients sent to from the Headquarters Camp?
A To Ishioka Hospital, outside of - - -

Q How far away was that hospital?
A One to one and a half kilos.

Q How long would it take to get from the Headquarters Camp to the hospital by walking?
A If you don't carry anything you may walk it in fifteen minutes.

Q How long would it take if you were carrying a sick man on a litter?
A Twenty to twenty-five minutes.

Q How long would it take to go from Headquarters Camp to the hospital in a truck?
A Three to five minutes.

Q In November and December of 1943 was there an ambulance at Headquarters Camp?
A No.

Q How many trucks were there for the use of the dispensary, if any?
A There wasn't any truck for the use of the dispensary - just one truck for the Main Camp.

Q How were patients taken to the hospital from the camp as a general rule?
A The usual case was to carry them on stretchers.

Q Do you know whether it was the custom at Headquarters Camp for duty officers to make surprise emergency roll calls?
A I could not state it was the usual custom; however, it was done.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q You stated there was one truck available for use of Headquarters Camp; will you describe that truck to this Commission?
A It is the same type of truck that is running on the streets at present - a Japanese truck.

Q Was it an open truck?
A Yes it is an open truck with the bed on it.

INTERPRETER: By bed he means the regular truck bed.

Q Was that truck in good mechanical condition?
A It was an average truck.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q Do you know Sergeant Walter C. Ryan?
A Yes.

Q Do you know Philip R. Sanders?
A Yes.

Q When did you see them last?
A The last time I saw Sergeant Walter C. Ryan was on October 24th or 25th of 1945; and Philip R. Sanders on August 7, 1945.

Q Do you remember on occasion in November or December of 1943 when a sick man w as sent to the hospital in that truck which you have mentioned?
A Yes, I do remember.

Q Do you know who gave the order for sending that prisoner of war to the hospital?
A In the latter part of 1943, I think when Lieutenant Miyatake was the duty officer, he was going around the barracks inspecting and came across this prisoner of war and after examining him he figured he had pneumonia so he came back to the office and told us that he should be transported to the hospital. And at that time there was a little bit of business I had to take care of in the barracks where the British stayed and when I came back the prisoner of war was already prepared to be transported to the hospital. Then he was loaded on the truck and taken out.

Q Did you see the prisoner of war placed on the truck?
A Yes.

Q Did you see the prisoner of war just before he was placed on the truck?
A Yes; because whenever the doctor gives an inspection to the prisoners of war I am always with the doctor.

Q Was the prisoner of war on a litter when you first saw him after returning from the British barracks?

PROSECUTION: We object to that as being a leading question.

DEFEN E: I will rephrase it.

Q Describe the position of the prisoner of war just prior to his being put on the truck.
A The usual case is that the patient prisoner of war would be taken to the hospital on a litter; he was brought out to the outside on a litter; I don't know which medical orderly it was but he told me Lieutenant Miyatake requested a truck so therefore he was going to be transported on a truck.

Q What happened next?
A Then this prisoner of war got up and he had his overcoat on and a blanket over his head and he got onto the truck and left for the hospital.

Q Was he able to get onto the truck without any help?
A The prisoner of war medical orderly named Murrit (ph) brought a stand and helped him get on the truck - him and two other prisoners of war.

Q Was the litter put on the truck?
A No.

Q Were any blankets taken away from this man?
A No.

Q Where was Lieutenant Miyatake at this time?
A So far as I can recall I think Miyatake was there by the truck.

DEFENSE: No further questions.

REDIRECT EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q At the time this sick prisoner of war was placed on this truck was there anything on the truck?
A There was nothing in particular that was in the truck at that time; however I noticed there was one empty mess basket on there.

Q Thinking back to that time, do you remember whether or not there were any provisions on the truck?
A There was nothing in particular that was on the truck; this one container that I have mentioned was pushed in the forepart of the truck and this prisoner of war was sitting on it.

Q Do you know if that truck went directly to the hospital?
A I think it went directly to the hospital.

Q Do you know for sure?
A Yes; because it was just the one truck road from the camp to the hospital so wherever the truck was going it would pass this hospital before any place else.

Q What was Philip E. Sanders's position at Headquarters Camp?
A He was in charge of the prisoners of war?

Q Were you present at the time Lieutenant Miyatake examined this sick prisoner of war in the barracks?
A Yes.

Q Did you see Lieutenant Miyatake strike this sick prisoner of war?
A Are you referring to this patient?

Q I am referring to that same patient.
A No.

Q Were you present in the barracks at that time, during the entire time Lieutenant Miyatake was there?
A Yes; because whenever there was a physical examination I would be there because I have the chart to take down notes.

Q At what place did you last see Philip Sanders?
A I think the last time I saw Philip Sanders was on June 5, 1945.

Q Where was that?
A It was after Headquarters Camp in Osaka burned down and the prisoners of war transferred to Tsunori Branch Camp. That is the place where I last saw Philip Sanders.

Q Did you see Philip Sanders in Yokohama in June 1946?
A I saw him in August.

Q 1946?
A Yes.

Q Where?
A In No. 2 Court.

Q Where did you last see Sergeant Ryan?
A Is that referring to the prisoner of war camp?

Q The last time you saw Sergeant Ryan.
A In October 1946.

Q Where did you see Sergeant Ryan?
A In No. 3 Court.

Q Are you related to Lieutenant Miyatake?
A No.

Q When was the last time you talked with Lieutenant Miyatake?
A Either in July or August of 1944.

Q When was the last time you saw Lieutenant Miyatake?
A In Sugamo when the lawyer called me out concerning the case - I saw Lieutenant Miyatake then.

Q Did you see Lieutenant Miyatake this morning?
A Yes.

PROSECUTION: No further questions.

DEFENSE: The defense has no further questions.

PRESIDENT: Are there any questions by members of the Commission? Apparently not, the witness is excused.

(There being no further questions the witness was excused and withdrew)

PRESIDENT: The Commission will recess until 0900 tomorrow morning.

The Commission then at 1500 hours, 27 January 1947, adjourned to reconvene at 0900 hours, 28 January 1947.

John P. Langhna
JOHN P. LANGHNA
Chief Prosecutor

Q Did you speak with him this morning?
A No, because we could not talk to anyone.

Q Did you receive any note from Lieutenant Miyatake?
A Nog nothing.

Q Were you ever convicted in any court of a felony?
A Yes; in this war crime trial I received twelve years.

Q What was it customary for a prisoner of war to take with him when he was transferred from the prisoner of war camp to a hospital?
A Usually they would take all of their personal belongings.

Q How many blankets would they usually take with them?
A I cannot state exactly what amount. It all depends on how the prisoner of war is taken. When taken on the stretcher they used enough blankets necessary and would bring them back when they came back, so it depended on the time as to the amount - whatever amount the prisoner of war doctor specified.

Q At the time this sick prisoner of war was placed on the truck, how many blankets did he have with him?
A He had the blanket over his head so I don't know the exact count. However, he may have had about two blankets.

Q Going back to the time that Lieutenant Miyatake examined this sick prisoner in the barracks was that prisoner strong enough to stand up by himself?
A Lieutenant Miyatake was saying something in English to the prisoner of war named Harritt, then Harritt was saying something in English to the sick prisoner of war and he came down from the bunk by himself. Then Lieutenant Miyatake gave his examination.

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
28 January 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case, being present. Mr. Minoru Kayashi was also sworn as Interpreter.

PRESIDENT: The Commission will come to order.

PROSECUTION: Is the defense ready to resume with their case?

DEFENSE (Mr. Nash): The Defense is ready. I would like to be excused by the Commission at this time in order to interview a witness who has just arrived from Osaka.

PRESIDENT: Very well.

(Mr. Nash was then excused and withdrew)

DEFENSE: The Defense calls as its next witness SOTARO MURATA.

SOTARO MURATA, a witness for the defense was sworn and testified through the interpreter as follows:

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

DEFENSE: I wish at this time to advise this witness of his rights.

PROSECUTION: Mr. Interpreter will you advise the witness he cannot be compelled to testify as to anything which would tend to incriminate him of any crime; he can waive this right and testify as he so desires but if he does so, anything he says in this courtroom can be used against him in any trial whatsoever.

(This was then explained to the witness by the Interpreter)

Q State your name, please?
A Sotaro Murata.

Q Were you formerly a member of the Japanese Army?
A Yes.

Q And what rank did you hold, if any?
A Colonel in the Army.

Q What branch of the service?
A Infantry.

Q Were you in the Japanese Regular Army or were you just called into service during the last war?
A The Regular Army.

Q How many years have you been in the Army?
A Thirty-two years.

Q What is your age at this time?
A Fifty-seven.

Q In June 1945 and continuing down through and including October 1946 what official duties did you perform, if any, in the Japanese Army?
A I was the Main Camp Commandant in Osaka.

Q Were there any camps that administratively operated under the direction of the Osaka Camp?
A Yes, there was.

Q Approximately how many?
A It depended on the season; however, there were twenty-two other camps under Osaka.

Q And what function did these subservient or branch camps perform? What was the object of their establishment?
A To handle all the prisoners of war.

Q And what did the prisoners of war do?
A They performed the duties as laborers.

Q Were these labors that they performed in furtherance of the Japanese war effort?
A No; it was just a civilian problem of labor.

Q Was it to supplement a shortage of civilian labor in manufacturing and other industries?
A That is correct.

Q Just what did the main Osaka Camp do relative to the management or direction of these branch camps?
A In the Main Camp of Osaka they furnished the instructions and procedures to the branch camps that was under this main camp.

Q And from where, if anywhere, did the Osaka Main Camp receive their instructions?
A We received instructions from the commander of the Central Area Army.

Q Where was the Headquarters of the Central Army located?
A It was in Osaka.

Q What was the name of the Japanese officer from Osaka from whom you directly received your instructions?
A Are you referring to the Central Area Army officer?

Q That is right.
A From the army staff who was in charge of the prisoners of war.

Q Were those orders issued to you in writing or verbally?
A It was written instructions.

Q In the Japanese Army do you have what is known in the military as a chain of command?
A Yes; for instance, the orders would be sent down from the War Minister to the Headquarters of the Army; in turn it would be passed on to the camp commandant. The order that is in this written matter states how the procedure should be performed by the camp commandant.

Q Do you have what is ordinarily known as a table of organization set up for the allowed -- for the personnel that you were allowed to operate each branch camp?
A There were no set regulations; however, in the Osaka prisoner of war camps we did have the set amount of officers and enlisted men in handling the prisoners of war in this area, but in the Osaka Prisoner of War Camp at the early part we received 1,100 prisoners of war and according to this we had a number of officers and enlisted men who were non-commissioned officers handling the prisoners of war. However, in a short period thereafter we received approximately 10,000 prisoners of war in the Osaka Area. To handle this amount of prisoners of war it would take a lot more staff than we already had and so we requested the War Minister to send some more staff down.

Q Did you ever receive from higher authorities sufficient personnel to adequately serve in handling the number of prisoners of war in your camps?
A Yes; after the request was sent in we received enough staff to handle and maintain all the prisoners of war.

Q Prior to the war was the camp known as Kobe Camp an Army installation?

LAW MEMBER: Hasn't it been testified to that it was a British warehouse?

DEFENSE: It has been brought out by the prosecution and I am going to be through with this line in just one moment.

A No.

Q Did the Osaka Headquarters which you commanded have the authority to fix the gram rations that were fed to the prisoners of war?
A The food was handled from other sections.

Q Who furnished the medical supplies to Kobe Camp?
A As to the medical supplies the Osaka Main Camp received from the higher headquarters and from there it was distributed to the camps.

Q Do you know the accused in this case, Kunio Miyatake?
A Yes; I do know him.

Q Did you know him from the period commencing June 10, 1945 and including most of 1944?
A Yes; I did know him.

Q Where was he stationed and what were his functions from June 10, 1945 to and including 31 August 1945, if you remember?
A He was stationed in Kobe Camp and performed his duties pertaining to the sanitation of the prisoners of war.

Q During that period was Kobe the only camp that it was his duty to perform the duties of - the sanitary duties necessary?
A No; in Kobe there were other camps like Kawasaki, Hirohata, and Harima and two or three others at which he performed his duties.

Q With this number of camps to service do you personally know how many days each week he devoted to Kobe Camp exclusively?
A I could not state definitely because his duty was to go to these other various camps and I don't know the exact amount of days he performed his duties at Kobe.

Q Do you know what the gram ration was for POW's in June of 1945?
A To each prisoner of war I think the ration was given to them equivalent to the ration of the Japanese Army; I think it was around seven hundred grams.

Q Was the gram ration changed - either raised or lowered - at approximately this period in 1945?
A I think it was the same amount of ration issued during this period; however, in the later date we received an order from the Army Commander to lessen the gram ration. This is not the responsibility of the camp commandant; it is an order from the Army Commander.

Q Neither you nor your subordinates had any control over the number of grams that were issued, did you?

PROSECUTION: I will object to the form of the question.

Q Did you or your subordinates have control over the amount of the grams issued?
A No; we did not have the power to change the gram ration; during this period that you mentioned - in 1945. Comparing Kobe with the other camps we had more food such as meats and bread. I think this could be verified by the branch camp commandant.

Q Regarding the medical supplies, did you have in Kobe Camp during this period of time sufficient medicines to treat the ordinary cases that were prevalent in camps of this character?

A During this period that you mentioned we did have enough medicine to treat the prisoners of war; however, being that the Japanese Army did not issue more than enough of medical supplies up to April of 1945 we did lack in medicines.

Q Do I understand that to mean that subsequent to April of 1945 the supply of medicines had lessened to some extent?

PROSECUTION: I submit the question should be asked over.

(The question was repeated by the reporter.)

WITNESS: From the period of April up to May of 1945 we received the specified amount of medicine; in June of 1945 the medicine was lessened.

Q Subsequent to 1 September 1945 did the accused continue to be a member of your command and, if so, where was he stationed and what were his duties?
A Yes; he performed his duties in a dispensary at Osaka Prisoner of War Camp under the supervision of the superior officer.

Q Did he have any duties that took him outside of the Osaka Camp?
A Yes, there was; he was performing his duties in the line of medical treatments at the various other camps.

Q Did you have a regular Japanese medical officer stationed on full duty time at each one of your branch camps?
A No, because we lacked in medical officers. We requested the doctors from the company where prisoners of war worked to help out and also we asked the prisoner of war doctors to help out.

Q And did the prisoner of war doctors actually help out and administer to the prisoners of war as you say was a part of your system?
A Yes, they did.

Q Do you know of an instance involving the death of a prisoner of war by the name of Hall at the Kobe Camp during the month of August 1945?
A I could not remember.

Q Do you have any personal knowledge of an incident involving a prisoner of war named Knutsen that happened either in November, December or January and he was a prisoner at the Osaka Camp?
A I could not remember.

Q Did you have occasion from 12 June 1945 down until the time Miyatake no longer worked at the Osaka Main Camp to observe his attention to his medical duties?

DEFENSE: The normal answer to my question would be "yes" or "no". I didn't ask for an opinion. I am trying to lead up to whether he had a basis on which to form an opinion. Now, if the Commission please, I don't know what he has said but I confined my question to the performance of his medical duties. I don't know which will be the shortest but I don't like to be bound by his covering any territory that I didn't cover myself.

PROSECUTION: I submit this is a defense witness and he is being interrogated in his native language; therefore, I think the defense is bound by any answer given.

LAW MEMBER: Well it becomes a little involved when it becomes necessary to convert it into Japanese and I again suggest that both of you when you are propounding questions that have to be translated it should be in the simplest and most direct phraseology you can possibly make it. The last question was quite involved even in English and when the interpreter gets it interpreted God only knows where it will be. I think the witness should go ahead and answer that question so long as you have put it to him.

DEFENSE: Well, it was primarily a question that should have been answered "yes" or "no" as to whether he knows and I would object to his observation. I asked "Did you have opportunity to observe?".

LAW MEMBER: I say it is your witness - you asked the question and got the answer.

PROSECUTION: I suggest the counsel state whether the witness' answer stands or not.

DEFENSE: I will withdraw the question.

Q Are you related by blood or marriage to the accused in this case?
A No.

DEFENSE: That is all.

CROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q Where in the Osaka Area was Camp Kawasaki located?
A It was in Kobe.

Q How far from Kobe Branch Prisoner of War Camp was Kawasaki Camp located?
A Figuring in ri it was approximately one and a half ri to two ri.

PROSECUTION: I would like the interpreter to state to the Commission how far that would be in miles.

INTERPRETER: About three point six miles.

Q Where was the Camp Hirohata located?
A It was located approximately one and a half ri away from the town called Himeji.

Q How far is that from Kobe Branch Prisoner of War Camp?
A I could not give the definite distance; however I think it was around fifteen or twenty ri away from Kobe. About approximately forty-five or forty-eight miles away.

Q How far from Kobe Camp was Amagasaki Camp?
A About seven or eight ri - about nineteen miles.

Q How far from Kobe Branch Prisoner of War Camp was Harima?
A I could not state the exact distance; however, I think it was around twenty-five or twenty-six ri, which is about sixty miles.

Q When Lieutenant Miyatake visited these four camps in the performance of his duties did he stay overnight?
A That is correct.

Q Would he stay more than one night?
A Like the time when he would go to Harima Branch Camp or Hirohata, I think he would stay more than one or two nights.

Q How often a month did Lieutenant Miyatake visit these camps?
A Is that the time when Lieutenant Miyatake was at Kobe?

Q That is right.
A I don't remember very clearly; however, I believe he has come to these various camps three or four times out of the month. It may be more; however, I could not state clearly because I am not with him at all times.

Q Approximately how many Japanese Army personnel did you have under your command in the Osaka Area?
A As for the officers, medical officers and the General Affairs officers there were around twenty-four or twenty-five; however, for the non-commissioned officers and enlisted men I could not remember how many personnel was under me. When the amount would increase or decrease in regards to the amount of prisoners of war that we received and the amount of prisoners of war transferred out to Tokyo or Nagoya or any other area.

Q Did the Japanese Army personnel lose weight on their rations during this period of June 1943 through August 1943?

DEFENSE: The defense objects; it is improper cross-examination. Nothing like that was covered by us in direct examination.

PROSECUTION: I submit that the defense asked this witness what the ration was during this period in the Osaka Area and his answer was seven hundred grams, the same as the Japanese Army received. In other words, he has brought this ration out; therefore, we have the privilege of examining further the details as to that Army ration. We cite the SCAP rules for that, Paragraph 5d which says "The Commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the Commission's opinion would have probative value in the mind of a reasonable man. The Commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. etc". This Commission is a fact finding Commission and as such it is entitled to know the truth. The Manual for Courts-Martial, Page 126 states that you are allowed great liberality both in the form of the question and the matter of the question provided it is brought out to some extent on direct examination. We submit that the defense brought this matter up and we are entitled to explore it.

DEFENSE: I will refer to the record as to whether or not I even asked by inference whether or not anybody's weight increased or decreased. I merely asked whether the gram ration increased or decreased. On the theory that he construes the liberality of these rules anything can be asked. Now, I know that you gentlemen are familiar with the ruling on cross-examination. You are confined to the general line of questioning followed by the one who submits the witness - okay. And when it mentions liberality it means liberality on the things brought out by the who submits the witness but it doesn't mean they can question and explore. We object strenuously to this line of questioning.

PROSECUTION: I refer the Commission to Page 126 of the Manual for Courts-Martial - "Cross-examination should be limited to matters having a bearing upon the testimony of the witness on direct examination." Referring this Commission to this Witness' answer that this ration of the prisoners of war in the Ocean Area was seven hundred grams, the same as the ration of the Japanese Army. The subject has been opened.

LAW MEMBER: Also testimony was that that ration was cut.

PROSECUTION: Yes.

LAW MEMBER: In view of that the objection is overruled.

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1015 to 1025 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the Prosecution:
Answers through the Interpreter:

Q Did the Japanese Army personnel lose weight on their ration during the period June 1943 through August 1943?

A I think their weight was lessened. There was a time when I saw the chart of the Japanese Army Personnel in the Headquarters and it showed on the chart that their weight was lessened. Of course, compared with the Japanese Army personnel's physical build with the Americans it is different. However, there was cases of malnutrition in the Japanese Army personnel of which I was warned by the Army Commander.

Q How often did you visit Kobe Branch Prisoner of War Camp in the period 10 June 1943 through August 1943?

A I don't remember the exact number of times; however, I did go at various times.

Q Can you give us an approximate number of the times you went?
A Taking the average of a three year period I would say I visited this Kobe Camp at least once a month; however, during the period of 1943 when we received the prisoners of war I would go to this camp more than ten times in the month and there were times I visited four or five times a month during this period.

Q Did the Central Army Headquarters ever send down to you at your headquarters an order authorizing Japanese officers to beat prisoners of war with fists on their own initiative?
A No.

Q Did Central Army Headquarters ever send down to your headquarters an order authorizing Japanese officers to kick prisoners of war?
A No.

Q Did your headquarters ever authorize the officers at Kobe Branch Prisoner of War Camp to kick prisoners of war?
A No.

Q Did your headquarters ever authorize the Japanese officers at Kobe Branch Prisoner of War Camp to strike prisoners of war with a sword when such prisoners of war were found violating camp regulations?
A No.

Q Were the Japanese officers at Kobe Branch Prisoner of War Camp authorized at any time to inflict physical violence upon the prisoners of war?
A No.

PROSECUTION: No further questions by the prosecution.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q You don't know what the orders of Captain Morimoto to his subordinate officers were, do you?
A I don't know.

DEFENSE: No further questions.

PROSECUTION: The prosecution has no further questions of this witness.

EXAMINATION BY THE COMMISSION

Questions by the Members:
Answers through the Interpreter:

Q In your inspections of the camps under your command, did you inspect the sleeping quarters, messhall, kitchen, infirmary?
A I did so.

Q Were prisoners of war allowed to see you with any complaints?
A Yes; there were prisoner of war officers who would step and through an interpreter ask various questions and I would hear whatever they had to say.

Q During the period mentioned, in the Kobe Camp did you receive any complaints from the prisoners of war during any of your inspection visits?
A I could not remember.

Q What were the authorized punishments to prisoners of war for failure to obey camp regulations?
A After investigating the incident they would receive the punishment which is drawn up by the Japanese Army.

Q Then a prisoner of war would not be punished until he had been investigated?
A That is correct.

Q What would be the punishment for failing to count off?
A I don't know actually whether the prisoners of war made a mistake or did not count off properly; however, if I was to be the one I would not punish them, but if they disregarded the order they would be punished.

Q What would be the punishment for failure to salute?
A In the Japanese Army, after an investigation there would be a court-martial; however, they saluted at all times so I did not think anything about this matter.

Q Do you know that the position of attention in the Allied Armies is different from the position of attention in the Japanese Army?
A Yes, I know it is different.

Q What would be the punishment of a prisoner of war for failing to stand to attention in the Japanese Army manner?
A After investigating the matter the decision would be made.

Q In other words, no prisoner of war would be punished for infraction of the camp rules without an investigation; is that correct?
A After an investigation and finding that he did break the camp regulation he would be punished; however, if it is known that he did not break the regulation he would not be punished.

Q Did you put out any instructions to your camps about holding tenkos at odd hours of the day or night?
A Yes, I did mention a time to take roll call at odd hours when we suspected the escape of prisoners of war. This is made in the Japanese Army regulations.

Q What does a tenko consist of? Tell us how it is done, in other words.
A This tenko is merely to count the number of persons and see if there is any that is missing.

Q And that count is done by the men counting off the number?
A There are various ways. However, letting them count off is the most appropriate way.

Q Suppose a tenko is held at two o'clock in the morning after the men are in bed and asleep; how is it held then?

A When I was Second Lieutenant or First Lieutenant the way I performed a tenko was that I woke each one up, made them wear their uniform, and stand them in formation. It was the appropriate way.

Q Is it customary in the Japanese Army for an officer to strike an enlisted man with his fist?

A We don't do such an unjust thing.

Q Is it customary in the Japanese Army for an officer to strike enlisted men with the sheathed saber? A saber in the scabbard?

A There shouldn't be such an incident but depending upon the person's character and misunderstanding it might occur; however, I think if such an incident would occur it would be a misunderstanding.

Q Did you assign a limit to the number of prisoners of war in your branch camps who could be marked sick in quarters and excused from work?

A No.

Q This investigation which was held when a prisoner broke a camp rule, was an officer required to make that investigation?

A The camp commandant who is in charge of the prisoners would make the investigation.

Q Is it customary in the Japanese Army during a formation in which soldiers are formed into a company or a unit if one of the soldiers fails to stand at attention is it customary for the officer to strike him with his fist or saber?

A It depends on the officer's character; however, it is done, that the officer would use his fist and hit the soldier who is slow in coming to attention.

Q Is that sort of thing authorized in the Japanese Army regulations?

A It isn't authorized but the Japanese person has that habit from childhood and in the Army it is carried out. During the period near the termination of the war we were warned at various times not to do this from the higher headquarters. There is another way that you could take this hitting or striking a person in the army. For instance, some soldier might commit an offense. If they were to be reported to the commanding officer they would receive punishment. However, without letting the higher officer know about the incident they would strike them and with no ill feeling but to settle the matter and without letting the higher officer know about this incident.

Q You just stated that you were warned by the War Ministry, I believe, not to do this striking; was that warning passed on down to the camps under your command?

A Yes; every month I had all the camp commandants come over to my camp and would instruct them not to strike prisoners of war.

PRESIDENT: No further questions by the Commission.

REDIRECT EXAMINATION

Questions by the Defense:
Answers by the Interpreter:

Q I understood you to say that this order to cease beating prisoners of war was handed down from higher authorities towards the end of the war; is that correct?

A Not only that I received an order not to beat a prisoner of war during the time of the termination of the war but when I took command as the camp commandant in 1942 I personally lectured to each one not to beat prisoners of war.

Q But in spite of your lecture did the practice of beating prisoners of war continue until higher authority issued a formal order towards the end of the war? Answer "yes" or "no".

A No; this order does not pertain to the prisoners of war; it was the regulation which was in the Japanese Army itself.

Q If the regulation was being carried out not to beat, why did a special order came down?

PROSECUTION: I object to that; this witness does not know what would be in the mind of the commander. I think that it is evident that this man would not and could not know what was in the mind of the higher staff.

LAW MEMBER: Any comment?

DEFENSE: If the Commission please, the question has been gone into and I think I quote the record correctly when he said an order came down from higher authority towards the end of the war to cease the beatings. Now, I think I am correct and if there is any question as to whether I am or not correct - whether I made a misstatement I would like to refer to the record.

LAW MEMBER: What was the question objected to?

DEFENSE: I asked him if the order had come down to cease beating prisoners because the custom had prevailed - - -

PROSECUTION: I don't think that is quite the question. Will the reporter read the complete question?

(The question was read by the Reporter)

DEFENSE: Do you still object?

PROSECUTION: We still object.

DEFENSE: I will withdraw the last phrase and ask:

Q Do you know why an order came down from higher authorities?

A I mentioned this because I have attempted the influence of the Japanese Army and at that time it was called to the attention not to strike a person.

Q And what was the date it was so called to your attention that you have just mentioned?

A This was during when Uchiroku was Army Commander. It was during the latter part of 1942 up to the summer of 1943. We received an instruction with an example that a soldier was beaten; therefore, he escaped and committed suicide. With this example he called our attention not to beat these subordinates.

Q Did you ever later at any time from that time until the termination of the war receive any other order or instruction not to beat? Answer "yes" or "no".

A I could not remember.

DEFENSE: No further questions.

PROSECUTION: The prosecution has no further questions.

PRESIDENT: Are there any questions by any members of the Commission: Apparently not; the witness is excused.

(There being no further questions the witness was excused and withdrew)

PRESIDENT: The Commission will recess until 1315 hours.

The Commission then recessed from 1130 hours to 1315 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

DEFENSE: The Defense calls as its next witness Chuji Oshima.

CHUJI OSHIMA, a witness for the defense was sworn and testified through the Interpreter as follows:

PROSECUTION: Before the witness begins his testimony I suggest he be advised of his rights, that he cannot be compelled to testify as to any matter that will tend to incriminate himself; that he can, if he so desires, waive this privilege and if he so waives that privilege, anything he says in this court can be used against him at any time.

(This was then explained to the witness by the Interpreter)

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q What is your name?
A Chuji Oshima.

Q Were you a member of the Japanese Army?
A Yes.

Q How long did you serve in the Army?
A Approximately nine years.

Q What was your highest rank in the Army?
A Master Sergeant.

Q What was your branch of service?
A Infantry.

Q Was it the general policy in the Japanese Army for superiors to beat inferiors for minor infractions of the rules?
A Yes.

Q Was it the general practice in the Japanese Army to call surprise roll calls at any hour of the day or night?

PROSECUTION: We object to the form of the question; the witness can properly be interrogated through the interpreter.

LAW MEMBER: What was the objection?

PROSECUTION: It is a leading question and this is direct examination.

LAW MEMBER: Rephrase that.

Q Tell us what you know about the manner in which roll calls were conducted in the Japanese Army as a general practice.
A In the Japanese Army the regular appointed hour for roll call would be 5:00 in the morning and at the night. Besides this an officer who has the rank of First Lieutenant or Captain has the right to call a surprise roll call for any purpose in practicing at the time for when they have fire or other hazards.

Q Was it the practice to hold such surprise roll calls at night as well as in the daytime?
A Speaking from my own experience they would have surprise roll calls during the day and also late at night. They usually pulled this surprise roll call when it was not expected. For instance, when everyone is in the deep slumber or early in the morning.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q Where were you stationed in the Army in Japan?
A I was called to the Army four times so could you specify the time?

Q Where were you stationed in 1943?
A In Kobe Prisoner of War Camp.

Q Were you stationed there during the period from June 1943 through August 1943?
A I performed my duties at Kobe Prisoner of War Camp from December 15, 1942 to October 13, 1943.

Q At Kobe Branch Prisoner of War Camp during that period did they have a regular morning and evening roll call?

DEFENSE: We object to the question on the ground that it isn't proper cross-examination. We deliberately limited the examination of this witness to two points - the general practice in the Japanese Army on rollcalls and the general practice as regards beatings of inferiors. This man is under no obligation to make any statement; in fact, he can't be forced to make a statement on cross-examination with respect to actual occurrences at Camp Kobe. He was available to the prosecution if they wanted to use him; he is available in rebuttal if they want to bring him back, but it has already been ruled that in cross-examination the prosecution cannot exceed the scope of direct examination.

PROSECUTION: The scope of direct examination is as set forth on page 126 of the Manual for Courts-Martial - "Cross-examination should be limited to matters having a bearing upon the testimony of the witness on direct examination. Now, this witness has stated and testified as to the general practices of the Japanese Army; therefore, we are allowed to question him as to how that practice affected the accused at that particular place. Now, this witness was not brought forward by the prosecution; since the defense brought him forward and opened up the field we are entitled to explore fully this question as having a direct bearing on his testimony on direct examination. It is, therefore, proper.

LAW MEMBER: Why don't the prosecution bring the witness forth as a prosecution witness and then that would settle this continuous argument that is going on about whether or not cross-examination is proper.

PROSECUTION: We could, may it please the Commission, but there is no necessity under the rules for so doing. This is a defense witness - they cannot bring him up, open a field and say "stop". That isn't the way cross-examination is conducted. If they touch upon a matter then anything that has a bearing, the Courts-Martial Manual says, can be brought out by cross-examination. That is all we are doing now. They have qualified this man as an expert on general Japanese Army practices. Now, we are entitled to know what places that practice was carried out and how. That is what we are attempting to show - where that was carried out and how. I submit it has a direct bearing on the direct examination of this witness.

DEFENSE: We didn't open up this Kobe business and deliberately limited

it to general practices in the Japanese Army. We might have had any number of reasons. As mentioned in other testimony before this Commission, this man's name has been mentioned. Now we don't feel we might have failed for any reason - he might be asked about certain instances because if he is examined by us about some points, the prosecution cannot examine him on other points and if we choose to examine him on general practices the prosecution has no right to cross-examine on specific instances. We didn't even mention corporal punishment. We didn't ask "Where were you stationed?" We referred wholly to hypothetical questions and general questions and they are perfectly free to go on regarding general practices but they have no right to pin it down to any specific place or time and we feel that is an elementary principle of law. We agree with the Manual but we have not opened up this path. We feel we are supported in that position, as mentioned before, by the previous ruling of this Commission.

PRESIDENT: The Court will be closed.

The Court was then closed from 1335 hours to 1350 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

LAW MEMBER: The Commission sustains the objection of the Defense.

PROSECUTION: At this point I would like to ask permission of the Commission that we be allowed to call this witness as a prosecution witness. I understand that the witness will be in Osaka and it would greatly inconvenience him if he were compelled to wait around for a day or two until the defense has completed their case and then be called as a prosecution witness. I will ask the defense if they will consent that we interrupt a portion of their case in order to permit the prosecution to call this man as a prosecution witness?

DEFENSE: The Defense agrees that the witness be called out of time as requested by the prosecution.

PRESIDENT: It is so ordered.

PROSECUTION: I think that is proper under the rules because this Commission is directly under the rules as given us by the Supreme Commander of the Allied Powers and they are also allowed and authorized to make rules of procedure as they see fit - Headquarters Eighth Army directive, 1 February 1947.

PRESIDENT: The witness now becomes a prosecution witness. Do you desire that he be warned against of his rights in the matter?

PROSECUTION: I see no harm in warning him again. Will you again state to this witness that as a witness he cannot be compelled to answer any

question or testify as to any matters which will tend to incriminate him or indicate that he has committed any crime or offense; also state to the witness this is a personal privilege which he can waive, that if he elects to testify to any matters, such answers can be used against him at any time or at any place.

(This was then explained to the witness by the interpreter)

DIRECT EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q Will you state again where you were stationed during the period from 1 June 1943 to 1 September 1943?
A At Kobe prisoner of war camp.

Q Did they have tenkos at Kobe Branch Prisoner of War Camp?
A Are you referring that did I perform roll call?

Q No, the question is did they have tenkos at Kobe Branch Prisoner of War Camp?
A I performed the morning and night roll calls whenever I was on duty.

Q Was that a regular routine practice?
A That is correct.

Q Did they have any other roll checks of the prisoners at any other time of day or night at Kobe Branch Prisoner of War Camp?
A No, I haven't.

Q Did anybody also conduct any other checks as to the presence of the prisoners during the day or night?
A I did not see with my own eyes.

Q What was your position in the camp? What were your official duties?
A I was in the General Affairs Section.

Q What were your duties in the General Affairs Section? What things did you do?
A My duty was to keep the record of each prisoner of war that goes out to work everyday and also the duties of keeping records of the duties of Japanese personnel and take orders from the commanding officer.

Q In the performance of your duties did you have occasion to see the orders pertaining to officers of the day?
A The instruction sheet that I saw pertaining to this duty officer was just the instructions as to sanitation and fire hazards; that is all I have seen on the order.

Q Was there any mention of tenkos on that order?
A No, just the number of prisoners of war.

Q In your duty position did you see the orders that were issued by Headquarters Camp pertaining to treatment of prisoners of war?
A Yes, I did see.

Q Did you ever see an order from Headquarters Camp regarding corporal punishment of prisoners of war?
A There was an order from Colonel Murata that this corporal punishment is not permitted.

Q Did Captain Morimoto ever issue any order regarding punishment of prisoners?
A Captain Morimoto was saying the same thing that Colonel Murata ordered.

Q Were these orders in effect at Kobe Branch Prisoner of War Camp during the period from 10 June 1943 up to 1 September 1943?
A We received these orders to the extent of a warning.

Q On what approximate date did you receive these orders?
A I could not remember the date.

Q Can you remember the year?
A I have heard from the early part that the corporal punishment was not permitted.

Q Were the orders of Colonel Murata ever rescinded, to your knowledge?
A Are you referring to me personally?

PROSECUTION: I am sure the question wasn't understood by the witness.

Q The question is: Did Colonel Murata ever revoke these orders?
A I could not remember.

Q Did Captain Morimoto ever revoke his orders regarding corporal punishment?
A I don't remember such an incident.

PROSECUTION: No further questions.

CROSS EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q You stated that it was the general practice in the Japanese Army - - -

PROSECUTION: I submit that is not a proper question on cross-examination by this witness. This witness is a prosecution witness and he has testified to no standard practices in the Japanese Army.

DEF MBR: We will call him again as our own witness.

PROSECUTION: The Defense can't have its cake and eat it, too.

DEFENSE: I think we are only being accomodating here. I don't know but it seems to me the very point that we actually brought out - - -

PROSECUTION: The ruling of this Commission is cross-examination will be limited to the scope of direct examination. There has been no mention of general practices in the Japanese Army on direct examination of this witness.

LAW MEMBER: Well, if I sustained the objection on the part of the defense I will have to do it here. It is the same thing.

PROSECUTION: In the interest of getting through this, the prosecution will withdraw its objection.

Q Was this order from Colonel Murata that you refer to in written form?
A I cannot remember if there was any of them written or not; however, the order that I remember was the verbal orders that we received.

Q Isn't it true that these orders were issued near the end of the war?
A No; it was before that.

Q Are you sure that it was as early as the period between 1 June 1943 and 1 September 1943?
A It was before that; - at the time when I entered this camp.

Q You stated that it was the general practice in the Japanese Army for superiors to beat inferiors for minor infractions of the rules; is that correct?
A There is a specific regulation stating that the superior should not beat the subordinate; however, I actually have seen it done and heard that the superiors beat their subordinates. It is the habit, as it could not be helped.

DEFENSE: That is all.

PROSECUTION: The prosecution has no further questions of this witness.

EXAMINATION BY THE COMMISSION

Questions by the members:
Answers through the Interpreter:

Q You stated that you kept the records of the prisoners of war in the Kobe camp; did these records include instances in which the prisoners had disobeyed camp regulations?
A No; I could not refresh my memory as to remembering any specified incident that I kept in the records.

Q Well, if a prisoner were punished for an infraction of the rules did you enter that on his record?
A If I did see the incident with my own eyes I might have kept the record of it; however, there is no specified incident that I could remember which I kept record of.

Q If one of the Japanese officers on duty in the camp punished one of the prisoners would it be entered in your records?
A No, I do not think it would be listed in the record.

Q When prisoners disobeyed or failed to obey some of the camp regulations who was he punished?
A If I was to see such an incident I would report this to the superior officer.

Q What would the superior officer do?
A I would not be able to state what they would do with the incident.

Q If a prisoner were accused of breaking a rule, was an investigation made by one of the camp officers?
A Yes, if there was an incident occurred they would investigate.

Q Do you know of any occasions in the Japanese Army when the inferior yielded to the punishment by the superior rather than receive a more severe punishment by a court-martial?
A The inferior thought that it could not be helped being punished by his superior.

Q Were they punished by being beaten with fists or with belts or with swords?
A I have never seen with my own eyes; however, I have heard there are such punishments that occur.

Q You don't know whether they were punished with fists or with belts or with swords?
A I have never seen but I have heard quite a number of times that it did occur.

PRESIDENT: No further questions by the Commission.

PROSECUTION: The prosecution has no further questions.

DEFENSE: The defense has no further questions.

PROSECUTION: The witness is excused.

(There being no further questions, the witness was excused and withdrew)

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1438 hours to 1440 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

DEFENSE: Our next witness will be Hiroma Kobayashi.

HIROMU KOBAYASHI, a witness for the defense was sworn and testified through the Interpreter as follows:

PROSECUTION: Advise this witness that he cannot be compelled to testify to any facts or matters that will tend to incriminate him as having committed any crime or offense; that this is a personal privilege which he can waive but if he waives this and testifies to such matters, any matters he testifies to can be used against him in any court at any time or place.

(This was explained to the witness by the interpreter)

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q What is your name?
A Hiroma Kobayashi.

Q Were you a member of the Japanese Army?
A Yes.

Q What was your branch of service?
A Medical Corps.

Q What was your highest rank?
A Medical Sergeant.

Q Where were you stationed between August 1943 and February 1945?
A At the Osaka Main Camp.

Q Do you know the accused Kunio Miyatake?
A Yes, I do know him.

Q Was Kunio Miyatake stationed at Osaka Main Camp while you were there?
A So far as I can remember I think Lieutenant Miyatake was here at the Osaka Main Camp from September 1943 up to July 1944.

Q Who was your superior officer?
A The officer I was under was Second Lieutenant Marina, Second Lieutenant Ano, First Lieutenant Miyatake, and First Lieutenant Nosu.

Q Who was the superior officer among those four mentioned?
A First Lieutenant Nosu.

Q What were you duties at this camp at the time Lieutenant Miyatake was there?
A I was in charge of the medical supplies and issuing it out.

Q Where was the nearest hospital for prisoners of war?
A In Osaka, a place called Ichichin.

Q How far was it from Headquarters Camp?
A It is about ten cho which is approximately .8 miles.

Q How long did it take to get to that hospital walking from Headquarters Camp?
A Approximately twenty minutes.

Q How long did it take to get there in a car or truck?
A Approximately five minutes.

Q Was there an ambulance at the Headquarters Camp?
A No.

Q What transportation was available to bring prisoners of war to the hospital?
A Either use a truck that we had in the camp or take them on a stretcher.

Q Do you know of any special efforts made by Lieutenant Miyatake to procure additional medicines for the prisoners of war?

PROSECUTION: I ask that he be provided to show at that camp and the date.

DEFENSE: We will add to that, "at headquarters prisoner of war camp while you were stationed there."

A Yes.

Q Please tell the Commission what you knew about this.

PROSECUTION: I don't want to unduly object but I submit to the Commission there is no charge against this accused as to failing to provide medical attention or medicines at Headquarters Camp. The Specifications are 12, 13, and 14 that pertain to Headquarters Camp that he did willfully and unlawfully mistreat Warrant Officer Scaby and approximately sixty others, etc.

DEFENSE: We grant that - don't read them.

PROSECUTION: Then I submit if he is not charged, such line of inquiry is not pertinent at this time.

DEFENSE: We believe it is.

LAW MEMBER: Are you going to amplify on that?

DEFENSE: No; I just want to state why I think it is material. It has probative value because it is a general principle of law that you can show a course of continuity and we already have testimony in the record showing this man made special efforts at Kobe Camp. Now, we want to show he made special efforts to get more medicines when at Headquarters Camp. It is showing the kind of doctor he was. He is charged with neglect of prisoners at Kobe Camp. It

certainly has probative value if we can show at another camp where he was stationed he made efforts to get more medicines.

LAW MEMBER: Subject to objection by any member of the Commission the objection is overruled.

A Lieutenant Miyatake knew that the regulations of the Army pertaining to the medical supplies was just the amount of what the Army issued to the camp. However, knowing that that medicine wasn't sufficient there were occasions when Miyatake and myself went to Cooks and purchased some medicines.

Q How many times did you and Miyatake purchase medicines?
A I could not specify the exact number; however, I do remember it was five or six times.

Q What money was used for the purpose of purchasing these medicines?
A The money was obtained from the company where the prisoners of war worked; also Lieutenant Miyatake put out his personal money and there was a time when I myself put out some money.

Q Name some of these medicines which were purchased, if you can remember any of them.
A We purchased various vitamins such as A, B^1, B^2, sulfa drugs and medicines for diarrhea, and ephedrine, with various others but I cannot remember the names.

Q After you purchased these medicines what did you do with the medicines?
A So far as I can remember whenever the company purchased the medicines we would take the medicines to the company and turn it over to them; however, like the time when Lieutenant Miyatake went to Marina or Hirohata Branch Camps he took the medicines that he purchased personally.

Q Were some of these medicines brought to the dispensary at Headquarters Camp?
A I cannot state that because I am not directly connected with the physical examination section.

Q Were you on duty in the supply room where there were various medicines which were used in the treatment of prisoners of war?
A That is correct.

Q Were some of these medicines that you have stated you bought put into that room with the other medicines already there?
A No.

MEMBER: No further questions.

PROSECUTION: The prosecution has no questions.

PRESIDENT: Are there any questions by any member of the Commission? Apparently not; the witness is excused.

(There being no further questions the witness was excused and withdrew)

DEFENSE: The Defense calls as its next witness Juro Hamiki.

JURO HAMIKI, a witness for the defense, was sworn and testified through the interpreter as follows:

PROSECUTION: Advise the witness that as a witness he cannot be compelled to testify as to any matters which shall tend to incriminate him or indicate he has committed any crime or offense; this is a personal privilege that can be waived but if he so testifies to anything, that can be used against him in any court at any time or place.

(This was explained to the witness by the interpreter)

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q What is your name?
A Juro Hamiki.

Q Were you a member of the Japanese Army?
A No, I never have.

Q What is your profession?
A I am a doctor.

Q Where did you study medicine?
A I attended the Imperial University in Tokyo.

Q Do you have a degree in medicine?
A Yes, I have a doctor's degree.

Q From what college or university do you have this degree?
A From the Imperial University in Tokyo.

Q How long have you been a doctor?
A Around twenty-two years.

Q What is your present position?
A I am a professor at the Kanazawa Medical University teaching dermatology and urology.

Q Do you have any other positions besides being the head of the Dermatology and Urology Departments?
A I am a director at the present in a hospital.

Q What hospital?
A At the Kanazawa Medical University.

Q How long have you been connected with that hospital?
A From about last year in April.

Q Do you mean you have been a director from last April?
A That is correct.

Q Were you attached to the hospital as a member of the staff before you became the director?
A Yes.

Q How long were you a staff member in that hospital?
A From April 13, 1940.

Q Do you know the accused in this case, Kunio Miyatake?
A Yes.

Q When did you first meet him?
A In a schoolroom.

Q Please be more specific. Was he one of your students in this medical college?
A When I first met him he was one of my students. It was his third year in the school.

Q When did Lieutenant Miyatake graduate?
A I cannot state the definite date; however, I think it was around 1942.

Q Did you ever have any correspondence with Lieutenant Miyatake after he left the medical school?
A Yes.

Q Did he indicate in this correspondence where he was and what he was doing?

PROSECUTION: I will object to this line of questioning because I don't know the purpose of it but they are merely self-serving statements of the accused. The best evidence is the accused himself. If he wants to testify to this -- - not this man's remarks of what Miyatake wrote and told him.

DEFENSE: We believe they have a bearing on the issue or we wouldn't have started this line of questioning. We propose to show while the accused was stationed at Kobe Branch Camp at a time when he is accused of not providing sufficient medical treatment he went out of his way and wrote letters back to his former professor asking for more advice and help so that he would be able to give proper treatment to the prisoners of war. He wasn't content just doing his duties in the camp - he went and consulted a man whom he believed to be an expert.

PROSECUTION: I suggest that the counsel is now testifying, not the accused or the witness.

DEFENSE: Well, we propose to show that and we think it is relevant.

PROSECUTION: We believe it isn't; the best evidence would be the statements of the accused himself.

LAW MEMBER: Do I understand you are going to put the accused on the stand?

DEFENSE: We maintain we don't have any obligation at this point to state that - we don't know.

LAW MEMBER: The objection is not sustained.

A. Yes.

Q Where was he and what was he doing?
A He mentioned he was the medical officer in one of the prisoner of war camps.

Q What else did he write in that correspondence to you?
A It depended upon what he was doing when he wrote the letters; however, there were quite a number of times he mentioned about these sicknesses and asked for my advice.

Q Did you answer these letters?
A Yes, as much as I possibly could.

Q Did your answers contain medical advice?
A Yes.

Q. How many letters did you receive from Lieutenant Miyatake in which he mentioned medical problems and in which he asked for your advice?
A Lieutenant Miyatake was a very good correspondent. I cannot state the definite amount; however, I think I received about seven letters from him and in these seven, four of them consisted of requested medical advice and I can definitely state that one of the letters asked for the definite advice of certain medical matters.

Q Did you answer these four letters which pertained to medical matters?
A I think so far as I can remember I did answer these four letters.

Q Can you state definitely whether you answered at least some of these letters?
A Yes, I can.

Q About how many?
A I could state definitely that I gave him detailed advice to one of his letters; however, I am sure that I gave some little advice to two or three of his letters.

DEFENSE: I shall now ask the witness a hypothetical question and I will ask the Commission to allow the interpreter to interpret each assumption as I go along. I assume the prosecution will agree that he is qualified as an expert.

PROSECUTION: We will agree he is qualified as a Japanese doctor.

DEFENSE: Do you have any objections to our putting a hypothetical question?

PRESIDING: It is your witness.

Q Assume the case of a young man between twenty and thirty years of age; he is working every day; nothing is known as to his condition of health; at 4:00 in the afternoon he is brought into camp, put in the hospital and he is unconscious; he is bleeding from a wound in the head; he is bleeding from the nose slightly; the nearest hospital is eighteen miles away; you have no ambulance; the only way you can get that man to the hospital is to send him in a regular pleasure car or in an army truck; in your opinion should such a man be sent to the hospital or should he be treated where he is in the camp?

A It is rather a complicated matter. I could not give a definite answer to this extent. However, from hearing these statements I would conclude that the man might have had a skull fracture as he should be taken care of very carefully. Again, I could not state the disease unless I see the person personally. However, in view of the statements if the treatment was available at the place where this person was brought it would be better to treat him there instead of moving him.

Q I shall ask another question based upon the same set of facts. Assume that the following treatment is given to this injured person; he is kept quiet; his wounds are dressed and bandaged; he is given periodic injections of camphor; he is given periodic injections of glucose; cold applications are made to his head. Will you state whether in your opinion the treatment outlined would be an approved prescribed method of treating such a case?

A It would not be to the extent of being satisfactory; however, it would be an approved treatment.

Q In your opinion in what respect would it not be satisfactory?

A It isn't that it isn't satisfactory, however, if the patient were in a stage where the breathing was hard, if some sort of stimulant to help him out in his respiration were given it would help him.

Q Is there any other point that you might mention in the treatment outlined which might be considered in your opinion unsatisfactory?

A No, because in such cases quietness is most important. The other treatment would be secondary, so I would say the treatment that you specified is approved.

Q I will ask you to assume the following hypothetical case. Assume a man who has been sick five or six days with bronchitis; he is one degree above normal temperature; he has a fast pulse; you believe he may have or may be developing pneumonia; you decide to send the man to the hospital; it takes fifteen or twenty minutes to walk to the hospital; it takes three, four, or five minutes to get to the hospital in a car. You have an open truck which you might use to send the man to the hospital. You could also have him carried on a stretcher. It is a cold night; it is raining; if the man is carried by stretcher he can have four or five blankets; if the man goes in the open truck he can only have his overcoat and one blanket; which method of conveyance would you use to send him to the hospital?

A Before answering the question I would like to know if this man, this physician, actually found that the patient was developing pneumonia by examining him or from the expression on the sick person.

Q Assume that he decided he might develop pneumonia because of the result of his examination.

A If the temperature of this person was only one degree above normal I would not consider it as a serious sickness. If this doctor should examine him with the microscopic slide he would have a hard time deciding the sickness. As you stated the way the weather was I think it was better that the person was transferred on a truck so that he would not be exposed to the weather. In any case, even though this sickness wasn't serious the decision to transfer this man right away was appropriate.

Q In your opinion would exposure for twenty minutes on a lister with five blankets have a worse effect on the man than exposure for five minutes with one blanket would have?

A The answer to that I could not state which method is better because even though you carried the man on a stretcher for a long period if he had a blanket over him so that the weather would be protected from him it would be all right; however, even though you take him on a truck with the blanket used in a way so that he will be covered from the weather this would be all right.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q Assuming that a man was brought in having suffered a serious fall with a head wound to the left template and covered with coal dirt and coagulated blood, medically speaking what would be the first thing to do to that man?

A If the man was to be unconscious you would check the pupil of the eye; if he is conscious you would check the movement of the arms and legs and his reflexes and see if he is bleeding from the nose or ears and check his respiration and heart function.

Q What would you do about the coal dust?

A That would have to be cleaned and the place where the wound is would have to be disinfected and if there was a bleeding it would have to be stopped.

Q In his letters to you, did Lieutenant Miyatake ever mention beating any Allied prisoners of war?

A Absolutely not.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q Assuming the patient died of concussion of the brain two or three days after the injury; there is no evidence of any infection from any wound; in your opinion would failure to have removed the coal dust or treat the wounds have had any relation to the death of the patient?

A No.

DEFENSE: No further questions.

CROSS EXAMINATION

Q If a man incurred a serious fall, suffered serious head injuries and was unconscious for a period of three days approximately and died at the end of those three days would the fact that such a man was beaten and kicked about the legs on the evening of the first day of his injury contribute to his death?

A I cannot say that the effect of the beating and kicking killed the man; however, I will say that it would not have helped him.

PROSECUTION: The prosecution has no further questions.

DEFENSE: The defense has no questions.

PRESIDENT: Are there questions by any member of the Commission? Apparently not; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

PRESIDENT: The Commission will recess until 0900 hours tomorrow morning.

The Commission then at 1605 hours, 28 January 1947, adjourned to reconvene at 0900 hours, 29 January 1947.

John P. Laughna
JOHN P. LAUGHNA
Chief Prosecutor

(This was explained to the witness by the Interpreter)

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q What is your name?
A Takeichi Tsuitsui.

Q Were you a member of the Japanese Army?
A Yes.

Q What branch of service?
A Medical Corps.

Q What was your highest rank?
A While I was at the prisoner of war camp I had a rank as Superior Private.

Q Were you ever stationed at Kobe Prisoner of War Camp?
A Yes.

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
29 January 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the members of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case, being present.

PRESIDENT: The Commission will come to order.

DEFENSE: The Defense calls as its next witness Takaichi Tsuitani.

TAKAICHI TSUITANI, a witness for the defense was sworn and testified through the interpreter as follows:

PROSECUTION: Instruct this witness of his rights - he cannot be compelled to testify as to any facts or matters which may tend to incriminate him or tend to indicate he has committed any crime or offense; this is a personal privilege which he can waive but if he elects to waive this privilege and does testify to any such matters, anything he says in this court can be used against him at any time or any place.

Q When were you stationed there?
A From September 1942 up to June, 1943.

Q Do you know the accused, Kunio Miyatake?
A Yes, I do know him.

Q Was he stationed at Kobe Camp at the same time you were there?
A Yes, as far as I can remember I think he was there for approximately two or three months at the time I was there.

Q What were your duties at Kobe Camp?
A My duty was to work in the office of the dispensary.

Q Can you describe for this Commission the sick call system for the prisoners of war at Kobe Camp?
A They did not have the regular sick call as to morning or night; however, when the Japanese medical officer came to the camp he would examine the prisoners of war at least once.

Q Was Lieutenant Miyatake stationed at Kobe everyday?
A No, not everyday.

Q How many days a week was Lieutenant Miyatake at Kobe Camp, approximately?
A I could not state definitely; however, Lieutenant Miyatake was working for the Kobe Prisoner of War Camp in Kawasaki and Amagasaki, as as I recall I think he was coming to Kobe Camp two days out of a week.

Q Who decided whether a prisoner of war was too sick to go to work?
A Whenever the Japanese medical officer was present at the camp he would make the decision; however, if he was absent I think the prisoner of war medical officer made the decision.

Q Do you remember the name of the prisoner of war doctor?
A I could not recall at the present.

Q Was the prisoner of war doctor on duty in the camp hospital everyday?
A Yes, he was present everyday.

Q What were his duties?
A His duty was to see the sick prisoners of war when the Japanese medical officer is not present at the camp and when the Japanese medical officer is present at the camp they would go around together.

Q Do you know whether it was the practice in the Japanese Army to have surprise roll calls, either in the daytime or at night?
A I was in the medical corps; however, when I received the basic training I experienced these surprise roll calls.

Q While you were at Camp Kobe do you know of any surprise roll calls taking place?
A No, I did not experience such a thing.

Q Do you mean by your last answer that no surprise roll calls were called either for the prisoners of war or for the Japanese personnel?
A Yes.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q Did you see any sick calls yourself?
A No, because I am not a medical doctor.

Q Were you present when you saw Lieutenant Miyatake conduct any sick call?
A No, I could not remember because I performed my duties in the office most of the time and I never did go around with the doctors.

PROSECUTION: No further questions.

LAW MEMBER: Further questions by the Defense?

DEFENSE: No further questions.

PRESIDENT: Are there any questions by any member of the Commission? Apparently not; the witness is excused.

(There being no further questions the witness was excused and withdrew)

DEFENSE: The Defense calls as its next witness Ichiro Usui.

ICHIRO USUI, a witness for the defense was called, sworn, and testified through the Interpreter as follows:

PROSECUTION: Instruct this witness that his rights as a witness are as follows - he cannot be compelled to testify as to any matters or give any evidence that might tend to incriminate himself or indicate he might have committed any crime or offense; this is a personal privilege which he can waive; if he elects to waive this privilege anything he says in this court may be used against him by this commission or any other court at any time or place.

(This was explained to the witness by the Interpreter)

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q What is your name?
A Ichiro Usui.

Q What is your age?
A Thirty-four.

Q What is your occupation in civil life?
A A Company employee.

Q Of what company?
A I am working in the coal pail company.

Q Were you a member of the Japanese Army during the late war?
A Yes.

Q Were you ever stationed in Kobe Branch Prisoner of War Camp?
A Yes.

Q Give the dates as well as you remember.
A When I was first assigned to the Kobe Prisoner of War Camp it was from October 5, 1942 to December 13, 1942; I was again reassigned to this same camp August 25, 1943 up to November 25, 1944.

Q Were you a member of the regular Japanese Army or were you inducted into the service?
A No, I was not a member of the regular army.

Q During the time you were connected with Kobe Camp during the dates given, did you know the accused in this case, Hanie Miyatake?
A I do know him.

Q What were your duties at Kobe Camp?
A My duty was to make out the medical reports and the medicines in the medical department.

Q What were Miyatake's duties?
A His duty was to give the physical examinations to the prisoners of war and the regular medical officer's duties.

Q What was your rank in Kobe Camp?
A Medical Sergeant.

Q Were Miyatake's duties confined solely to Kobe Camp or did he have other camps that he serviced?
A He performed his duties at various other camps also.

Q Were your duties confined exclusively to Kobe Camp or did you have other camps that you attended?
A I also performed my duties at various other camps the same as Miyatake.

Q How many days each week were you on duty at Kobe Camp exclusively?
A The average was about three days out of the week.

Q How many days each week was Lieutenant Miyatake at Kobe Camp performing his duties there?
A Approximately two or three days out of the week.

Q In the organization of the branch camp at Kobe if there was a prisoner of war doctor on duty with the prisoners, what duties particularly did the prisoner of war doctor perform?
A The prisoner of war doctor was rendering his services as to the physical examination and giving treatment to the prisoners.

Q For example, if a prisoner of war reported on sick call, who was the first doctor who examined the prisoner of war?
A The prisoner of war doctor.

Q If the ailment was of a minor nature, would Lieutenant Miyatake examine that particular patient?
A No.

Q If the patient was suffering from a serious illness, was Lieutenant Miyatake's attention called to such cases?
A Yes.

Q Do you know the method of keeping the medical supplies at Kobe Camp - that is, physically - where they were kept and how they were issued to the patients or the doctors?
A The medical drugs were kept in the regular medical supply room. Then the prisoner of war doctor prescribed a medicine it was issued out.

Q Were there any particular types of drugs that could not be issued until they got the approval of the Japanese authorities?
A All medicines would have to be authorized by the Japanese before it was taken out.

Q In the event a prisoner of war doctor requested a medicine in the absence of Miyatake who approved or disapproved the request?

INTERPRETER: The witness wants to correct his previous answer that he has given.

DEFENSE: Any objection?

PROSECUTION: None at all.

DEFENSE: Proceed.

WITNESS: My answer to that would be whenever the prisoner of war doctor prescribed for the medicine it can be taken out.

Q By that do you mean if morphine was prescribed by the prisoner of war doctor that it would be taken out?
A Yes.

Q Was it a part of your duties to keep a record of the history of the illness of a patient?
A Yes.

Q And would a sick report covering a particular patient contain a case history of that patient?
A That is correct.

Q Do you remember an incident that happened in Kobe Camp on or about 12 August 1943 involving an accident to a prisoner of war by the name of Hall?

PROSECUTION: We object to that because this witness by his own testimony did not come to Kobe Camp until 25 August 1943.

DEFENSE: Well, if he was there by accident he could say he remembered or didn't.

PROSECUTION: His own testimony is, as I recall, he was at Kobe Camp from 5 October 1942 until sometime in December 1942; he returned to Kobe Camp on 25 August 1943 and stayed there until 25 October 1944.

DEFENSE: Very well.

Q Where were you stationed on 12 August 1943? I mean where did you live - where were you billeted?
A I was living in Kawasaki.

Q And how far was that from Kobe Camp?
A About 2.6 miles.

Q While stationed in Kawasaki did you have any duties to perform at Kobe Camp?
A I was performing my duties at Kobe Camp two or three times out of the week.

Q And your duties at Kobe Camp during the period of time in question, what did it consist of?
A My duty was to report the condition of the Kawasaki Camp to Lieutenant Miyutsko and to check and see if the medical orderlies at the Kobe Camp is taking down reports according to the regulations.

Q Did you have occasion to be in Kobe Camp in the performance of your duties on 12 August 1943?
A Yes.

Q What particular duties were you performing at Kobe on that particular date?
A I took the report of the Camp Kawasaki to Kobe that day.

Q Do you remember the occasion of a prisoner of war by the name of Hall being brought to Kobe while you were there on 12 August performing your duties?
A Yes, I remember.

Q Do you know approximately what time Hall was brought into the Kobe Camp after his accident?
A I could not state definitely; however, I think it was around 4:00 P.M.

Q Did you see Hall when he was first brought into Kobe?
A Yes, I did.

Q Where did you see him?
A I saw him through the window in the dispensary.

Q Do you know where Hall was taken when he was brought into the camp?
A He was taken into the hospital.

Q Did you have occasion to make any report to higher authority of the fact of Hall's having sustained an accident?
A Yes.

Q State what you did in regards to making a report and to whom you made that report.
A First I reported the incident to First Lieutenant Nora through a telephone when Hall was first brought into the camp and after Lieutenant Miyatake rendered the examination I reported again to Lieutenant Nora that the accident is serious; later I sent a written report through Lieutenant Nora to the camp commandant at the main camp in detail.

Q Were you personally acquainted with a Captain or Major Boyce who the testimony shows was a medical officer - he was a prisoner of war and I believe his nationality was Australian?
A Yes, I do know him.

Q And what functions was Dr. Boyce performing, if any, relative to prisoners of war at Kobe?
A His duty was to perform physical examinations and treatment to the prisoners of war and he was related to Lieutenant Miyatake in physical examinations.

Q Did Dr. Boyce and Miyatake jointly make an examination of the injuries to Hall?
A Yes.

Q Did you personally witness with your own eyes the two of them making this examination?
A I did.

Q Where in Kobe Camp did this examination take place?
A At the place where Hall was first brought.

Q Hall, where was that place - that is what we want to know?
A On the second floor of the hospital.

Q Did you hear any conversations between Dr. Boyce and Lieutenant Miyatake while the examination was being made?
A I did.

Q State what you heard each of these doctors say while this examination was being conducted.
A I couldn't state definitely what type of conversation they were carrying on because of the fact I don't understand English very well; however, the nature of the conversation was that they were agreeing that Hall should not be moved.

Q Did either of the doctors have with them any medical instruments that they used in conducting the examination of Hall?
A They did.

Q State what they had and who had the respective instruments.
A Lieutenant Miyatake did not have any instrument; however, Major Boyce had a stethoscope.

Q Did Major Boyce use his stethoscope in the examination of Hall?
A Yes, he did.

Q Did Miyatake touch the patient in any way?
A When he was there Lieutenant Miyatake was counting the pulse of the patient.

Q Was Major Boyce there at that time?
A Yes, he was.

Q Did the two consult in your presence?
A After Lieutenant Miyatake finished his examination then they were conversing.

Q Was a medical record prepared of the Hall accident?
A Yes.

Q Who prepared the record?
A I did.

Q And when did you commence this record?
A After the physical examination was over.

Q Was it commenced in the sickroom where Hall was lying and the two doctors there?
A That is correct.

Q Where did you get the information to put on this medical record?
A From Lieutenant Miyatake.

Q Was that information given to you in the presence of Major Boyce?
A That is correct.

Q Did the medical record contain any treatment that was prescribed after the consultation between the doctors?
A Yes.

Q State to the Commission what that treatment was.
A It stated to put mercurochrome on the places where he received cuts and bandage it and to give glucose shots of twenty cc everyday and to give one camphor shot after two or four hours - I have forgotten the exact interval - and not to move the patient and to put an ice pack on his head and as for the food to give him rice paste.

Q Were those entries made by you while you were in this sickroom and from information you received there in the case you have just described?
A That is correct.

Q In addition to Major Boyce and Miyatake and yourself were there any others, either Allied prisoners of war or Japanese soldiers, present?
A I remember there was a medical orderly named Chagaki and one or two other Japanese soldiers and two or three prisoner of war medical orderlies were there.

Q At the time that you saw the patient and when you made the report did he have any bandages on a wound on his head?
A Yes, he did have a bandage on.

Q Did you take any official action in regards to transmitting the information on the medical report that you have just described to any higher authorities?
A Yes, I sent a report that was written through First Lieutenant Noro to the Main Camp Commandant.

Q What was the relative position between this Lieutenant Noro and Lieutenant Miyatake?
A Lieutenant Noro was Lieutenant Miyatake's superior; his responsibility was in the Medical Section of all the prisoner of war camps in the area.

Q Was it a part of the regular procedure to report serious accidents or illnesses from the Kobe Camp to this superior authority?
A That is correct.

Q And would that superior authority to whom you reported approve or disapprove the action of the local medical officer or would he take any action at all? In other words, what did he do about it?
A Yes, we received from the superior authority that the treatment that was rendered to the person was approved.

Q In the instant case, did the superior authority approve or disapprove the treatment contained on the report?
A The treatment that was given in the case was approved by the superior authority.

Q When you first saw Hall and were near him - I don't mean through the window but when you actually went up to make the report, was he conscious or unconscious?
A He was unconscious.

Q Did he ever regain consciousness during the time you were present in the room as you have just testified to?
A No, he did not regain consciousness.

Q On a later date did you have occasion to be in Kobe Camp and personally see Hall?
A I went to Kobe the day after the accident and saw Hall.

Q Personally saw him now is what I mean.
A I personally saw Hall.

Q Where was Hall in reference to where he had been the previous day?
A He was at the same place as the day he was brought in.

Q Was he conscious or unconscious, if you know?
A When I saw him he was still unconscious.

Q Did you ever see him after this second time?
A No.

Q Did you read the medical chart on Hall the second visit you made to Kobe and before Hall died?
A Yes, I did.

Q Did that chart indicate whether Hall was improving or was failing?
A I am not a doctor and I cannot state definitely; however I did notice that the report was that he was not improving.

Q From all you saw and what you personally knew about this Hall incident, do you know of any occasion when Miyatake refused to permit Major Hayes to administer to the patient?
A No.

DEFENSE: That is all.

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1035 hours to 1050 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

CROSS EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q Where were you stationed between 10 June 1943 and 25 August 1943?
A I was in Kawasaki.

Q Were you in the Army at that time?
A Yes.

Q When you say Kawasaki, do you mean Kawasaki Branch Prisoner of War Camp?
A That is correct.

Q Were you under command of Colonel Morimoto, commanding officer of Kobe Branch Prisoner of War Camp?
A That is correct.

Q Was Colonel Morimoto commanding officer of Kawasaki Branch Prisoner of War Camp at that time?
A Yes, he was the commandant of the Kobe Branch at Kawasaki Branch Camp.

Q Did you have any official duties at Kobe Branch Prisoner of War Camp during that period?
A Yes, together with the Kawasaki I would have a duty in Kobe Prisoner of War Branch Camp.

Q Did that chart indicate whether Hall was improving or was failing?
A I am not a doctor and I cannot state definitely; however I did notice that the report was that he was not improving.

Q From all you saw and what you personally knew about this Hall incident, do you know of any occasion when Miyatake refused to permit Major Hayes to administer to the patient?
A No.

DEFENSE: That is all.

PRESIDENT: The Commission will take a short recess.

The Commission then recessed from 1045 hours to 1050 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness was reminded by the prosecution that he was still under the oath previously taken)

CROSS EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q Where were you stationed between 10 June 1943 and 25 August 1943?
A I was in Kawasaki.

Q Were you in the Army at that time?
A Yes.

Q When you say Kawasaki, do you mean Kawasaki Branch Prisoner of War Camp?
A That is correct.

Q Were you under command of Colonel Morimoto, commanding officer of Kobe Branch Prisoner of War Camp?
A That is correct.

Q Was Colonel Morimoto commanding officer of Kawasaki Branch Prisoner of War Camp at that time?
A Yes, he was the commandant of the Kobe Branch at Kawasaki Branch Camp.

Q Did you have any official duties at Kobe Branch Prisoner of War Camp during that period?
A Yes, together with the Kawasaki I would have a duty in Kobe Prisoner of War Branch Camp.

Q What were your duties at Kobe Branch Camp?
A As I have mentioned previously.

Q How many days during this period between 10 June 1943 and 25 August 1943 were you on duty at Kobe Branch Prisoner of War Camp?
A The average was three days out of the week but whenever I was busy I just went down twice a week.

Q Do the official Japanese records show you as being on duty at Kobe Branch Prisoner of War Camp during the period 10 June 1943 and 25 August 1943?

DEFENSE: We object to the form of the question. Of course, I think he should be asked if he knows that the Japanese official records show.

PROSECUTION: I will withdraw that last question.

Q Do you know whether or not the official Japanese records show you as being on duty at Kobe Branch Prisoner of War Camp during the period 10 June 1943 and 25 August 1943?
A Yes, it was on the record.

Q What were Ohnishi's duties at Kobe Branch Prisoner of War Camp?
A His duty was to issue out the medicines and whenever I am not present he took the reports.

Q At the time that Private Hall was brought into the dispensary at Kobe Branch Prisoner of War Camp was Colonel Flinim present?
A I could not remember.

Q Do you know Lieutenant Colonel Flinim, an American prisoner of war?
A Yes, I do remember him.

Q But you cannot remember whether or not he was present at the time Hall was brought in, is that true?
A That is correct.

Q At any time you were in the dispensary during the time Hall was there did you see Lieutenant Colonel Flinigh?
A I could not remember.

Q Do you understand much English?
A No, the extent of English that I know is the name of the medicines.

Q At the time Miyatake and Captain Royce talked together in the dispensary did they converse in Japanese or English?
A They were conversing in the language which is mixed Japanese and English together.

Q Did you understand fully what was said?
A That conversation that pertained to the treatment I did understand.

Q Who gave you the information to put on your official record as to Hall's condition?
A Lieutenant Miyatake.

Q Was that record written in Japanese or English?
A In Japanese.

Q You testified that Hall was given injections of camphor and glucose; did you see any of this treatment given?
A I saw the medical orderly named Flynne rendering the shots to Hall - a British prisoner of war.

Q When did you see this treatment given?
A On my second visit there.

Q Did you actually see any treatment given on your first visit there?
A On my first occasion there I saw Lieutenant Miyatake bandaging the injured person after he examined the cut.

Q Did you see Captain Hayes give any treatment to Private Hall?
A I did not see him give treatment; however, I did see him examining Private Hall.

Q Will you describe to the Commission the appearance of Hall the first time you saw him?
A What do you mean by position?

Q Appearance.
A He had a bandage on his head and he was sleeping on a bed.

Q Were his clothes clean?
A When I first saw him he was dirty - he was still in his working clothing.

Q Were his face and hand clean?
A I could not remember.

Q Was there any dried blood on his face?
A There may have been some blood on his face but not enough to notice.

Q Are you well acquainted with the equipment in the dispensary at Kobe Branch Prisoner of War Camp?
A Yes.

Q Was there an X-ray machine there?
A No.

Q Did they have any surgical instruments there?
A There were just a small case that the medical doctor used for surgery.

Q Did you hear Captain Hayes at any time request that Private Hall be X-rayed?
A No.

Q Did you hear at any time Captain Hayes request that Private Hall be removed to a hospital?
A No, I did not hear it.

Q Were you the only man to make a r[illegible] at the Kobe Branch hospital?
A No; Okazaki and myself were taking the reports.

Q Did Dr. Bayes have available to him an interpreter who spoke both the English and the Japanese languages?
A Yes, there was an interpreter at Kobe Branch Camp.

Q Were any of the medical orderlies who were Allied Prisoners of War and who assisted Dr. Bayes present at the time in the sickroom when Miyatake came and gave you the information from which to make the chart?
A Yes, they were present.

Q Was any protest of any nature registered by the Allied personnel present at the information Miyatake gave you to put on the chart?
A No.

Q Was this chart an official camp record available to be read or examined by the prisoners of war if they so desired?
A There never was such a request.

Q That wasn't the question; were the records available - was it possible if the prisoners of war desired to examine or read the records that you had written on the medical report?
A No.

Q If Dr. Bayes had requested to examine this record would that request have been refused?
A I would not show it to him.

Q About how far was the nearest Xray machine to Kobe Camp?
A I think it was around five miles which was in the hospital in the City of Kobe.

Q If you were both present, who usually made the report?
A I would be the one.

Q Usually, who gave you information to put in these reports?
A What type of report are you talking about?

Q These case histories you referred to in your direct examination.
A From Lieutenant Miyatake.

Q Did the prisoner of war doctor ever give you information that you put in these reports?
A No; however, the time when they were short of medicines he did come and request further medicines.

Q This chart you testified to as showing the condition of Hill, was that in Japanese or English?
A In Japanese.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q What hospital was available to treat serious cases from this Kobe Camp?
A It was in Osaka in Ichichan.

Q How far was that?
A Eight to ten ri, which is about twenty-four miles.

Q If Hall had been removed to a hospital was this the hospital he would have been moved to?
A Yes.

Q How would he have been moved - in what kind of conveyance, if any?
Q He would be moved in an automobile.

Q Do you mean an ambulance by automobile?
A The regular automobile.

Q Were you superior in rank in the Japanese Army to Okazaki?
A Yes.

Q On cross-examination you stated that the first time you saw Hall he was dirty and in his working clothes; was that the time you saw him through the window and as he was being taken to the hospital?
A No, I am referring to the time when this physical examination was being rendered to Private Hall.

Q And the second time that you saw Hall after the first physical examination, was he still in his dirty clothes and was he dirty?
A No.

DEFENSE: That is all.

REDIRECT EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q At the time that Lieutenant Miyatake gave you the information to put in the report concerning Hall's condition you stated that there were several prisoners of war there; do you know if any of these prisoners of war could speak Japanese?
A I think the simple words such as the medical names I think all the orderlies would know.

PROSECUTION: No further questions.

DEFENSE: We have no further questions.

PRESIDENT: Are there any questions by any member of the Commission? Apparently not; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

PRESIDENT: The Commission will recess until 1315 hours.

The Commission then at 1105 hours recessed until 1315 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats, except Mr. Fuller who was absent to investigate matters in connection with this case.

PRESIDENT: The Commission will come to order.

REFEREE: The Defense calls as its next witness Captain James Jones.

CAPTAIN JAMES FRANKLIN JONES, a witness for the defense, was sworn and testified as follows:

REFEREE: The defense waives the interpretation of the testimony of this witness. The accused will be fully advised of his testimony by the interpreter assigned to the Defense.

DIRECT EXAMINATION

Questions by the Defense:

Q Will you state your name, rank, serial number?
A James Franklin Jones, Captain, O-473608.

Q What is your branch of service?
A Medical Corps.

Q Where are you stationed at present?
A 159th Station Hospital, Yokohama.

Q What are your duties there?
A Ward Officer of the General Surgical Department and Assistant Chief of Surgery.

Q Are you a licensed Physician in civil life?
A Yes.

Q Where were you educated?
A I had my college education at Hartford Medical College, and Columbia School of Physicians and Surgeons, New York.

Q Do you hold a degree in medicine?
A I do.

Q What is that Degree?
A M.D.

Q How long have you been in the Army?
A I have been in since 7 July 1945 - going on nineteen months.

Q I will state a set of facts and ask you to give us your opinion as a doctor on the facts as I give them.

PROSECUTION: The prosecution at this time will object to this witness being qualified as an expert witness. He has testified he is a medical man but he is not licensed to practice in any State. It is true that he is acting as a doctor in the Army but this Commission can take judicial notice of the fact that the field of medicine covers a wide field and in order for any man to qualify as a particular expert in any particular phase he has to have had some experience. This witness has no particular experience sufficient to qualify him as an expert in any phase of medicine.

DEFENSE: We will go on and ask the witness to tell us more about his experience.

LAW MEMBER: Is the defense attempting to qualify him as an expert?

DEFENSE: Yes, we are.

Q Will you tell the Commission in general what your experience as a medical officer has been?
A As a medical officer in the Army?

Q Yes.
A Except for about three months all my work has been in a general surgical ward, which cases on that ward include waiting on traumatic general surgery. My work over here for the last nine months was doing general surgical work and that includes the acute trauma cases, general abdominal surgery, and septic surgery.

Q You stated you were an assistant in charge of the Surgical Department in the 159th Station Hospital; is that correct?
A I am Assistant Chief of Surgery.

Q How long have you been holding that position?
A Since October.

DEFENSE: We submit that this witness holds a degree of Doctor of Medicine, he is a captain in the Medical Corps, he is treating our own soldiers, and we believe he is competent to give medical opinion to this Commission.

PROSECUTION: We feel that the prosecution should have the right to cross-examine this witness as to his qualifications before he is allowed to proceed as an expert witness.

PRESIDENT: Okay.

PROSECUTION: Captain, please understand this is no reflection upon you or your profession; it is just an attempt to bring before this military Commission what your best qualifications are so that the Commission can judge

fully the value to be attached to your testimony - there is nothing personal meant by it. When you state "trauma cases" you mean those cases involving fractures and other usual head injuries, none of which resulted from a blow or concussion, isn't that true?

WITNESS: Yes.

PROSECUTION: You stated you were in a ward handling that type of cases; approximately how many skull fractures have you personally handled during the time you have been in the Army?

WITNESS: I should say about fifteen.

PROSECUTION: Were they major cases or relatively minor cases?

WITNESS: About two-thirds of them you could call major cases.

PROSECUTION: Well, about ten major skull fracture cases?

WITNESS: Yes.

PROSECUTION: What other types of injuries do you handle?

WITNESS: We handle fractures, any injury resulting from trauma, any type of injury, actually.

PROSECUTION: Any type caused by an external blow.

WITNESS: Yes.

PROSECUTION: About how many such cases have you personally handled?

WITNESS: Since I have been in the Army?

PROSECUTION: Since you have been practicing medicine.

WITNESS: Since practicing medicine, that is a hard estimate to make.

PROSECUTION: Just a rough approximation to give this Commission some idea of the extent of your experience.

WITNESS: I should say several hundred.

PROSECUTION: Several hundred fracture cases.

WITNESS: Very roughly, maybe two hundred or three hundred.

PROSECUTION: Did you handle these yourself personally - with the entire supervision, or did you work on those under the supervision of another doctor?

WITNESS: It varied; soon after getting out of medical school I had supervision; the last two years, say roughly half the cases I handled myself and if I felt incompetent I asked for supervision.

PROSECUTION: Do you often ask for supervision?

WITNESS: At the present time?

PROSECUTION: Yes.

WITNESS: No; I ask for consultation but not supervision.

PROSECUTION: How often did you ask for consultation?

WITNESS: On trauma cases?

PROSECUTION: On trauma cases.

WITNESS: Roughly one out of ten.

PROSECUTION: You have handled about fifteen skull fractures?

WITNESS: Yes.

PROSECUTION: Did you handle all fifteen by yourself without calling for competent supervision?

WITNESS: That is a difficult question to answer because included in that group are cases which we handle initially - that is, they were on the call at night or day and we will handle the case until the duty hours start the next day and then the case is handed over to the next doctor in charge of the ward to which that case belongs. If you want to call the initial treatment as handling the case alone then I should say two-thirds of them I handled by myself.

PROSECUTION: Then by your explanation I understand that very seldom do you handle a complete case by yourself such as is customary in civil practice.

WITNESS: That is correct; it is on rare occasions that you would not either go into an informal consultation or the case would not pass into another doctor's hands.

PROSECUTION: In civil practice is it not true the customary procedure for a physician is he can handle that case completely by himself except in the rare cases wherein he thinks because of the unusual nature of the injury he would like to have additional advice?

WITNESS: Yes.

PROSECUTION: No further questions.

PRESIDENT: Does the prosecution agree to the Captain's being introduced here as an expert witness?

PROSECUTION: No, sir, the prosecution cannot agree that the witness is qualified as an expert witness. He has testified he has handled approximately fifteen trauma cases which is roughly the general nature of the one case before the Commission. He don't feel fifteen cases is sufficient to make any medical man an expert in that field. I think this witness will answer that question himself. He has had experience, yes, but without drawing directly from his experience. He hasn't broad background of taking a case and following it through. I think it is a matter of judicial notice that it takes years of practice, years of experience, numerous patients - and this witness has not so qualified himself.

DEFENSE: We never dreamed such a question would be raised, and legally I want to state there are no such requirements to put such an expert on the stand. We can take a boy just out of medical school and put him on the stand and let him testify as an expert witness. The reason for that would be where you have a doctor in a large city who is a specialist. He is a doctor; he is going to give testimony - opinions relating to something that he has studied and made a business of and he is qualified to give that - anybody who goes through medical school is qualified to give opinion as to causes of an injury and method of treatment. That is the legal basis of qualifying them - as long as he has gone through medical school and who knows his particular subject. Naturally, if a man practices forty years, more weight will be given to his testimony, but legally by the word "expert" it does not mean what it means in the proper sense. For example, by similarity I can give expert opinion on a man's handwriting if I have only seen that signature once - or, of course, I can put a man on the stand and if he has seen one signature he can give expert opinion on another signature and say whether it is signed by the man who put the original signature there. Legally, an expert is something different, and it goes to the weight of evidence but certainly not to the qualifications of the man. All you need to show is that the man went through medical school and he is an expert witness.

LAW MEMBER: As I understand it, you are calling this witness to give opinion on head injuries, based upon his experience.

DEFENSE: Based upon his experience and four years in medical school.

LAW MEMBER: Is there any objection to that - leaving it up to this Commission to use its - - -

PROSECUTION: We will withdraw our objection, but the testimony will be taken for what it is worth in the light of his experience.

Q Before coming into the Army did you serve as an intern?
A I did.

Q Please tell us for how long, giving some idea of the number of these cases you have seen as an intern.

A I have been in the service for eighteen months. Prior to coming into the army, and making another rough estimate I should say seventy-five to one hundred skull injuries have come under my treatment.

Q Dr., assume the following set of facts: a man is brought into your camp hospital who is unconscious; he has a wound on his head and he is bleeding slightly from that wound; he is also bleeding slightly from the nose; the nearest hospital is twenty miles away; you have no ambulance; the only way you can get that man to the hospital is to send him in an ordinary pleasure car; the man is kept and treated at the camp hospital, and three or four days later he dies, never having regained consciousness. In your opinion was the decision not to send him to the hospital but to treat him in the camp the proper medical conclusion in that set of facts?
A In that set of facts I think the decision was correct.

Q Will you state why you think that?

A Because the first main point in the treatment of a skull injury is to put the patient completely to rest and move them as little as possible, and you do that under all conditions unless - - well, I can think of no exception where you wouldn't put the patient completely to rest.

Q In treating such a case is it agreed by the medical profession that Xrays are of any use?

A They are, but not of prime importance and if giving him an Xray is going to disturb the patient you wait on the Xray and keep the patient quiet.

Q Assume that this patient received the following treatment: he is kept quiet; he receives periodic injections of camphor; he receives periodic injections of glucose; cold applications are made to his head; his wounds are dressed and bandaged; he never regains consciousness and four days later he dies. In your opinion, under the circumstances was the treatment which he received a proper approved method of treating such cases?

A You say he receives glucose?

Q He receives injections of glucose and he receives injections of camphor.

A The treatment as you outline it is all indicated in skull fractures. I would like to know a little bit more about the clinical picture. I would have to know more about the picture of the patient before I could say whether full and complete treatment. So far as it went it was the indicated treatment.

Q If nothing is known except the man was unconscious afterwards from this head injury, could you tell us what further treatment might be indicated - might be desirable?

A We don't know any further symptoms - the reflex reaction or such?

Q This was at a camp hospital where we are assuming also in this question that there were no Xray equipment or there were not the facilities that would be available in a large hospital. All that we are asking is whether the treatment as I have outlined would be an appropriate treatment for such a case as we have mentioned.

A It would.

Q Now, assuming the same set of facts - the same case. If there were shown that the night previous this man who was injured had lost between one and two hours of sleep and if it were further shown that the man might have slept a total of nine hours and if nothing definite is know about the actual physical condition of this man, could you state whether or not that loss of sleep of two hours the previous night would have had any connection with the accident the following day?

A I don't think it would have any connection with it.

Q I will ask you to assume another hypothetical case. You are the camp doctor and you are called to examine a person who is in the dispensary; he has been sick for five or six days with bronchitis; as a result of your examination you believe he may be developing pneumonia; you decide to send him to the hospital; it takes from three to five minutes to get to the hospital by car or truck; it takes between twenty and twenty-five minutes to walk to the hospital; you have your choice between sending the patient on a litter, carried by two other men or by sending him in an open truck; if you use the litter the man will have four or five blankets; if you use the truck he will

have in addition to his clothing and overcoat only one blanket; in the circumstances which method of transportation would you use?

A I think the truck.

Q Would it be your opinion that the exposure in the truck for three to five minutes would be less harmful even with only one blanket than exposure for twenty to twenty-five minutes with four or five blankets?

A I don't think there is any difference in the amount of exposure he would get, considering the time ratio - a short time with one or a longer time with four or five.

Q I neglected to mention that at the time you send this man to the hospital it is raining and cold. Would these circumstances alter your opinion as you have given them?

A I don't think so; if it is raining he will have a longer chance of being exposed by stretcher than by truck.

Q Would the fact that it was raining then be an additional reason for choosing the truck, in your opinion?

A It would be a sure point of comfort - not for the patient but who has to carry the litter.

Q In such a case, if it were shown that death from pneumonia occured approximately eight to ten days after the man was sent to the hospital, in your opinion could the exposure that he received have been a contributing cause to his death?

A His exposure or - -

Q The exposure received in the truck when sending him to the hospital.

A In contrast to exposure of the night?

Q No; assume you sent him by truck; now, assume he died eight or ten days later from pneumonia. In your opinion would the exposure that he suffered when taken to the hospital, could that exposure be considered as a contributing cause to his death eight or ten days later from pneumonia?

A If there were such a thing of exposure; I don't believe you have proved such a thing as exposure.

Q Is it your opinion that being transported in a truck for between three and five minutes in such a case would not constitute such exposure as would have any effect on the health of that patient?

A I don't think it would have any significant effect on his future course.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the Prosecution:

Q Isn't it very important that in cases of pneumonia that that patient be kept from exposure to cold and rain?

A It is important to keep that patient from being exposed.

Q If they were so exposed to cold and rain, isn't it true that such exposure might bring about early death?

A That is - - - first you have to define what you mean by exposure.

Q Exposure to rain and cold.

A Yes; my idea of exposure is if the patient suffers directly it would depend on how much exposure he gets.

Q Can a patient be fatally exposed who was suffering from pneumonia and was placed out in an open truck with no blankets for five minutes?

A There is where I am - - -

PROSECUTION: I will withdraw that question.

Q Take a case of a man who has been ill with pneumonia and seriously ill with it, having been ill for several days; he is too weak to stand. Would exposure of such a man to cold and rain for five minutes have any effect on his general health?

A If he was actually exposed to cold and rain for five minutes.

Q He was exposed.

A I don't think his alternate course would be significant; I think that is a minor factor.

Q Would you change your opinion if that same man died that evening?

A I would have to know his condition at the time of the exposure.

Q Isn't it true that before you can make any opinion that has much weight you have to see the man and know his actual condition at that time?

A Yes.

Q Isn't it true, doctor, that any hypothetical question you might answer at this time would be a sheer guess of yours inasmuch as the symptoms of various diseases varies as regards that individual and you would have to know so many things that you cannot possibly render an accurate opinion; isn't that true?

A No; I think you can render an opinion in this case - the facts presented are enough to render a rough opinion.

Q But it is still a rough opinion, is it not?

A It is.

Q Wouldn't your opinion necessarily be dependent on knowing whether or not that man up to the time of illness was well nourished, ill-nourished, undernourished, wouldn't you want to know more or less what kind of work he was doing?

A No; I think in this case all I would want to know is whether the patient was an extremist or not; I think that the amount of exposure would be of minor importance.

Q In the hypothetical question propounded to you by Mr. Rash in regards to the bronchitis case, could you tell from those facts whether or not that patient was an extremist?

A Yes, I can. If his diagnosis of bronchitis was correct with the statement

made there was fear that he might be developing pneumonia you can imagine he was an extremist.

Q Would your answer be different if you were told instead of having bronchitis he had pneumonia?
A You would have to know what stage.

Q The answer to that hypothetical question depends entirely upon the word "bronchitis" and what stage of pneumonia that the patient was in, is that not correct?
A Yes.

Q You gave an opinion as to carrying that patient on a litter; now, if such a patient were well wrapped in blankets, so well wrapped he was not exposed to the rain, was not exposed to the cold, would a journey of twenty minutes have much effect on him - twenty minutes on a litter?
A No.

Q Would he not be in a better shape than a man placed on an empty truck alone, such truck being an open truck with but one blanket, and it is raining and cold?
A In the truck for only five minutes?

Q Yes.
A I don't think any ill result he might suffer one way or the other would make any significant difference with the facts we know.

Q Isn't it true a patient having bronchitis should be protected as much as possible from the rain and cold?
A Yes.

Q Isn't is true, doctor, that a patient suffering from pneumonia should be protected as much as possible from the rain and cold?
A Yes.

Q Take the case of a patient having pneumonia, too weak to stand, having been ill for several days, would the fact that such a man were struck several blows on the face and kicked have any ill effect on him?
A I would have to know to what extent - how severe the blows were.

Q Say, as many as three hard vicious blows to the face and several kicks about the body.
A You don't know if there were any resulting fracture?

Q There is no indication of any resulting fracture.
A Or internal hemorrhages?

Q None.
A Just bruises - that type of injury?

Q Yes.
A I don't think that would have any effect on his course.

Q Could a kick about the body cause an internal injury?
A It could.

Q. Would you be suspicious if that same man died that evening?
A. If he were ambulatory with pneumonia, kicked, and died that evening?

Q. That is right.
A. I would be suspicious enough to look for other injuries rather than pneumonia.

Q. In reference to the concussion case, doctor, if all of your surgical equipment in the dispensary consisted of one small pocket-size instrument case, such as medical students have during their second and third years of medical studies, and a scalpel improvised from some dental probes, would you feel competent to treat a man who had had a serious fall from a scaffold into the hold of a ship?
A. I would feel competent in treating him if no operative procedure was indicated.

Q. If operative procedure were indicated would you advise removal to a hospital?

DEFENSE: We object because that is not in evidence in this case.

PROSECUTION: These are hypothetical questions. We can bring it out entirely on cross-examination. They did not bring up the subject but the ruling is any matter that has a bearing on direct examination can be brought out by cross-examination. This does have a bearing. We can't just take a phase of a subject, cut it off short and let it go at that, otherwise we wouldn't have the effect of the truth before this Commission.

DEFENSE: When a witness is put on the stand who is a specialist or an expert and he is asked a hypothetical question, each question must be based upon what is actually before the court at the time. He has now assumed a set of facts but there is nothing under investigation by this Commission - no evidence showing there is any evidence that surgery was necessary. On his theory he can go back and ask any question.

PROSECUTION: I refer the Defense and this Commission to Exhibit No. 15 and we ask that the witness be excused from the room while we argue this out.

PRESIDENT: Withdrew.

(The witness then was excused temporarily and withdrew)

PROSECUTION: In Exhibit 15, Captain Royce's affidavit states that he asked removal to a hospital, he asked for Xrays, which requests were denied. That is on Page 5 of Captain Royce's affidavit under "U.K. HALL". "Our requests for removal to hospital, for shaving and dressing the wound and for Xray were refused". And "His wound a vertical incision on the left temple one and one quarter inches long was not seen at all by the "Mad Doctor" and we were forbidden to touch him. Nippenese treatment was twenty cubic centimeters of glucose every five hours intravenously and an injection of camphor every two hours and also the doctor considered he had done all required of him by writing the diagnosis in German: "Commotio Cerebri schwere form, kontusion an der L.Temporalgegend". Our requests for removal to hospital, for shaving and dressing the wound and for Xray were refused." I think that does indicate other than what has been brought out by the Defense. We are entitled by that background to bring out the full details.

Also, on Page 4 of Captain Bogue's affidavit "There were many severe beatings one only of which can be given in detail but several instances will be given where death occurred where contributory to the death was Hippocrates medical negligence, complaisance, unfeeling ignorance and incompetence. They are as follows:" Among these is W. E. Hall. There is indicated there that the treatment afforded them wasn't sufficient. It is a statement by presumably a competent medical man - a doctor and a captain. We are entitled to see if this were present and that were present if it would change this doctor's opinion and that is all we are doing.

LAW MEMBER: The questions are still hypothetical questions.

PROSECUTION: They are in an effort to find out if this were present and that were present would it change his opinion and how would it change it.

LAW MEMBER: Any further remarks by the Defense?

DEFENSE: No, sir.

LAW MEMBER: The objection is overruled.

(The witness then returned to the courtroom and was reminded by the prosecution that he was still under the oath previously taken)

(The question was repeated by the reporter)

A No, I would advise that the patient remain where he was and the instruments or supplies be brought to the patient.

Q I will ask this question: in the case of the man who had a fall from a scaffold into the hold of a ship, he lay on the deck for approximately two hours without medical attention and was then brought into a dispensary where the only surgical instruments were a small kit of instruments such as a medical student has during his dissecting second and third years of medical studies, he is covered with coal dust and coagulated blood, he was unconscious for seventy-two hours and then dies, and the wound is a vertical incision on the left temple, one and one quarter inches long, he is given treatment of twenty cubic centimeters of glucose every five hours intravenously and an injection of camphor every two hours, there was no Xray, his head was bandaged during the period of that two hours; is there any reason from that for calling such treatment negligent?

A From what was said there?

Q From what was said there.

A Is there any reason to call that treatment negligent?

Q That is right.

A The treatment given was not negligent.

Q Was it sufficient?

A I would have to know more before I could answer that.

Q. Do you understand the medical terminology?
A. I do.

Q. If an expert who saw that man and knew all the details of the treatment just recited called it negligence, would you be inclined to agree?

DEFENSE: I object to that on the ground it is irrelevant and immaterial. That is basing one presumption on another.

LAW MEMBER: I don't agree with that. Subject to objection by any member of the Commission I will overrule the objection.

A. Well, I think I am up against two hypothetical situations; first you say an expert saw - -

Q. An expert - I mean a medical expert.
A. And he made the statement that such treatment was negligent?

Q. Yes.
A. Well I would have to know the condition of that patient myself - I wouldn't take the word of anybody.

Q. Isn't it true you cannot at this time tell this Commission any answer to any hypothetical question involving a trauma injury without having first seen the patient?
A. That is true.

PROSECUTION: That is all; no further questions.

WITNESS: May I ask a question?

PROSECUTION: Yes.

WITNESS: You say "see the patient?"

PROSECUTION: Without first seeing the patient.

WITNESS: Or get a full report of the condition of the patient. I think I can give an honest truthful opinion as to whether the treatment was negligent or not if I had a full report of the patient's condition. As given, there is very little I do know other than he was unconscious for seventy-two hours. I would like to know more about the patient.

PROSECUTION: If you were told that no one could tell you more about that patient's actual condition, could you give an honest well-founded opinion as to his condition and treatment?

WITNESS: As to the treatment as just outlined - as I review it then the patient had a lacerated forehead, was unconscious - -

PROSECUTION: I will review it. The patient had a serious fall from a scaffold into the hold of a ship about 2:00 or 2:30 in the afternoon; he received

no medical attention until about 4:00 or 5:00 in the afternoon; he lay unconscious for seventy-two hours, then died; his wound was a vertical incision on the left temple one and one quarter inches long; the treatment given during the period of the seventy-two hours was twenty cubic centimeters of glucose every five hours and an injection of camphor every two hours, no Xray; he was bandaged sometime during the seventy-two hours.

WITNESS: Your question is, was that negligent?

PROSECUTION: Yes.

WITNESS: I can say that the treatment is not negligent.

PROSECUTION: Going back - if a medical doctor who saw that same patient knew all of these details and the details of the treatment declared such treatment was negligent would that change your opinion?

WITNESS: I would have to know if he was the only one to see him and I know nothing about the case - we would have to take his word for it.

REDIRECT EXAMINATION

Questions by the Defense:

Q But still, Captain, on the basis of these facts that have been told to you and on the basis of the treatment outlined to you, you would say that that treatment was sufficient, would you not? If you were not told anything about anybody else's opinion - just on the basis of the facts and treatment as outlined to you, would you say that was approved and correct treatment under the circumstances?

A I would say the treatment was approved and was not negligent, but on the basis of the facts that the prosecution has given me I can't say whether it is adequate or not but the treatment as far as it went was approved and was not negligent. I would have to have more facts to tell whether it was adequate.

Q In the treatment of head injuries does the medical profession agree that Xrays are of any importance whatsoever? I mean by that is it definite, medically, that the use of Xrays in all head injuries are necessary?

A The use of Xrays are not necessary.

Q Is there one division of medical thought that hold that Xrays should never be used in such cases? That is, they are not necessary at all - one school of medical thought?

A I don't think that we can put that dogmatically, that Xrays should be or should not be used - it applies to the individual case. In some cases you feel you would benefit by an xray; in other cases from a clinical observation you can learn as much as you can by an Xray.

Q On the stated facts, where a man receives a head injury, never having regained consciousness and died three or four days later, in your opinion would you say that an Xray would have been of any importance in the case? Just knowing that much about the case and no more?

A Just knowing that much about the case and no more?

DEFENSE: Well, I will withdraw the question.

WITNESS: It is hard - the only feature I have about this patient is the fact that he was unconscious for seventy-two hours, had lacerations of the forehead and died after seventy-two hours. Again I say it presumes he had an intracranial injury, with or without skull fracture, but I have no means of telling if the skull was fractured, whether or not it was, and it is obviously an intra-cranial injury but to what extent and where it was localized I don't know - it is so vague, these facts presented, that it is hard to say one way or the other.

Q Well, in your opinion was failure to have this patient Xrayed, was that negligent?
A No; in my opinion I don't think it was negligent.

DEFENSE: No further questions.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q With the facts just described by the defense, would it have been of any help if there had been Xrays?
A It may have been a help.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:

Q Would you say that the help derived from the Xray would be counteracted by the harm that would be done to the patient by transporting him twenty miles in an unconscious condition in a pleasure car rather than an ambulance?
A I do; the information which would possibly be given by the Xray would be far over-weighed by the result of transporting the patient.

DEFENSE: That is all.

RECROSS EXAMINATION

Questions by the Prosecution:

Q Will you state whether or not it is true that a case of a man having a serious cranial injury, that disturbing his body by violently kicking and beating him about the legs would have a serious effect on him?

A Violently disturbing his body would not have a serious effect; that would have a dilatory effect.

PROSECUTION: That is all.

REDIRECT EXAMINATION

Questions by the Defense:

Q Assume that a man was unconscious - he lay in the hospital unconscious for two or three days; assume that while he was laying there he was beaten about the legs with a stick several times and that he was kicked several times. Can you state positively that that kicking and beating would be a contributing cause to that man's subsequent death - assuming that that man never regained consciousness from the time of the injury until the time of his death?

A I can't state positively that that would be a contributing cause of death.

Q In your opinion, could any doctor make a definite positive statement that that was a contributing cause, assuming the head injury and failure to regain consciousness - would striking about the legs several times with a stick, being kicked about the legs several times while in an unconscious condition, medically, the question is in your opinion is it possible to state definitely that that beating contributed to the subsequent death of that man?

A It is impossible to make a dogmatic statement whether anyone -- by contributing to the death of man that without that the death would not occur.

Q No; I mean would it have a contributory effect? In other words, that it had some influence in bringing about the death - I don't mean necessarily that he would have lived if it had not been for the beating but I mean would it have a definite effect in accelerating the death. The question is whether anybody can be certain, can give definite medical opinion saying that such a beating did contribute to the death.

A You could not give definite opinion that it did.

DEFENSE: No further questions.

PROSECUTION: No further questions.

PRESIDENT: Are there any questions by the members of the Commission? There appear to be none; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

PRESIDENT: The Commission will take a ten minute recess.

Q Will you state whether or not it is true that a case of a man having a serious cranial injury, that disturbing his body by violently kicking and beating him about the legs would have a serious effect on him?

A Violently disturbing his body would not have a serious effect; that would have a dilatory effect.

PROSECUTION: That is all.

REDIRECT EXAMINATION

Questions by the Defense:

Q Assume that a man was unconscious - he lay in the hospital unconscious for two or three days; assume that while he was laying there he was beaten about the legs with a stick several times and that he was kicked several times. Can you state positively that that kicking and beating would be a contributing cause to that man's subsequent death - assuming that that man never regained consciousness from the time of the injury until the time of his death?

A I can't state positively that that would be a contributing cause of death.

Q In your opinion, could any doctor make a definite positive statement that that was a contributing cause, assuming the head injury and failure to regain consciousness - would striking about the legs several times with a stick, being kicked about the legs several times while in an unconscious condition, medically, the question is in your opinion is it possible to state definitely that that beating contributed to the subsequent death of that man?

A It is impossible to make a dogmatic statement whether anyone -- by contributing to the death of man that without that the death would not occur.

Q No; I mean would it have a contributory effect? In other words, that it had some influence in bringing about the death - I don't mean necessarily that he would have lived if it had not been for the beating but I mean would it have a definite effect in accelerating the death. The question is whether anybody can be certain, can give definite medical opinion saying that such a beating did contribute to the death.

A You could not give definite opinion that it did.

DEFENSE: No further questions.

PROSECUTION: No further questions.

PRESIDENT: Are there any questions by the members of the Commission? There appear to be none; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

PRESIDENT: The Commission will take a ten minute recess.

The Commission then at 1415 hours recessed until 1425 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

DEFENSE: The defense calls as its next witness 1Lt. David M. Gibson.

FIRST LIEUTENANT DAVID M. GIBSON, a witness for the defense was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Defense:

Q State your name, rank, and serial number.
A David M. Gibson, First Lieutenant, O-765299.

Q To what branch of service are you assigned?
A Medical Corps.

Q Where are you presently on duty?
A The 159th Station Hospital, Yokohama.

Q Are you a licensed physician in civil life?
A I am.

Q Where did you receive your medical education?
A University of Kansas Medical School.

Q Do you have a degree from that institution?
A I do.

Q Have you had any experience as a doctor in civilian life?
A Just nine months as an intern.

Q How long have you been in the Army?
A Nine months.

Q I am going to ask a hypothetical question and will ask you to give the Commission your opinion as a doctor.

PROSECUTION: At this time I believe it is the right of the prosecution to further interrogate this witness.

LAW MEMBER: Is the Defense attempting to qualify the witness as an expert?

DEFENSE: Yes, sir.

LAW MEMBER: Go ahead.

PROSECUTION: As I understand it, doctor, you have had eighteen months total medical experience as a medical man.

WITNESS: That is right.

PROSECUTION: Nine months as an intern.

WITNESS: That is right.

PROSECUTION: Nine months in the Army.

WITNESS: That is right.

PROSECUTION: At what hospital did you serve your internship?

WITNESS: The University of Kansas Hospital.

PROSECUTION: Where is that hospital located?

WITNESS: In Kansas City.

PROSECUTION: Have you specialized in any particular phase of medicine?

WITNESS: No specializing, no.

PROSECUTION: It all has been general practice.

WITNESS: Yes.

PROSECUTION: Have you had much trauma medical experience?

WITNESS: Not much.

PROSECUTION: Approximately how many cases of skull fracture have you yourself personally treated?

WITNESS: I have assisted in the treatment of quite a few; I have treated probably one or two by myself.

PROSECUTION: In approximately how many have you assisted?

WITNESS: Probably ten or fifteen.

PROSECUTION: Approximately how many cases of cranial injury have you yourself fully supervised?

WITNESS: All by myself?

PROSECUTION: By yourself.

WITNESS: Probably one or two.

PROSECUTION: Approximately how many cases have you assisted in in cases of cranial injury?

WITNESS: Ten or fifteen.

PROSECUTION: In your Army experience are you in the habit of taking a case from the beginning and following it through entirely by yourself without supervision?

WITNESS: As far as possible.

PROSECUTION: Approximately how many such cases have you had involving trauma injuries?

WITNESS: Probably one or two.

PROSECUTION: No further questions by the Prosecution. If any member of the Commission has any questions as to qualify this witness it is entirely proper at this time.

PRESIDENT: Does the Commission have any questions? Apparently not. Go ahead.

Questions continued by the Defense:

Q In medical school did you study the approved methods of treatment for head injuries?
A Yes, sir.

Q Is it true you studied the approved method of all sicknesses?
A That is right.

Q I will ask you to assume the following set of facts: a man is brought into a camp hospital unconscious; he has suffered a head injury and he is bleeding slightly from that head injury; he is bleeding slightly from the nose; the nearest hospital is twenty miles away; you will have to send him to the hospital in a pleasure car because you have no ambulance; the man remains unconscious for two or three days and dies in the camp hospital. In the circumstances in your opinion should that man have been moved to the hospital twenty miles away or should he have been treated in the camp hospital?
A From the facts as stated and considering the fact that I didn't see the patient myself it would be impossible to make a definite statement but I would certainly hesitate to move a man that had been injured in such a manner.

Q Assume that this man received the following treatment: he is kept quiet; his wounds are dressed and bandaged and he is given an injection of camphor; he is given an injection of glucose; this treatment continues for two or three days and the man dies never having regained consciousness. In your opinion was the treatment which he received the approved method of treatment for such a case?
A Insofar as the facilities at the time - I mean the circumstances involved, yes.

Q Assume that that man was deprived of two hours sleep the night before this accident took place; assume also that the man could possibly have had a total of nine hours sleep; would you say that the loss of two hours out of a possible nine hours of sleep would have had anything to do with the resulting accident on the following day - assuming that the accident occurred

at 3:30 in the afternoon? Now, before answering the question I want to explain further that you don't know anything about the actual physical condition of this man beforehand; you do know he is working every day at manual labor. Now, the question is, in your opinion as a doctor would you say that the loss of two hours sleep the night before could have had anything to do with the accident?

A It would be very unlikely.

Q I will ask you to assume the following set of facts: you are asked to examine a patient in the camp hospital; he has been sick for five or six days with bronchitis; as a result of your examination you believe that he may be developing pneumonia; you desire to send him to the hospital; if you send the man to the hospital on a stretcher it will take between twenty and twenty-five minutes to get there; if you send the man in an open truck which is at your disposal it will take between three and five minutes to get there; the night is cold and it is raining; if you send the man on the litter, he will have five or six blankets; if you send the man in the truck he will have his clothing, his overcoat, and one blanket. In these circumstances which method of conveyance would you use?

A I would use the truck.

DEFENSE: No further questions.

CROSS EXAMINATION

Questions by the Prosecution:

Q Take a hypothetical case of an undernourished man engaged in stevedoring work; his sleeping quarters consist of a hard mat wherein he is allotted a space of approximately twenty-four inches wide and six feet long; his shoulders touch the shoulders of the man sleeping next to him; we are supposing that man's slumber was disturbed twice in one week from two or three o'clock in the morning on one instance and from three to four thirty in another instance; wouldn't the fact that that man's slumber had been disturbed have any effect on his daily work reaction?

A I would think it would be unlikely but possible.

Q It is possible?

A Yes; you couldn't say for sure without having seen the patient himself. These things are very hard to evaluate.

Q In addition to the facts stated, doctor, the period of that interruption, if that man were placed under nervous strain, under fear of a possible beating, would that aggravate the condition?

DEFENSE: We object to the question as stated because the phrase is used "if he is in fear of a beating".

PROSECUTION: Of a possible beating.

DEFENSE: We object to that being included in a hypothetical question to this witness because I know of no evidence that even starts to bear that out. That is assumption.

PROSECUTION: The evidence is plain in affidavit after affidavit that during the course of these tenkos there were numerous beatings. It is only reasonable assumption that any time tenkos were called any man in that group might be beaten. All I have to do is refer this Commission and the defense counsel to almost any one of the forty-one affidavits before us.

DEFENSE: The is no evidence that this particular man was placed under any such strain. Now, there is affidavit after affidavit stating that men were at some of these tenkos later beaten, maybe beaten during the tenkos but there is no evidence that this particular man was ever beaten in any testimony - - - -

LAW MEMBER: As I understand this it is altogether a hypothetical question, not referring to a particular man at all.

PROSECUTION: The whole thing is a hypothetical question.

LAW MEMBER: The same as the defense's questions were hypothetical questions. In view of that and subject to objection by any member of the Commission, the objection is overruled.

(The question was read by the reporter)

A By "condition" what do you mean - his fatigued state?

Q His fatigued state at daily work the next morning or any morning.
A Possibly, yes.

Q What is the natural tendency of fatigue and the reaction of the average individual?
A It retards them.

Q Does it make them less observant of conditions around them?
A It can.

Q With just this bare statement before you can you state whether the treatment set out therein is adequate. Take the case of a man who suffered a serious fall into the hold of a ship from a scaffold; he received no medical attention for approximately two or three hours; he was brought into the dispensary and remained unconscious therein for a period of seventy-two hours and then he died; his wound is a vertical incision on the left temple one and one quarter inches long; the only treatment given him was twenty cubic centimeters of glucose every five hours and an injection of camphor every two hours; there was no Xray; his wound was dressed sometime during that seventy-two hours. In your opinion, Lieutenant, is that treatment adequate?
A I think it is adequate under the circumstances.

Q What do you mean "under the circumstances"?
A With just that statement there - I think you have to see - - you have to know whether any other medical installations are available within a short period of time.

Q Would it alter your answer any if you knew that the only medical instruments

available at that dispensary was as follows: one small pocket size instrument case such as a medical student has during his dissecting second and third years of medical studies, and a scalpel improvised from dental probes.

A I would also want to know about the medical installations in the neighborhood that he could be taken to.

Q Would that condition indicate that a removal would be desirable?

A If at all feasible.

Q Suppose there was a hospital between eight and twenty miles away.

A That would depend on the method of transportation.

Q The only transportation available being a truck or a pleasure car.

A I would have to move him eight or ten miles regardless of the method of transportation.

Q Can you tell us from that last recital what the injury of that man might have been?

A I assume it was probably a fracture of the skull.

Q Can you state with any certainty such was the injury?

A I believe - - did you say in that that the patient was bleeding from the nose?

Q No, I did not; all I stated was he had suffered a fall from a scaffold into the hold of a ship, received no medical attention for two or three hours, was unconscious for seventy-two hours, and died. The wound was a vertical incision on the left temple one and one quarter inches long; the only treatment given was twenty cubic centimeters of glucose and an injection of camphor every two hours; there were no Xrays taken; the wound was bandaged sometime during the seventy-two hours.

A You could - - I think you would assume the man had a skull fracture.

Q Could you assume that with any certainty?

A A reasonable amount.

Q If a doctor who was there at that time saw that man, knew the details of the treatment, made the statement that in his opinion such treatment was negligent and inadequate would that be apt to change your opinion?

A Well, it is very difficult to say without seeing the patient yourself but from just what you say I would hesitate to move the man.

Q Isn't it true, doctor, that before any doctor can make a diagnosis as to a cranial injury and proper treatment he has at least to see a complete history of the patient or else observe the patient himself?

A Certainly.

Q Would you call the facts enumerated to you a complete case history?

A Of course not.

Q Isn't it true that you cannot give an opinion as to the proper treatment of that man?

A I said you couldn't without seeing the man yourself.

Q You couldn't give an opinion as to whether that was proper treatment without seeing the man?

A That is right.

Q Take - - Could you give an opinion as to whether that was adequate without seeing that man?
A Certainly not - not a definite opinion.

Q Take the case set out for you by the defense counsel in reference to the man with bronchitis; would your opinion be any different if instead of having bronchitis that man had pneumonia and had been seriously ill for several days, he was too weak to stand at the time he was removed to the truck?
A Would my opinion be different if that were the case?

Q Yes.
A No, I don't believe so.

Q Isn't there a great different between bronchitis and pneumonia?
A Certainly.

Q Isn't it true in pneumonia so as exposure to cold and rain even for short periods is very dangerous?
A Yes.

Q Would there be as much danger - - take the case of a patient well wrapped with blankets, protected from the cold and rain by these blankets and transported for a period of approximately twenty minutes by litter while suffering from pneumonia would such patient be seriously harmed?
A He might be.

Q Would the probable harm be greater or less if that same patient suffering from pneumonia, seriously ill for several days, too weak to stand, if that same patient were placed upon an open truck in the cold and rain, clad only in an overcoat and with one blanket--would the possibility of harm be greater or less than if he were wrapped properly and transported by litter?
A I think it would be less.

Q Why?
A If I had a patient sick enough to go to the hospital I would certainly want to get him there as soon as possible. I think the short time of exposure in the truck would counter-balance the long haul on the litter with less exposure and with more blankets.

Q Remember, he has only one blanket on the truck.
A That is correct.

Q You think it would be more preferable to send him on the truck rather than the litter?
A That is right; I would want to get him there as soon as possible.

Q If he had five blankets on the truck would it not have been better for him?
A It probably would have been, yes.

Q In other words, the more protection such a patient has from the winds, cold, and rain, the better off he is?
A That is right.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:

Q If it were shown in that pneumonia case that death resulted approximately eight or ten days later, would it be your opinion that the exposure he had received by being transported to the hospital acted as a contributory cause to his death, regardless of which method of transportation was used?

A Probably not.

Q Can yo definitely say, going back to the first hypothetical question of the head injury, on the facts as they have been presented to you, can you state whether or not Xrays would have been of importance in that case - assuming that the man never regained consciousness and died three days after the injury?

A No, I can't say definitely without seeing the patient.

Q Is there any indication in that same set of facts that any other surgical instruments if they were there in the camp would have been helpful in treating that case? In other words, from the facts as assumed, is the fact that they didn't have certain medical instruments would you say that fact had anything to do with his subsequent death?

A Naturally, if more facilities had been available a more complete study could have been made. What I mean is you could make an evaluation of the case properly and more efficiently and not just a hypothetical case. I can't say definitely whether more instruments would have been helpful or not.

DEFENSE: That is all.

PROSECUTION: The prosecution has no further questions.

PRESIDENT: Are there any questions by the Members of the Commission? Apparently none; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

DEFENSE: The Defense offers as its next witness the accused.

PRESIDENT: I presume that the accused has been warned of his rights in all respects as to taking the stand, etc?

DEFENSE: Yes; that he has the right to remain silent.

KEKIO MIYATAKE, the accused, was sworn and testified through the interpreter as follows:

REDIRECT EXAMINATION

Questions by the Defense:

Q If it were shown in that pneumonia case that death resulted approximately eight or ten days later, would it be your opinion that the exposure he had received by being transported to the hospital acted as a contributory cause to his death, regardless of which method of transportation was used?

A Probably not.

Q Can yo definitely say, going back to the first hypothetical question of the head injury, on the facts as they have been presented to you, can you state whether or not Xrays would have been of importance in that case - assuming that the man never regained consciousness and died three days after the injury?

A No, I can't say definitely without seeing the patient.

Q Is there any indication in that same set of facts that any other surgical instruments if they were there in the camp would have been helpful in treating that case? In other words, from the facts as assumed, is the fact that they didn't have certain medical instruments would you say that fact had anything to do with his subsequent death?

A Naturally, if more facilities had been available a more complete study could have been made. What I mean is you could make an evaluation of the case properly and more efficiently and not just a hypothetical case. I can't say definitely whether more instruments would have been helpful or not.

DEFENSE: That is all.

PROSECUTION: The prosecution has no further questions.

PRESIDENT: Are there any questions by the Members of the Commission? Apparently none; the witness is excused.

(There being no further questions, the witness was excused and withdrew)

DEFENSE: The Defense offers as its next witness the accused.

PRESIDENT: I presume that the accused has been warned of his rights in all respects as to taking the stand, etc?

DEFENSE: Yes; that he has the right to remain silent.

EMMIO MIYATAKE, the accused, was sworn and testified through the interpreter as follows:

PROSECUTION: Has this accused been fully advised of his rights?

DEFENSE: He has.

DIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q State your name.
A Hanie Miyatake.

Q Are you the accused in this case?
A That is correct.

Q What is your age?
A Twenty-four.

Q Are you a graduate doctor in civil life?
A That is correct.

Q And when did you finish your medical course?
A September 29, 1942.

Q Did you practice as a civilian practitioner after completing your medical course?
A Yes, I practiced for one week.

Q After that what happened that you didn't continue your practice?
A I was inducted into the army.

Q What training, that is, military training did you have in the Army?
A I received a medical officer's training.

Q How many months did the training take?
A Approximately three months.

Q Where were you stationed then?
A I performed my duty at Himeji Army Hospital.

Q Did you later on serve in the Osaka Area at a camp called Kobe Camp?
A Yes, I did.

Q Give the dates when you reported to Kobe Camp for duty.
A I reported to Kobe Camp on June 10, 1943 to August 1, 1943.

Q When did your duty terminate at Kobe Camp?
A I left Kobe Camp on August 11, 1943.

Q And where did you go from Kobe Camp?
A To the Main Prisoner of War Camp in Osaka.

Q And how long did you remain on duty there?
A I started from September 1, 1943 up to August 15, 1944.

Q At Kobe Camp what were your duties?
A My duty was to protect and give physical examinations and treatment to different prisoners of war in this area - there were approximately 1,500 prisoners of war and one hundred Japanese Army soldiers. An additional duty was pulling duty officer once every week.

Q How many days each week were you present at Kobe Camp?
A About two days.

Q Who was the camp commander at Kobe?
A First Lieutenant Yasuji Morimoto.

Q Did you administer to camps other than the Kobe Camp?
A Yes, I did.

Q How were the prisoners of war at Kobe Camp organized for the purpose of administration while they were in camp?
A The Kobe Branch Camp was run by First Lieutenant Morimoto and by Colonel Murata, the Main Camp Commandant and in the Medical Section First Lieutenant Nosu was in charge.

Q Did the prisoners of war at Kobe Camp have a camp spokesman or leader?
A Yes, there was.

Q Did they have a prisoner of war doctor?
A Yes.

Q In handling the sick patients among the prisoners of war explain how that was done. In other words, when a prisoner of war got sick, what steps did he go through to get treatment and who treated him?

A Every day a regular sick call was called by the prisoner of war doctor and twice a week I personally participated in the regular sick call. In addition to this for the special patients that might occur for that day there were sick calls morning and evening to give them physical examinations. This, myself or the prisoner of war doctor performed.

Q When you were absent from camp on other duties who administered to the serious cases or illnesses that arose in the camp?

A The prisoner of war doctor.

Q Would the Japanese authorities have a sufficient medical personnel to hold the prisoner of war sick calls in the various labor camps?

A No.

Q Who was the prisoner of war doctor in Kobe Camp while you were stationed at Kobe?

A Captain Begeo.

Q Where did Kobe Camp receive its supply of medicines from?

A From the Main Prisoner of War Camp in Osaka.

Q Where did you receive your food supplies from?
A So far as I can recall I think we were receiving the food supplies from the next Army installation.

Q When Captain Hayes needed medicines to treat sick prisoners of war how did he obtain that medicine?
A There was some medicine that he could obtain himself personally, however, there was some medicine that he would have to write a prescription and it was given to the Japanese medical orderly and through him he would receive it.

Q At the time you were stationed at Kobe was there in your pharmacy an adequate supply of all medicines to treat the ordinary illnesses?
A Yes.

Q Did you ever refuse or did you ever issue an order to those serving under you to refuse the prisoner of war's request for medicine while you were in Kobe?
A No.

Q Did you ever receive any complaints from Captain Hayes that he had been refused requested medicines?
A No.

Q Where did you treat surgical cases that arose at Kobe?
A In the camp dispensary.

Q Did you operate for appendicitis in the camp dispensary?
A If there were any patients who were seriously ill and needed an operation they were sent to the other hospital.

Q And where was that hospital from Kobe - in miles?
A It was approximately thirty kilometers away from Kobe.

Q Was Kobe Camp equipped to handle serious surgical cases or cases of serious illnesses?
A If there was small surgery we would have equipment to do it.

Q And what type of surgery was that you refer to?
A For instance if the prisoner was injured in the arm and received lacerations we can sew it at the camp dispensary and we could cut the infection that they might have had.

Q Did you ever receive an order while at Kobe to never have in your hospital more than fifteen patients at any one time?
A No.

Q Was any patient sent to work who should have been marked sick in the hospital and be excused from duty?
A Yes, there was.

Q Explain the case, giving the name of the man.
A That person that is responsible in sending out these sick patients were Sergeant Ochiai and First Lieutenant Morimoto; I think the reason was that they wanted to lessen the number of patients in the camp.

Q Where did you receive your food supplies from?
A So far as I can recall I think we were receiving the food supplies from the Japanese Army installation.

Q When Captain Royce needed medicines to treat sick prisoners of war how did he obtain that medicine?
A There was some medicine that he could obtain himself personally; however, there was some medicine that he would have to write a prescription and it was given to the Japanese medical orderly and through him he would receive it.

Q At the time you were stationed at Kobe was there in your pharmacy an adequate supply of all medicines to treat the ordinary illnesses?
A Yes.

Q Did you ever refuse or did you ever issue an order to those serving under you to refuse the prisoner of war's request for medicine while you were in Kobe?
A No.

Q Did you ever receive any complaints from Captain Royce that he had been refused requested medicines?
A No.

Q Where did you treat surgical cases that arose at Kobe?
A In the camp dispensary.

Q Did you operate for appendicitis in the camp dispensary?
A If there were any patients who were seriously ill and needed an operation they were sent to the other hospital.

Q And where was that hospital from Kobe - in miles?
A It was approximately thirty kilometers away from Kobe.

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Q And what type of surgery was that you refer to?
A For instance if the prisoner was injured in the arm and received lacerations we can sew it at the camp dispensary and we could cut the infection that they might have had.

Q Did you ever receive an order while at Kobe to never have in your hospital more than fifteen patients at any one time?
A No.

Q Was any patient sent to work who should have been marked sick in the hospital and be excused from duty?
A Yes, there was.

Q Explain the case, giving the name of the man.
A That person that is responsible in sending out these sick patients were Sergeant Oshima and First Lieutenant Morimoto; I think the reason was that they wanted to lessen the number of patients in the camp.

Q Do you know whether any order had come down from the Osaka Main Camp to your camp commander requesting or ordering that more prisoners of war be sent to work?

A There was no written orders that were passed down to the camp commandant; however, the commanding officer of the Osaka Main Camp told all the branch camp commandants as such.

Q Did you as the medical officer in charge of the Kobe Camp ever personally order a POW to work who was so weak he should not have been sent to work?

A No.

Q While at Kobe did you know a British prisoner of war named Burbridge?

A Yes, I do know him.

Q Did you have occasion to see Burbridge while on duty as OD at Kobe Camp?

A Yes.

Q Did anything unusual happen at that time?

A Yes.

Q State what it was.

A It was around July 16, 1943 after finishing taking the usual roll call or tenko I patrolled the camp area; when I came up to the kitchen I noticed that Burbridge was eating something. I asked this prisoner of war why he is eating. "The kitchen personnel usually eats around this time". But I noticed there were two or three other prisoners of war who were working in the kitchen were not eating. The regulations in the camp concerning the kitchen personnel do not show they were to eat on those irregular hours. Usually the supper time for the prisoners of war in this camp was 6:00 P.M. which was the order of First Lieutenant Morimoto. I asked this prisoner of war several times why he is eating at this irregular hour but I received no answer. It was 8:30 at this time. From then I ordered him to go towards the guardhouse and called Corporal Hoblett. I asked him if the kitchen personnel usually eats after the roll call. Hoblett's answer was that it wasn't the usual custom.

Q Who was Corporal Hoblett?

A He was an interpreter.

Q Did he perform any particular function for the prisoners of war in relation to the Japanese?

A He was known as the interpreter.

PRESIDENT: The Commission will adjourn until tomorrow morning.

The Commission then at 1535 hours, 29 January 1947, adjourned to reconvene at 0900 hours, 30 January 1947.

John P. Laughlin
JOHN P. LAUGHLIN
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
30 January 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case, being present.

PRESIDENT: The Commission will come to order.

(The accused was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the Defense:
Answers through the Interpreter:

Q On the occasion of the Burbridge incident, did you call the POW interpreter to interpret for you?
A Yes, I did.

Q Did any American officer accompany the interpreter when you sent for the interpreter?
A I could not remember.

Q What did the interpreter do when he reported to you?
A He just stood by me.

Q Was he informed by anyone as to the purpose of your calling him?
A I personally called him.

Q What did you tell him when he reported?
A I informed him that this particular prisoner of war was eating the supper meal later in the evening; I asked him what was the regular hour for the supper meal for all the prisoners of war; the interpreter's answer was that the kitchen/personnel ate when the rest of the prisoners of war ate their supper.

Q What did you do next?
A I then took the leather belt from one of the guards that was standing there and punished him so that this sort of thing would not happen again.

Q Was the act of Burbridge in your opinion a violation of your rules of the camp?
A Yes.

Q Were you on duty as O.D. when this incident occurred?
A Yes.

Q Describe to the Commission the extent of your punishment - the severity of it.
A To the extent that I punished him - I punished this prisoner of war with the belt with the strength that you use ordinarily in swinging your arms.

Q As a result of this punishment was Burbridge required to receive medical aid or attention?
A He bled from his nose.

Q Did he require the services of a doctor to stop his nose from bleeding?
A No, it was not to that extent.

Q Did he suffer any permanent injury as a result of this punishment?
A No.

Q Did he report for duty and perform his duties the following day?
A He was not in the dispensary the next day so I imagine he went out to work.

Q In Specification No. 2 the names of Captain Weeden and Lieutenant Baird are mentioned; do you have an independent recollection at this time of either one of these two officers?
A No.

Q The specification charges that on or about 14 July 1943 certain incidents happened to these two officers; on or about 14 July 1943 did you personally inflict any punishment of any kind upon any officer in Kobe Camp?
A Yes, I do recall. Correction to that last answer; I have never punished anyone personally, however I have seen punishment rendered.

Q Were some officers punished on or about this date in the camp?
A Yes, there was.

Q Did it personally come to your attention that some officers were being punished about this time?
A Yes.

Q What was the nature of the punishment you saw being imposed?
A At the time when I saw this incident it was in front of the guardhouse. One prisoner of war officer was standing at attention with a bucket of water over his head and there were guards standing by him.

Q Do you know who had directed this punishment?
A No.

Q When you saw this officer in the position you have described what, if anything, did you do as an officer?
A I made him stop this particular punishment.

Q Did you ever direct a punishment of any officer at Kobe Camp by directing that they hold a bucket of water or buckets of anything else up over their head?
A No.

Q Do you remember a prisoner of war named H. S. Jaynes and a Private Lipscombe, who were Australian and British prisoners of war?
A I remember Jaynes.

Q How many prisoners of war were there at Kobe Camp?
A Approximately six hundred and fifty prisoners of war.

Q How many prisoners were in the camps - the other camps that it was your duty to serve?
A Approximately nine hundred prisoners of war.

Q Now, as I understand you you remember Jagnes.
A That is correct.

Q Do you remember Lipscombe?
A No, I cannot remember him.

Q On or about the date alleged in the specification did you see Jagnes and direct any punishment be rendered to him?
A Yes.

Q Where you on duty as O.D. at the time this incident happened?
A That is correct.

Q Was Jagnes violating any of the camp rules or regulations?
A He had violated the regulation.

Q Tell the Commission in your own words what rule he violated and what you did.
A This prisoner of war named Jagnes was smoking a cigarette after the regular 8:00 P.M. roll call; therefore, I hit him with the leather belt.

Q Before striking him with the belt did you ask him why he was smoking the cigarette?
A I actually saw him smoking.

Q And where was he at the time you saw him smoking?
A In his own quarters.

Q Were the other prisoners also at their proper places in the quarters?
A Yes.

Q What time of day or night was this?
A So far as I can remember it was around 8:30 P.M.

Q What was the occasion of your being in this particular barracks at that particular time?
A After finishing the roll/call I was inspecting the barracks.

Q Was there a rule that prisoners shouldn't smoke after the evening roll call?
A Yes, there was.

Q How many other prisoners of war were in this room, approximately, when Joynes was there at this time?
A I did not strike Joynes in this room.

Q That wasn't the question. The que tion is, approximately how many other prisoners of war were in the room where you saw Joynes smoking?
A I think there was approximately one hundred and fifty prisoners of war there.

Q Were any of the other prisoners of war smoking?
A No.

Q Do you know how long previous to this incident that Jagnes had been a prisoner of war at Kobe Camp?
A I think he was in this camp approximately a month and a half before this incident occurred.

Q When you saw him smoking what did he say or do?
A When I was going up the steps to these rooms I saw Jagnes smoking; as I was coming up he noticed I was coming so he threw the cigarette out the window. I went up to him and asked if he was smoking. He answered "no". This was the only conversation that was carried on.

Q How far were you from Jagnes when you saw him smoking?
A Approximately three meters away.

Q Were the lights on in this barracks?
A Yes.

Q Was there any obstruction between you and where Jagnes was first seen by you smoking?
A No; there wasn't any; most of the prisoners of war were already lying on their bunks.

Q Did you immediately go to Jagnes when you saw him smoking?
A Yes, I did.

Q When he denied he was smoking what, if anything, did you do?
A I ordered him out to the front of the guardhouse.

Q What took place, if anything, in front of the guardhouse?
A I called Corporal Mohlett again.

Q Did any Allied prisoner of war officer accompany the interpreter on this occasion?
A No, I could not remember.

Q When the interpreter arrived what did you tell the interpreter, if anything?
A I related to him that I just caught this prisoner of war smoking but he denies it so I asked the interpreter to ask him again if he really was smoking or not.

Q Did the interpreter follow your instructions?
A Yes, he did.

Q And what did the interpreter report back to you?
A The interpreter's answer was that the prisoner of war was not smoking.

Q What did you do then?
A From then I struck him with the leather belt.

Q How many times did you strike him?
A I think approximately fifteen times.

Q Did you strike him for violating the rules of the camp or did you strike him for denying that he was smoking?
A Both.

Q Did the punishment you administered draw blood?
A His face was swollen.

Q Did you use any other method of punishment other than the use of the belt?
A No.

Q Did the prisoner of war suffer any permanent injury as a result of this beating?
A No.

Q Did he return to the barracks under his own power?
A I took him to the dispensary.

Q Was the interpreter present all the time you administered the punishment?
A No; he was not there.

Q Under Specification No. 4 you are charged with mistreating Commander Harrington; do you remember him as an individual?
A Yes, I do remember him.

Q And one Lieutenant Colonel Fitzpatrick; do you remember him as an individual?
A No, I cannot remember him.

Q Do you remember Lieutenant Percy M. Cotten?
A No, I could not remember him.

Q You are charged with mistreating these three officers I have mentioned and approximately twenty-two others by forcing them to stand at rigid attention, stare into glaring light, and by beating and kicking them, and by humiliating the officers by forcing them to scrub the streets; do you remember that occasion - do you have an independent recollection of it?
A Yes.

Q Were you on duty as OD at the time this incident happened?
A Yes; that is correct.

Q What occasioned you to administer any disciplinary action to this group of prisoners?
A On the night when I went around to their rooms for roll call I noticed a cigarette smoke in the room; I inspected their spittoon to see if it was clean; it wasn't dirty but I noticed a smoked cigarette was in it. From then I called all the persons out to in front of the guardhouse and asked who was the guilty one who smoked the cigarette.

Q Was it a violation of the rules for this smoking to take place at this particular time?
A Yes.

Q Did you call the interpreter?
A This interpreter was with me when I went around to take the roll call.

Q Did you direct the interpreter to inquire among the officers as to who had been smoking?
A Yes, I did.

Q Did the punishment you administered draw blood?
A His face was swollen.

Q Did you use any other method of punishment other than the use of the belt?
A No.

Q Did the prisoner of war suffer any permanent injury as a result of this beating?
A No.

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Q Was it a violation of the rules for this smoking to take place at this particular time?
A Yes.

Q Did you call the interpreter?
A This interpreter was with me when I went around to take the roll call.

Q Did you direct the interpreter to inquire among the officers as to who had been smoking?
A Yes, I did.

Q What did the interpreter report back to you?
A The answer that a prisoner of war from one of the other rooms was up in their room and smoked.

Q Do you mean that some visitor had been in the officers' room just previous to your inspection?
A Yes.

Q It was customary, was it not, for visitors to come up and visit the officers?
A They however, just prior to the roll call there is a bugle call so that they all know there will be a roll call and in usual occasions they will all be sitting in their own particular room.

Q And were there any visitors in the officers' room when you entered the room?
A No.

Q How long had this warning bugle announcing the commencement of the inspection sounded prior to your entering the officers' room?
A Approximately twenty minutes.

Q Did you see tobacco smoke floating in the air when you entered the room?
A Yes.

Q Is that what caused you to inspect the cuspidors?
A No.

Q What caused you to inspect the cuspidors?
A I inspected it to see if any waste had been spit in.

Q Then you say you found a cigarette butt?
A That is correct.

Q Did any of the officers admit some ship of this cigarette butt when you made inquiry about it?
A No, there wasn't.

Q Do you remember Colonel Flinim who testified here for the prosecution several days ago?
A Yes.

Q Was Colonel Flinim a prisoner of war in the camp during June, July, and August of 1943?
A Yes, he was.

Q Had you become acquainted with him to the extent that you knew that he was an American high ranking officer?
A I remembered his face.

Q Was he present in the officers' barracks when you questioned the officers in regards to the ownership of the cigarette butt?
A No, he was not there.

Q Did you send for him to be present and assist in interrogating the officers?
A No, I did not.

Q And I believe the interpreter was with you on this inspection?
A Yes, that is correct.

Q When you did not receive information as to the ownership of the cigarette, what did you next do?
A Then I considered that all the officers were responsible; however Commander Harrington was in charge of the quarters so I thought he had the most responsibility, therefore I hit him with the fist and the rest of them I slapped with the open hand.

Q Did you order them to stand to attention before a glaring light?
A No.

Q How many times did you strike Commander Harrington?
A One time.

Q Did you abuse or torture Commander Harrington in any other method on this occasion than by the one blow of the fist?
A No.

Q Did Commander Harrington or any of the other officers suffer any permanent injury as a result of your punishment?
A No.

Q Did you order these officers to go down and scrub the streets as punishment for this violation of the rules?
A No.

Q Did you ever see any officers out scrubbing the streets as a result of the incident described in Specification 4?
A No.

Q Did you either as O.D. or as your position as a medical officer at the camp have authority to order an officer to scrub any street?
A If I were O.D. I would have the authority; however, on other times I will not have the authority.

Q When did you go off your tour of duty as O.D. on this occasion - what time of the day or night?
A The following morning at 8:00 A.M.

Q Did you see Colonel Flinim at any time during this tour of duty as O.D.?
A Are you pertaining to the time I was duty officer or the time you particularly specified to the incident?

Q I am referring to the time you were duty officer on this occasion.
A I did see him.

Q Did you send for him?
A I could not remember that I called him.

Q Did he act in any way as an interpreter or in any other capacity in assisting you to find out who was owner of the cigarette butt?
A No.

Q Was he present when you administered the punishment you have just described?
A No, I cannot remember.

Q Is it possible that he could have witnessed it?
A It could be possible.

Q Under Specification 5 you are charged during the month of June of 1943 at Kobe of beating Warrant Officer Dudley Gove with a sword scabbard and by kicking him; do you remember Dudley Gove?
A No, I could not remember.

Q Do you remember of any occasion during June of 1943 of beating any prisoner of war with your sword scabbard?
A No, I could not remember.

Q When you were performing your duties as medical officer only did you wear a sword?
A No.

Q On what occasions, if any, did you wear a sword?
A When I am on as duty officer.

Q Were you on as duty officer during the month of June, 1943?
A Yes, I have.

Q Did you always wear your sword?
A That is correct.

Q You also served as duty officer during July and August, did you not?
A Yes, I did.

Q Did you beat anyone during those last two months that could have been in your opinion Warrant Officer Gove?
A No.

Q Do you remember any occasion on which you punished the leader of the prisoners of war who were returning from work on the docks away from the camp?
A No.

Q Did your functions as officer of the day include disciplining any prisoners when they were out on a work job or going to or returning from a work job?
A No.

Q At any time when you were officer of the day did you leave what is known as Kobe Camp and meet any of the gangs away from the confines of Kobe Camp but who were returning from work to the camp?
A Yes, I have.

Q And when were the times that you refer to now?
A I could not remember the dates.

Q Why did you as officer of the day leave the camp and meet the work crews before they returned to the camp?
A It wasn't that I went out to meet the prisoners of war; it is just that I went out to inspect the surroundings of the camp.

Q And you have no independent recollection of Warrant Officer Cero at this time?
A That is correct.

Q Do you remember a British prisoner of war named James McDougall?
A Yes, I do remember him.

Q As officer of the day did you have occasion to see him during the month of June 1943?
A Yes, I did.

Q On your inspection did you find any forbidden article in the possession of McDougall?
A Yes.

Q What was the article?
A A pencil.

Q Was the possession of articles of this kind forbidden by the camp rules?
A All the prisoners of war except the officers that works in the office and the prisoner of war leaders were the only ones that were permitted to have pencils.

Q How were the prisoners of war informed of the rules of the camp so that they would know whether they were violating the rules or whether they weren't?
A First Lieutenant Morimoto gave a lecture, calling an assembly for all the prisoners of war.

Q Could he speak English?
A No; with the aid of the interpreter he gave the lecture.

Q Do you know how long McDougall had been in this camp prior to the discovery of this pencil on his person?
A I think he was in the camp over a half year.

Q What did you do when you discovered this pencil?
A At that time under the orders of First Lieutenant Morimoto I gave a personal inspection to all the prisoners of war.

Q Well, while you were making this personal inspection, was that when you discovered this pencil on McDougall?
A Yes.

Q What was the principal object of this special inspection?
A The purpose was to inspect and see if the prisoners of war had any articles in their possession that they were not supposed to have.

Q What did you do, if anything, after discovering the pencil?
A I found a pencil under one of the blankets so I called the person who this blanket belonged to and asked him if this pencil was his but this person denied it.

Q How do you know that you called the man that this blanket belonged to?
A I asked who this blanket belonged to and the person answered.

Q Well, who was this person you asked?
A James McDougall.

Q Who had you obtained the information from that this was McDougall's blanket?
A McDougall, personally.

Q Did McDougall deny that it was his blanket?
A No.

Q But he did deny it was his pencil?
A That is correct.

Q Did he have any explanation or theory as to how that pencil got under his blanket?
A No.

PRESIDENT: The Commission will take a short recess.

The Commission then at 1035 hours recessed until 1045 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The accused was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the Defense:
Answers through the Interpreter:

Q Did you take any disciplinary action at that time in regards to this prisoner of war?
A Yes, I did.

Q Relate to the Commission just what you did.
A When he denied that he broke the regulation I hit him twice with the fist.

Q Did he bleed as a result of these blows?
A No.

Q Did he suffer any permanent injury?
A No, he did not.

Q Calling your attention to Specification 7, do you have an independent recollection of an Australian prisoner of war by the name of George E. Kibourne?
A No, I could not remember.

Q After you were stationed at the Main Camp at Omuta you would visit Kobe Camp on periodical inspections, would you not?
A Yes.

Q On any of those occasions did you have any personal dealings with any prisoner of war that was named or described to you as being George E. Kibourne?
A No, I could not remember.

Q While on duty as duty officer while you were stationed at Kobe do you remember any incident that calls your attention to George E. Kibourne?

A I have seen all the prisoners of war; however, I could not picture each individual what their name was.

Q And never on a visit after you were moved to the Main Camp do you remember any incident between yourself and Kibourne; is that right?
A That is correct.

Q Calling your attention to Specification 8, do you remember Lieutenant John Fuller who was an Australian prisoner of war?
A No, I could not remember.

Q Calling your attention to Specification 9, do you recall a Private W. H. Hall, who was an Australian prisoner of war?
A I do remember him.

Q Did anything unusual - any unusual occurrence happen to Hall while you were stationed at Kobe?
A Yes.

Q Will you state what it was?
A On August 12, 1943 around 3:30 P.M. while Hall was working at the Kobe Port handling coal he fell approximately five meters into the hold and received an injury.

Q According to the reports of Kobe Camp on the morning of August 12, did they show that Hall was in any way sick?
A No.

Q Did he go out with the other prisoners in the regular work gang in the usual way that prisoners go to work?
A I did not see; however, I think he did go out in the usual manner.

Q There is no indication in your records that he was suffering from any trouble at the time he went to work that morning?
A That is correct.

Q Did you been the officer of the day the preceding night - the night of August 11/12?
A No.

Q Did you hold any tenko or any other formation in Kobe Camp the night of August 11?
A No.

Q Were you at that time yourself suffering from any ailment?
A Yes.

Q What was that ailment?
A Acute bronchitis and ringworm.

Q As a result of these illnesses were you at that time making your regular inspections at the other camps adjacent to Kobe?
A No.

Q During the period of illness were you put on duty as officer of the day in Kobe Camp?
A No.

Q After Hall's accident when did you see Hall?
A On that same day around 5:00 P.M.

Q How did you receive information that Hall had been injured?
A While I was resting in my room on the third floor, Sergeant Uoui came and reported to me.

Q Had Hall up to that time been brought to Kobe Camp from his work place?
A That is correct.

Q When you first saw Hall was he conscious or unconscious?
A He was unconscious.

Q Did he have any wounds that had already been bandaged?
A No, it was not.

Q Who was present of the American prisoners of war at the time that you entered Hall's sickroom where he was lying?
A There wasn't any American prisoner of war.

Q Did some American prisoners of war and Major Boyce come into the room while you were there?
A Major Boyce was there; however other prisoners of war did not come in.

Q Was Boyce there with the patient when you first came to see the patient?
A That is correct.

Q Were any of his medical assistants with him?
A Yes, there was.

Q Who accompanied you to the sickroom of the Japanese personnel, if anybody?
A I went alone.

Q Did you and Major Boyce both have information that the accident that caused the injury occurred about two or three hours previous to your seeing the patient?
A I knew that the accident occurred around 3:30 P.M.

Q What, if anything, did you and Major Boyce do in regards to making an examination of the patient?
A First of all I examined the whole body, felt his pulse, and used the stethoscope to his chest; Major Boyce did the same thing.

Q Did he have an open wound on his head?
A Yes, there was.

Q From your examination of that open wound were you and Major Boyce able to ascertain the extent of any possible internal injury to this man's skull?
A Yes.

Q Could you at that time diagnose the probable extent of the injury to the part of the man's head beneath the skull?
A Yes.

Q At that time did you both have information as to the nature of the accident the patient had gone through?
A Yes, I did know.

Q Did Major Boyce also know how the accident had occurred?
A Yes.

Q Were there any other evident wounds on any part of the body except the head injury?
A There were some small scratches.

Q Were they of a serious nature?
A No, it was not serious.

Q Did Major Boyce use the stethoscope in his examination of the patient?
A Yes, he did.

Q After the information that you had and Major Boyce had and your examination did the two of you reach any diagnosis?
A Yes.

Q Was there any disagreement between you and Major Boyce as to the nature of this injury; I am not referring to the method of treatment but as to the injury suffered by this man, Hall?
A No.

Q What was the common diagnosis of the case by the two of you?
A We agreed that the patient should absolutely not be moved.

Q But what ailment did the two doctors agree the patient was suffering from?
A We came to the conclusion that since he hit his head he might have a brain hemorrhage.

Q In the medical profession is this a serious illness or an illness of a minor nature?
A It is regarded as a very serious injury.

Q And in medical practice are there established methods of treatment of such cases?
A Yes, there is.

Q Did you two doctors have information that from the time of the injury at 3:00 or 3:30 down to the time he was brought to Kobe he had been unconscious during all this period?
A Yes, we had heard.

Q Was the patient still dressed in his work clothes and was there coal dust and blood on his head as a result from the wound?
A Yes.

Q What, if any, action was taken to remove the blood and coal dust from the patient's head and cleanse the wound?
A I ordered someone to clean him later on.

Q Was he cleaned?
A Yes, on my second visit to that ward that same night he was clean.

Q Was it the regular routine in a case of this kind for the Americans to cleanse the prisoner and administer to him or did the Japanese do that directly?
A They both participated in it.

Q And this particular patient was actually cleaned and the wound dressed as you and Dr. Boyce had agreed upon; is that right?

A When are you referring to - what time?

Q Between your first visit and your second visit.

A On the first visit I myself bandaged his head and cleaned the coal dust and bandaged his head and on the second visit his whole entire body was cleaned.

Q What method of treating this patient did you direct, such as administering medicine and any other medical treatment?

A First of all I instructed them w/A to move the patient, and to take off his clothes so that his respiration would be easy; to lanpack his head and heart; then I ordered them to give a 50% twenty cc glucose shot three times a day and camphor shots every four hours; I also instructed them to give a thrombogen drug once everyday to stop the blooding, and if the patient gained consciousness I instructed them to give him liquid food and a limited amount of black tea, also to dress the wound.

Q Did Major Boyce approve or disapprove of this method of treatment?

A He approved it.

Q Did Major Boyce recommend that the patient be moved to a hospital and he prayed?

A No, he did not.

Q Were either Major Bayes or any of the prisoner of war personnel ordered by you not to treat or touch this patient?
A Absolutely not.

Q If this patient had been removed to a hospital what hospital was available to your camp and how far distant was such hospital?
A It would be that he would be moved to the Ichicha prisoner of war hospital in Osaka the distance is approximately thirty kilometers away.

Q What method of transportation would have been necessary had he been moved to this hospital?
A The only method we could use would be to move him on a stretcher.

Q Did you have any ambulance at Kobe?
A No.

Q Would it have been possible to obtain a truck to make this trip?
A No.

Q Did Major Bayes or any of his medical staff ever request any medicine of you or any other facilities to treat Hall during his illness and you refused their requests?
A No.

Q Did you report the circumstances of this accident to your superior medical officer at the main camp?
A I made Sergeant Usui report this incident that same day and later on I personally made a report.

Q Did you report the method of treatment you had prescribed to your superior officer?
A Yes, I did.

Q Did he approve your method of treatment and your recommendation that the prisoner remain quiet at Kobe?
A Yes.

Q Did you have any Xray equipment at Kobe?
A No.

Q You are a graduate doctor, are you not?
A That is correct.

Q In your study of medicine in medical school did you take any course on the treatment of brain injury or concussion cases similar to this case in question?
A I did.

Q Did Hall ever regain consciousness before death?
A No.

Q In your study of medicine and in your experience as a practitioner did you ever hear or is it written in any book that you have read that Xray treatment could cure or ever has cured concussion of the brain?
A No.

Q Do you have any opinion from your personal connection with the Hall case as to the effect that it would have had on Hall had he been moved from Kobe to the hospital under the conditions existing?
A My opinion would be that if he was moved it would just help him to bleed more from the hemorrhage.

Q Are you referring to an internal hemorrhage beneath the skull?
A Yes, the internal hemorrhage.

Q In the case of an injury of the nature Hall had and he subsequently died two or three days later, what progress takes place in the wound that ultimately causes his death?
A Receiving an external injury and having a concussion of the brain develops an internal hemorrhage as the cause of the death.

Q What known method is there in medical science that can stop an internal hemorrhage such as Hall had?
A The method would be not to move the patient and to render a drug to stop the hemorrhage.

Q What drug would be administered to stop the hemorrhage?
A Thrombogen.

Q Did you have any of that medicine?
A Yes.

Q Did you administer any of that to Hall?
A Yes.

Q Have you ever known of any cases in your practice where the administration of this medicine administered in a case as serious as Hall's stopped the hemorrhage and the patient lived?
A No.

Q X-ray merely shows the progress of the infection beneath the skull, does it not?

PROSECUTION: We object to the form of the question; it is entirely leading. This is direct examination. Let the witness state what the X-ray shows.

Q What is the purpose of taking an X-ray picture of the skull when a man is suffering from an injury such as Hall had?
A To see if the skull is fractured or not and to know what type of injury he received internally.

Q Does the X-ray have anything to do with the cure of the ailment?
A No.

Q And if the X-ray picture shows the skull to be cracked what can the doctor do?
A The only thing that the doctor could do is not to move the patient.

Q Was a death certificate or record made of Hall's death?
A Yes.

Q Prosecution's Exhibit No. 1, already admitted in evidence, shows that Hall was injured on 12 August 1943 and died 2200 hours 15 August 1943; is that correct?
A That is correct.

Q Do you have any independent recollection of one Hylton Collins of 14 Oxford Avenue, Bankstown, State of New South Wales, who was presumably a prisoner of war at Kobe Camp at the time Hall was in the camp?
A Is that an American prisoner of war?

Q No, he was an Australian prisoner of war.
A No, I could not remember.

Q On 15 August 1943, the date that Hall died - that is, he died that night - were you back on regular duty and making regular inspection rounds of the camp?
A No.

Q On that night did you dress up in your sword and go down to where Hall was - this is the night that he died - and kick him for about ten minutes and hit him with your sword?
A No.

Q Do you know one Corporal Howard Shannon who is presumably a medical orderly?
A No, I could not remember.

Q Are you a drug addict?
A Absolutely not.

Q Specification 10 covers a time you were on duty at Kobe and you are charged with mistreating and abusing numerous Allied and American prisoners of war by neglecting and refusing to give proper and adequate medical attention and forcing sick prisoners to work when physically unfit; as a doctor did you ever neglect any prisoner it was your duty to treat?

A No; not even once.

Q Did you ever refuse to provide adequate medical attention such as medicines and personal attention?

A No.

Q At this particular period did you have at Kobe Camp adequate medical supplies to treat the cases the camp was prepared and equipped to treat?

A They had enough to treat the prisoners of war; however, not in amounts that it would be left over.

Q Did you issue the medicines that you had available in your dispensary?

A Yes, I did.

Q Did you ever force a sick prisoner to go out on one of the work crews?

A No.

Q Do you know of that practice being followed in Kobe Camp while you were stationed there?

A Yes, it was.

Q And on whose orders was that practice carried out?

A Whenever I was present at the camp under the order of branch camp commandant Morimoto these practices were carried out.

PRESIDENT: The Commission will recess until 1315.

The Commission then at 1130 hours recessed until 1315 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The accused was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the Defense:
Answers through the Interpreter :

Q Was there any Xray equipment at the hospital you mentioned Hall would have been sent to had it been determined to hospitalize him?
A No.

Q How many times did you personally see Hall each day from the time he was brought to Kobe until he died?
A Fifteen times.

Q Under Specification 11 you are charged with mistreating and torturing numerous American and Allied prisoners of war who are unnamed by beating them with fists and sword scabbard and by kicking them; did you at Kobe ever mistreat any Allied prisoner except as you have admitted from the witness stand on your direct examination?
A No.

Q The same specifications further charges as an additional act of mistreatment that you held unnecessary inspections in the later evening and early morning, thereby depriving prisoners of war of much needed rest; did you ever hold what has been referred to heretofore as a surprise roll call except when you were officer of the day?
A No.

Q Why did you hold any surprise roll call?
A I was under the order of Colonel Murata of the Osaka main camp and branch camp commandant Morimoto and such a roll call was for the necessary cautions as follows: to see that the prisoners of war did not escape, fire hazards, and air raids.

Q Did you hold surprise roll calls each and every time you were officer of the day or did you merely hold them occasionally?
A I only held them twice while I was in Kobe.

Q Under Specification 12 after you had been moved to Osaka Main Camp you are charged between 1 November and 1 January of mistreating Warrant Officer Scaly and another soldier named Norman Archer; do you have an independent recollection at this time of either one of these two soldiers?
A I do remember Scaly; however, I do not remember Norman Archer.

Q Did any unusual incident happen between yourself and Scaly during this period of time?
A Yes.

Q Were there any other Allied prisoners of war involved in the same incident?
A I think there was another prisoner of war.

Q Tell the Commission what happened on this occasion.
A While I was performing duties of duty officer at the time I was taking a roll call I went to the quarters where Scaly was. When I went into the quarters there was one prisoner of war who was sitting on a chair and not at attention while the rest of them were in formation. I asked this prisoner if he was sick or not. The answer was he wasn't sick; therefore, I hit this prisoner of war and Scaly who was in charge of that quarters.

Q How many times did you hit him?
A I hit this prisoner of war who was sitting one time and Scaly twice.

Q What did you hit them with?
A With the sword scabbard.

Q Were there any other prisoners of war punished by you on this same occasion?
A No.

Q Did you draw the sword from the scabbard?
A No.

Q Where on the body did you strike these prisoners?
A On their temple.

Q And did this cause their temple to bleed?
A No, because of the fact that this scabbard had a leather sheath over it.

Q As I understand it, no metal touched the skin of the soldiers; is that correct?
A That is correct.

Q Did this incident take place at a regular tenko or what has been designated as a surprise tenko?
A The regular night roll call.

Q Passing Specification 13 for the present I call your attention to Specification 14 which charges you with mistreating numerous American and Allied prisoners of war by making unnecessary inspections, thereby depriving the prisoners of needed sleep and by beating them with fists and sword scabbard and kicking them and otherwise abusing them; on your entire tour of duty during the period of time covered by the specification did you ever strike either with your fist or with some object any other American prisoners or Allied prisoners other than those you have related?
A No.

Q How many surprise tenkos did you hold while you were stationed at Osaka Main Camp?
A Three times.

Q Referring to Specification 13, do you remember a prisoner of war named Kunteen?
A Yes, I do remember him.

Q Did you have occasion to see Kunteen between 1 November 1943 and 8 January 1944?
A Yes, there was.

Q Were you on any tour of duty at the time you saw him on this occasion?
A Yes.

Q What duty was that?
A The time when I was duty officer.

Q What were the duties of the duty officer?
A The duty of a duty officer was to see that there will be no prisoner of war escapes, fire hazards, sanitation of the camp, and as medical officer to inspect the hospital wards.

Q What particular part of these duties were you performing at the time you came in contact with Kunteen?
A When I was inspecting the quarters of the prisoners of war.

Q What called your attention to Kuntsen on this occasion?
A When I went through the sick ward to see the condition of the ten prisoners of war sick in that ward I asked each and every one what their ailments were and in this group there was one patient who was sitting against the wall who had bronchitis. This person was Kuntsen.

Q In any of your duties at Omaha had you ever had occasion to attend Kuntsen as a physician or doctor?
A Not even once.

Q Did Kuntsen tell you how long he had been suffering with some sickness?
A He told me he had been sick for one week.

Q Did you examine him to ascertain the seriousness of the sickness at the time?
A Yes, I did.

Q As a result of that examination did you decide or determine that he should be in a hospital and not in this little infirmary you had at Omaha?
A Yes.

Q What steps did you take to have him removed to a hospital?
A I consulted with medical officer Hosu, then we put Kuntsen on a truck and sent him out.

Q Was Hosu your superior officer in the medical setup there at Omaha?
A That is correct.

Q Who ordered the exact method of transportation that the patient should use to go to the hospital?
A Lieutenant Hosu.

Q Did you know about any arrangements that had been made by some Allied prisoners of war to carry Kuntsen to the hospital on a stretcher?
A No.

Q When did you first hear that some Allied prisoners of war were going to take him over on a stretcher?
A When Konde, a medical orderly, reported to me.

Q And when did he report to you?
A Around 1:30 in the afternoon.

Q Had the patient already gone to the hospital in the truck?
A No.

Q How far was it to the hospital?
A I don't know the exact distance; however, on a vehicle it would only take about three or four minutes.

Q Did you determine from your experience in medicine that it was better for the patient to be moved by truck than to be moved by litter?
A I think being transported by truck was better.

Q What was the regular method of transporting sick prisoners from Osaka to this hospital?

A Mostly they were transferred on the stretcher.

Q Why in this case did you determine it was better to transport him by truck rather than by litter?

A During this time there was a Captain Kanaka who was in camp and he was going back to the Central Area, so having transportation at that time I thought it would be better to have him loaded on a truck and taken to the hospital.

Q It has been testified to heretofore in this case that it was raining; do you remember whether it was raining or not?

A So far as I can remember I don't think it was raining.

Q Well, if it was raining was it severe enough that you noticed it?

A A light rain.

Q What was the condition of the weather as regards being cold or warm on that day?

A It was a cold day.

Q Do you know how the prisoner was clothed or protected from the weather on his trip to the hospital in this truck?

A He had a winter overcoat on and one blanket laid on the floor and one over his head.

Q Did either the patient or any of those so-called litter bearers protest to you on this method of transporting the patient to the hospital?

A No, I did not hear any protests.

Q From a medical stand point was there any reason why this wasn't as proper or a better method of transporting this patient under these conditions to the hospital than by litter?

A Yes, the method that we used was better.

Q Did you prior to sending Knutson to the hospital beat him and kick him?
A No.

Q Do you remember or know one Philip E. Sanders, Chief Boatswain Mate in the United States Navy?
A Yes, I do remember him.

Q Did you see Sanders on the occasion of your examination of Knutson when you determined whether to send him to the hospital or not?
A Yes, he was.

Q What, if anything, did Sanders say to you or you say to Sanders in regards to this patient or any other subject at that time?
A He did not say anything.

Q Do you know Dr. David Rockman?
A Yes.

Q Did he occupy any official position in the prisoner of war camp in Omsk?
A He was the prisoner of war doctor rendering treatment and physical examinations to the prisoners.

Q Did he ever reported to you the condition of Kautsen prior to the day you discovered Kautsen when you were on duty?
A No.

Q Was he present at the time you were examining Kautsen and sent him to the hospital?
A No, he was not there.

Q Do you know where he was at the time?
A No.

Q Did he ever protest after Kautsen was sent to the hospital and claim that he should have been sent by litter?
A No.

Q You stated a moment ago that Kautsen told you he had been suffering from bronchitis about a week before you saw him; is that right?
A That is correct.

Q The prosecution has introduced a death certificate marked Exhibit No. 2 covering the date of the illness and the date of the death of Kautsen; this certificate shows that the illness commenced 23 December 1943 and that the patient died on 8 January 1944; if the patient contracted the illness on 23 December and he stayed in Omsk one week before being sent to the hospital, is it your opinion that he was sent to the hospital on or about 30 December?

PROSECUTION: We object as it is a leading question.

DEFENSE: I will withdraw the question.

Q Assuming that the patient had been in the hospital the first eight days of January of 1944, in your opinion could the method of moving him from Osaka to the hospital whether it be by litter or whether it be by truck, have been a contributing factor to his subsequent death?

A No.

PRESIDENT: The Commission will take a short recess.

The Commission then at 1415 hours recessed until 1425 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness, the accused, was reminded by the prosecution that he was still under the oath previously taken.)

Questions continued by the Defense:
Answers through the Interpreter:

Q Before you went on active duty as an officer did you receive any instructions in the principles of international law?
A No.

Q Do you know what the Geneva Convention is?
A No.

Q At the time that you inflicted corporal punishment on prisoners of war did you know that that was forbidden by the principles of international law?
A No.

Q Was it the practice in the Japanese Army for superiors to beat inferiors for minor infractions of the rules?
A That is correct.

Q Was any record kept of such beatings and such offenses?
A No.

Q If a Japanese soldier was court-martialed was a record kept?
A Yes.

Q Where was that record kept?
A The record would be kept in the individual's record.

Q Where was that individual's record located?
A The record would be kept in a place where he is registered and also in the army record.

Q Would that record be kept in his home town among his family's records?
A Yes, that is correct.

DEFENSE: That is all.

CROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q Referring to the beating of Sergeant Burbridge, at what time did that beating begin?
A It was past 8:30 P.M.

Q How long did that particular beating continue?
A Approximately two or three minutes.

Q At the time Burbridge was beaten by you was he standing in the position of attention?
A Yes.

Q How long was Sergeant Burbridge forced to stand at a position of attention before the guardhouse?
A About twenty minutes.

Q During that time that he was standing to attention before the guardhouse was he forced to hold a bowl of water in his outstretched hands?
A No.

Q Was he unconscious at any time during the time he was in front of the guardhouse?
A No.

Q Did you throw water on Sergeant Burbridge at any time while he was in front of the guardhouse?
A No.

Q Did you kick Sergeant Burbridge?
A No.

Q Do you know anything about the physical condition of Sergeant Burbridge at that time?
A Yes.

Q Was he suffering from beriberi at that time?
A No.

Q Was he in a well nourished condition at that time?
A Yes.

Q How many British officers were prisoners of war in Kobe Branch Camp?
A I could not remember.

Q Can you state approximately how many were there?
A I think it was approximately twenty British officers.

Q Do you remember Major Pitts there?
A No, I could not remember.

Q Do you remember Captain Reeden?
A No, I could not remember.

Q Did you ever treat any British officers for illnesses about the middle of July 1943 at Kobe Camp?
A No, I could not remember.

Q At the time the Australian soldier, Joynes, was beaten, at any time during that time was Joynes unconscious?
A No.

Q Did you kick Joynes at any time?
A No.

Q At the time that you beat Joynes do you remember a British soldier being beaten by you for failing to salute you?
A No.

Q Do you remember beating a British soldier then for failing to bow to a guard?
A No, I could not remember.

Q Would you state definitely under oath that you did not kick Jaynes - is that true?
A Yes.

Q Going to Specification 4, the beating of Commander Harrington, and numerous other officers, as set forth in the specification - at the time you beat Commander Harrington was he standing to attention?
A Yes, he was.

Q Were the rest of the group standing to attention?
A Yes.

Q Approximately how many were in that group?
A Approximately twenty men so far as I can remember.

Q Were they all officers?
A I think there were orderlies in that group, too.

Q How long did you force that group to stand to attention?
A Approximately twenty minutes.

Q Was Frederick C. Frederickson, a civilian employee, among that group?
A I could not remember.

Q Do you remember Frederick C. Frederickson?
A No.

Q Did you kick anyone in that group?
A No.

Q Where was this group standing to attention?
A In front of the guardhouse.

Q Was there any light in or around that guardhouse?
A Yes, there was.

Q Will you state to the Commission the lighting that was present?
A The regular light that you light at the night which was on top of the guardhouse.

Q Will you show the Commission how large that bulb was?
A Approximately the size that is in this courtroom.

Q Was it a shielded light?
A It just had the shield on the top of the light, the bottom was bare.

Q In your opinion as a doctor was that group in good physical condition?
A Yes.

Q Do you remember any British Warrant Officers at all in Kobe Camp?
A I remember their faces but I could not remember their names.

Q Do you remember at all of beating any British Warrant Officer during June of 1944?
A No.

Q Going on to James McDougall, how many times did you beat James McDougall with your fists?
A Approximately two times.

Q Did you kick him at any time?
A No.

Q Did you strike him with your sword scabbard at any time?
A No.

Q Do you recall at any time in 1944 of striking an Australian prisoner of war who was standing in front of the guardhouse at attention at night?
A No.

Q Were you at Kobe Branch Prisoner of War Camp at all during 1944?
A No.

Q Did you visit Kobe Branch Prisoner of War Camp in 1944?
A Yes.

Q Why did you just say you were not at Kobe Branch Prisoner of War Camp in 1944?
A I thought the question was whether I was living in that camp or assigned to that camp at that time; that is why I answered I was not there.

Q How many times did you visit Kobe Branch Prisoner of War Camp in 1944?
A I could not state the exact amount of the times I went to Kobe Camp in 1944; however, I did go to that camp during the period of January up to May of 1944.

Q Did you go there the latter part of 1944?
A No, not even once.

Q Did you ever strike an Australian Lieutenant with a wooden clog?
A No.

Q At the time you were beating Jaynes, do you remember any officer, Australian officer, protesting the beating of Jaynes?
A No, there wasn't any officer that protested.

Q Do you remember Lieutenant John Fuller, an Australian officer?
A No.

Q Approximately how many Australians were in Kobe Branch Prisoner of War Camp?
A Approximately fifteen officers so far as I can recall.

Q Did you have much contact with the Australian prisoner of war officers?
A Are you referring to all?

Q Yes.
A Besides the time that I participated - when I am on duty as duty officer I would not contact the officers in a group.

Q Were you well acquainted with any individual Australian officers?
A There was.

Q Were you well acquainted with any individual Australian officer?
A Yes.

Q Which officers were you well acquainted with?
A Captain Boyce.

Q Any other officers?
A There was another Australian officer who left the medical school in between and joined the Army; I could not remember his name.

Q Do you remember Major Campbell?
A No.

Q Do you remember Lieutenant Bryan Gordon?
A No, I could not remember.

Q Were your relations with Captain Boyce friendly?
A Yes, they were.

Q In your opinion did Captain Boyce take good care of the prisoners of war at Kobe Camp?
A Yes.

Q In your opinion was Captain Boyce a competent medical man?
A I think he was well educated in his medical capacity.

Q During the course of time you were at Kobe Camp did you have any disagreements with Captain Boyce regarding treatment of individual prisoners?
A No, not even once.

Q Do you know of any reason why Captain Boyce now should say that you were negligent in your treatment of Hall?

DEFENSE: We object to that unless the prosecution -- I think at this time it might be well if certain portions of Boyce's affidavit were translated. We waived the translation in order to save time and the defense interpreter did translate all of these to the men, or the essential parts, but I am now wondering if it wouldn't be well to translate this affidavit and lay some foundation since we are going into this Boyce affidavit.

LAW MEMBER: Do you have any objection to the prosecution reading extracts from it?

DEFENSE: No.

PROSECUTION: They were read and the interpreters were giving the information in those affidavits to the accused and if -- and he should be well acquainted with the testimony and I don't see now why we should prepare this witness for his answer by refreshing his memory.

DEFENSE: That applies certainly in a case where the accused speaks the same language as everyone else but in this case I don't think it applies and I don't see why, as the Law Member suggests, portions can't be read. I object to the question first of all on the ground that Captain Boyce is ambiguous on that point.

PROSECUTION: Just a minute - - are you objecting to the form of the question or what is the basis of your objection to the question asked this witness?

DEFENSE: First of all we object because no proper foundation has been laid. The assumption is that Boyce has said in so many words that this man was negligent in treatment of Hall. We maintain that reading the exhibit will show clearly that he does not make any such definite statement so there is no foundation for this statement. Boyce states "several instances will be given where death occurred where contributory to the death was Hippocrates medical negligence, complaisance, unfeeling, ignorance, and incompetence", and then under that he gives this information. We say that is ambiguous and not altogether the Hall case individually. Later on he only implies that there was some lack, some neglect - he does not come out and say definitely. Now, the prosecution may read both portions of this affidavit and ask if the witness can explain them but whether he can pin him down like this - - This witness has the right to have exactly what Captain Boyce said about him translated by the interpreters.

PROSECUTION: I wish to submit that the prosecution is cross-examining the accused and we do not have to lay foundation for any question. On direct examination they did cover the treatment of Hall; this witness stated he had no disagreements with Boyce. The affidavit of Boyce is very plain - he did disagree with this witness. These matters are before this Commission and there can be no objection to the form of the question.

LAW MEMBER: You think it should be read to him?

DEFENSE: Yes, sir, and the question made definite as to - - -

PROSECUTION: Well, if that is the objection of the defense, let's stop right here and ask the defense if there is any affidavit that this accused doesn't understand and if he does not understand them we will have them all translated right here so that we can continue proper examination.

LAW MEMBER: I am under the impression that when the trial started I asked whether the accused was familiar with all the affidavits or had been furnished copies of them and you informed me that he had been acquainted with the contents of the all the affidavits, but had not been given a translation of them; is that correct?

DEFENSE: Yes, sir.

LAW MEMBER: Therefore, I assumed that he was familiar with all affidavits presented.

DEFENSE: Yes, sir, and as we stated several times we acquainted him with the essentials of each affidavit. In fact, in the first place we had about twenty that were not introduced. In the second place, we had only two weeks to prepare for this case and this Commission knows how hard it is to get information from the Japanese and to get information across to them; we brought witnesses in and examined them and in some cases we had never even seen the witness before. We were ready for trial but in order to expedite matters we did waive it but now we are saying we want not all of those read but Captain

Boyce's affidavit is the most important of all - the pertinent parts of it - these two paragraphs - and we think if he is going to be cross-examined about a particular affidavit the particular portions should be read to him immediately when being cross-examined about them. He had to keep all he knows, all the testimony he heard, and the testimony of Colonel Flinion, which we never heard and which he never heard - he has to keep all this in his head- not only that, but all this affidavit testimony. Now, he has the right to have his memory refreshed.

PROSECUTION: All this witness has to do is tell the truth, regardless of what anyone said if he tells the truth that is all he is expected to do. I want the record to show a statement by this defense as to whether or not this accused understands the nature of the charges against him. I was under the impression that there was a defense interpreter over there by his side interpreting these affidavits as they were read. Now, if it is true that this accused does not understand the evidence presented against him I think the trial should stop until he is given that opportunity.

LAW MEMBER: I think the record will show that I made the same inquiry of the Defense as to whether or not the accused was familiar with these.

DEFENSE: Yes, sir, but in the few minutes we have been talking about this that could have been read. That is, what he is being examined about now and I think it certainly isn't going delay things much.

PROSECUTION: Is it just this one affidavit you want read or are there others? I will read Boyce's affidavit but I want it understood I think it is almost unheard of that before a witness testified on cross-examination that you refresh him with all the testimony against him so that he can shape his answer but I am going to waive that and will read Boyce's affidavit right now to the accused, and any other affidavit the defense asks me to read, and we will have it interpreted to him, and after that is done then I claim the right to conduct proper cross-examination.

LAW MEMBER: Does that satisfy the Defense?

DEFENSE: Yes.

LAW MEMBER: The affidavit is merely a paper substitute for the actual presence of a witness; if the witness had been present all of his testimony would have been translated the same as Colonel Flinion's, for the benefit of the accused. Therefore, I think the suggestion of the prosecution is fair.

DEFENSE: All right; the defense accepts that suggestion and asks that only certain portions of the Boyce affidavit be read - Exhibit No. 15, paragraph e, the last paragraph on Page 4, and Page 5.

LAW MEMBER: If the Defense is claiming that the defendant is not familiar with the testimony in the affidavit of Boyce I think the whole thing should be read.

DEFENSE: It will take three hours to read the whole thing - it has page after page of evidence that has no bearing on this case.

LAW MEMBER: But the defense is making the allegation that this accused

is not familiar with the testimony presented before this Commission.

DEFENSE: Just one pertinent relative portion; we don't want to waste time - -

PROSECUTION: It isn't a question of wasting time and the Commission and the Prosecution will stay here indefinitely if necessary in order to give this accused a fair trial and present evidence that he can understand and to which he can present a defense if he has one.

LAW MEMBER: Does the Defense desire a recess to acquaint the accused or to prepare any testimony or to get more witnesses? If you so desire we will recess as long as you want at this time?

DEFENSE: I suggest a five minute recess and I believe this can be cleared up.

PRESIDENT: The Commission will take a short recess.

The Commission then at 1505 hours recessed until 1507 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

(The witness, the accused, was reminded by the prosecution that he was still under the oath previously taken)

PROSECUTION: At the time of recess the Defense had an objection whereby it was apparently implied that the defendant did not understand the affidavit evidence presented against him and which were read and introduced the first few days of this trial. I would like to have the defense clarify that and stand on that matter so that we can judge whether it will be necessary to read any one or all of these affidavits and have them translated in open court.

DEFENSE: The defense withdraws its objection and states that the accused is fully acquainted with all the charges against him and all the matters contained in the various affidavits before this Commission.

PROSECUTION: Is it a fair statement for the record that the accused has had interpreted to him the substance of all the affidavits introduced by the prosecution, because as I understand the procedure there was a defense interprete- interpreting as they were read. If that is true, I would like the record so show.

DEFENSE: That is true and the record may state the facts. We agree with the statement made by the prosecution.

Questions continued by the prosecution:
Answers through the Interpreter:

Q Do you know of any reason why Captain Hayes should now say you were negligent in your treatment of Hall?
A If I actually did neglect in treating Private Hall he would have protested at that time and I would have used other methods of treatment.

Q You have testified that you visited Private Hall about fifteen times; do you know of any reason why Captain Hayes should now state you only visited Private Hall in the dispensary twice?
A That, I could not understand.

Q Were there any civilian hospitals in the City of Kobe?
A Yes, there was.

Q What was the name of the one nearest to Kobe Branch Prisoner of War Camp?
A I don't remember the exact distance.

Q The question was "What was the name of it"?
A I don't know.

Q Do you know approximately how far it was from Kobe Branch Prisoner of War Camp?
A Approximately three cho away.

Q How many miles would that be?

INTERPRETER: Approximately 1/5 mile.

Q Did you ever send any sick prisoners of war to that hospital?
A Not even once.

Q Did you ever send a Japanese to that hospital?
A Not even once.

Q Were your relations with the Australian medical orderlies friendly or unfriendly?
A The average relation.

Q Do you know of any reason why they should make a false accusation against you?
A I could not understand.

Q Was Captain Morimoto the only person in Kobe Branch Prisoner of War Camp who forced sick prisoners of war to go to work.
A Yes; he passed an order down to Sergeant Ochiai.

Q Did Sergeant Ochiai enforce that order?
A Yes.

Q What was Sergeant Ochiai's exact duty function in Kobe Branch Prisoner of War Camp?
A His duty was in the General Affairs Section and having the responsibility of sending prisoners of war out to work.

Q Did you ever make any objection to that practice on the part of Sergeant Ochiai?
A Yes.

Q To whom did you object?
A To Camp Commandant Morimoto.

Q What did Morimoto say at that time?
A He discontinued the practice.

Q When was that practice discontinued?
A When I was returned from my duty from the other camps I noticed that one sick prisoner of war was returning from work and I went up to Captain Morimoto and related this to him. The next day this sick prisoner of war did not go out to work.

Q Approximately what date was this?
A I could not remember.

Q Was it early in your term of duty at Kobe Branch Prisoner of War Camp or late?
A It was around in July.

Q Then, is it correct that after that time in July no sick prisoners of war were sent to work in Kobe Camp?
A That is correct.

Q Do you know of any reason why Captain Boyce should make this statement: "Troops on the whole were benefitted by hard work and regular hours but many were sent to work when sick and unfit. ."?

DEFENSE: We object to that, if the Commission please, unless there is a date affixed to that time that Boyce has in mind.

PROSECUTION: In the time that Miyatake was there. This is from Exhibit No. 15.

DEFENSE: What is the date? What period of time is it that he refers to?

PROSECUTION: At any time - during the period this man was there.

DEFENSE: Well, how long was Boyce in camp?

PROSECUTION: Boyce was in camp for - - - I will change the phrasing and withdraw that question.

Q Is there any reason which would substantiate Boyce's making this statement: "Troops on the whole were benefitted by hard work and regular hours but many were sent to work when sick and unfit. ." Is there any reason to substantiate that statement of Captain Boyce as applying to the time you were in Kobe Camp?

A In this camp the prisoner of war's physical condition was good, compared to the other various prisoner of war camps in the Osaka Area; there were no cases where sick prisoners of war were sent out to work. As for the malnutrition, except for two or three patients who had, no prisoner of war suffered from malnutrition.

Q Referring to the time you beat Bosby you stated that you beat Sergeant Officer Bosby and one other prisoner; is that correct?
A That is correct.

Q Do you know of any reason why E. Taylor should state he was beaten by you on this same occasion?
A That, I could not understand because I did not hit any other person.

Q Do you know why he should say that you struck twenty men on the head?
A I did not hit those persons, so I do not know why.

Q Do you know why Herman Archer should state that you hit him on that occasion?
A This person was not to attention while all the rest of them were in the formation during a tenko.

Q Then you do remember Herman Archer?
A I could not remember.

Q How long after Hunteen was transferred from Headquarters Camp to the hospital did he live?
A Approximately ten days.

Q Do you know Corporal Hughes, a prisoner of war in Kobe Camp?
A No, I could not remember.

Q Do you know Private Inall, an Australian prisoner of war in Kobe Camp?
A I do not remember.

Q Do you remember Hunter E. Olsen, an Australian prisoner of war in Kobe?
A I could not remember.

Q Do you remember G. H. C. Tite, an Australian prisoner of war?
A I could not remember.

Q Do you know of any reason why Corporal Hughes, Private Inall, and Hunter E. Olsen should state that you hit them?
A I could not understand because what I have related there is no other incident.

Q Do you remember any time of beating G. H. C. Tite and eighteen other Australian soldiers?
A No, there was no such incident.

Q Do you remember Bill Tither? - an American prisoner of war in Headquarters Camp.
A I could not remember.

Q Do you remember the first day you reported into Headquarters Camp in 1943?
A Yes.

Q Was that a Sunday?
A I could not remember.

Q Do you remember whether or not it was a rest day for the prisoners?
A No.

Q Did you strike on that first day you reported in six or seven American prisoners of war?
A I did not hit anyone.

Q Do you remember Sergeant Ryan, an American prisoner of war?
A I could not remember.

Q Do you remember me talking with you at Sugamo Prison a couple months ago?
A Yes, I remember.

Q Do you remember the sergeant that was with me at that time?
A Is that the time a Sergeant was - - -

Q Do you remember any time at Sugamo Prison when I saw you that I was accompanied by an American sergeant?
A Yes, I do remember.

Q Do you know of any reason why that Sergeant should make a false accusation against you?
A That I could not understand.

Q Did you ever hear of any order of Colonel Murata forbidding corporal punishment in regards to prisoners of war?
A Yes, I have.

Q Did you ever hear of any order issued by Captain Morimoto forbidding corporal punishment to be inflicted upon prisoners of war?
A No.

Q When did you hear of Colonel Murata's order?
A So far as I can remember it was around March of 1944.

Q Do you know of any Japanese Army regulation forbidding a superior officer to strike an inferior officer?
A No.

Q Did any superior Japanese officer ever authorize you to strike a prisoner of war?
A Yes, there was.

Q Who?
A Captain Kawada.

Q Is he the only one?
A Yes, he was the only one.

Q Did Captain Morimoto ever authorize you to strike a prisoner of war?
A He did not authorize me to hit a prisoner of war or he did not warn me not to hit a prisoner of war.

Q Was that a Sunday?
A I could not remember.

Q Do you remember whether or not it was a rest day for the prisoners?
A No.

Q Did you strike on that first day you reported in six or seven American prisoners of war?
A I did not hit anyone.

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A Yes, there was.

Q Who?
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Q Is he the only one?
A Yes, he was the only one.

Q Did Captain Morimoto ever authorize you to strike a prisoner of war?
A He did not authorize me to hit a prisoner of war or he did not warn me not to hit a prisoner of war.

Q Why did you strike Burbridge?

A When we were first assigned to this prisoner of war camp we were told to handle prisoners of war as in the Japanese Army regulations. This prisoner violated this regulation so, therefore, I punished him.

Q Did you ever hear of Colonel Hanaka being court-martialed by the Japanese Army for mistreatment of prisoners of war?

A No.

Q Were you ever court-martialed or reprimanded for mistreatment of prisoners of war?

A No.

PRESIDENT: The Commission will adjourn until tomorrow morning at 0900 hours.

The Commission then at 1540 hours, 30 January 1947, adjourned to reconvene at 0900 hours, 31 January 1947.

John P. Laughlin
JOHN P. LAUGHLIN
Chief Prosecutor

Q Why did you strike Rutbridge?

A When we were first assigned to this prisoner of war camp we were told to handle prisoners of war as in the Japanese Army regulations. This prisoner violated this regulation so, therefore, I punished him.

Q Did you ever hear of Colonel Hurata being court-martialed by the Japanese Army for mistreatment of prisoners of war?

A No.

Q Were you ever court-martialed or reprimanded for mistreatment of prisoners of war?

A No.

PRESIDENT: The Commission will adjourn until tomorrow morning at 0900 hours.

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John P. Laughlin
JOHN P. LAUGHLIN
Chief Prosecutor

HEADQUARTERS EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
21 January 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter, who were present at the close of the previous session in this case, being present.

PRESIDENT: The Commission will come to order.

(The accused was reminded by the prosecution that he was still under the oath previously taken)

Questions continued by the Prosecution:
Answers through the interpreter:

Q Under the Japanese military system, did prisoners of war have any right - - by that I mean what were their rights in reference to receiving or not receiving corporal punishment?
A Could you further explain your question as to the rights?

Q Did you believe that under the Japanese military system that the individual Japanese officers had the complete freedom in making laws or rules and dealing with the prisoners of war?
A Yes, I think they did have.

Q What rights did the individual Japanese officers have?
A For instance, if the camp commandant is not present and one is assigned as the duty officer he has the right to perform any duty as a camp commander.

Q Did that right include the right to inflict corporal punishment?
A That is right.

Q Was there any written basis or order which gave you that right?
A Yes, there is a written order which is given to the officer who goes on as the duty officer.

Q Who issued that order?
A The Camp Commander Morimoto.

Q Did you hear Captain Morimoto testify that he did not authorize the duty officers to inflict corporal punishment immediately?
A Yes, I did.

Q Was he telling the truth?
A No.

Q Then as I understand it you believe that the individual Japanese officers had the right to immediately inflict corporal punishment and that the prisoner of war had no rights in that type of situation; is that true?

A Yes; if this officer was on duty as a duty officer and the camp commandant was not present, the statement you just mentioned is correct.

Q Was Captain Morimoto present at the time you beat Sergeant Rutbridge?

A He was not at the camp at that time.

Q Was Captain Morimoto present when you beat Private Jaynes?

A No, he was not present in the camp.

Q Was he present when you beat Private McDougall?

A Morimoto was not present at the camp.

Q Was he present when you beat Commander Harrington?

A Morimoto was not present at the camp.

Q In inflicting summary punishment did you have any governing rules as to what punishment you would give?

A What rule are you pertaining to?

Q Any rule at all that governed your individual acts in determining the type of punishment to be given for an infraction of the camp rules.

A The reason that I have rendered the presumptions I have is I did not follow the specified rules. For instance, a prisoner of war breaks a regulation as to smoking a cigarette and I used my own judgment as to the degree of punishment according to the Japanese Army regulation.

Q Did you consider it a disgrace for a man to be taken prisoner of war?
A Yes; I have received such an education.

Q Did you consider that prisoner of war lost all rights as an individual?
A I have considered that after they are captured they were supposed to follow the orders of the outfit that captured him.

Q Did you believe you had the right to punish any people for the offenses of some unidentified individual?
A I think I did; according to the Japanese Army system.

Q You stated that you pulled the duty as a duty officer at Kobe Camp about once every ten days; was the custom to change the duty officer each day in Kobe Branch Prisoner of War Camp?
A I did not state once in ten days; I said once every week.

Q All right; was it the custom at Kobe Branch Prisoner of War Camp to change the duty officer everyday?
A That is correct.

Q Who else besides yourself pulled duty officer at Kobe Camp?
A The persons that went on duty officer in Kobe Camp are as follows: Master Sergeant Ochima, Sergeant Uzui, Sergeant Mitsuhata, there was another corporal whose name I have forgotten, Itagaki, a civilian, Tamiya, a civilian, and myself.

Q Isn't true that in addition to the regular morning and evening tenkos that there was a bed check of the prisoners of war during the night?
A That is correct.

Q Did any duty officers other than yourself pull surprise tenkos in the early morning hours?
A I don't know if it was early in the morning or not; however, they did pull surprise tenkos.

Q How do you know?
A During the time I performed my duties in the camp I stayed in the camp almost every day I was on duty in that camp.

Q You stated you beat Sergeant Burbridge with a belt; how long was that belt?
A Approximately one meter.

Q How wide was that belt?
A Four centimeters.

Q What was that belt made of?
A Leather.

Q How was it fastened?
A Ordinary metal.

Q How thick was that belt?
A Approximately six or seven miri, which is about 1/16".

Q Was that belt about this length (indicating)?
A Yes.

Q Did it have this type of fastener on it (indicating)?
A Just one end.

Q Will you show the Commission how you held the belt when you beat Burbridge?
A On one end, and there is approximately ten holes in it and on the other end there is a buckle; I held the belt around the center of the belt, using the end where the holes were in slapping the prisoners of war.

Q When you graduated from medical school did you take any particular oath as a doctor?

DEFENSE: If the Commission please, I object to that. I see no purpose of it. In the first place, I know of no place where a doctor takes an oath upon graduation from a medical college. A lawyer takes an oath when admitted to the bar because his duties are in relation to court matters in upholding the laws of the land, which are matters of statute. In a way, we are an official of a court, whether on the prosecution or on the defense, but I know of no procedure where dentists or doctors are required to take an oath.

PROSECUTION: I think counsel has a misunderstanding of the general practice of the medical profession. The medical student upon entering the medical profession takes the medical oath - it is an oath that springs from Greece - from Hippocrates - it is an oath, a definite medical oath that obliges that man to perform certain things - certain matters, etc.

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DEFENSE: I will withdraw the objection.

PROSECUTION: We will withdraw the question. No further questions. One further question.

Q When you left school to enter upon your duties of your profession, did you take an oath to follow any particular code of ethics or practices as a doctor?

A I did not take any oath.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q After you were transferred from Kobe Camp to the Main Camp did you ever perform the functions of duty officer at Kobe?

A Not even once.

Q On what date were you transferred out of the Osaka Headquarters Camp?

A On August 16, 1944.

Q Did the Allied prisoner of war officers wear any insignia of rank on their uniforms?

A So far as I can remember I don't think there were any insignias to signify their rank.

Q You knew by name all those you have already testified to?

A That is correct.

Q And there were many other officers there who you knew by face but not by name; is that correct?

A That is correct.

DEFENSE: The Defense has no further questions.

RECROSS EXAMINATION

Questions by the Prosecution:
Answers through the Interpreter:

Q Did the officer prisoners of war sleep in the same place as the enlisted men?

A There were some who were sleeping together and others were sleeping with the officers.

Q Was there a general practice in Kobe Branch Prisoner of War Camp to keep the officers segregated from the enlisted men?

A There were times when they were segregated and times when they were together.

Q Were they segregated at the time you were at Kobe?
A Is that just pertaining to their sleeping quarters?

Q Sleeping, eating, etc.
A There was a time when they were segregated and a time when they were together - both.

Q Isn't it true that the time you beat Commander Harrington that all the officers were segregated at that time?
A The exact number I don't know but there were orderlies who were with these orderlies.

PROSECUTION: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:
Answers through the Interpreter:

Q During your tour of duty at Kobe and the Main Camp, when the camp ran short of medical supplies did you ever make any independent effort from the Army to procure necessary medical supplies?
A Yes, I did.

Q State just what you did in this respect.
A I went to the Central Army Medical Section and consulted them and obtained medicines; I also went to Osaka, to the Yasaharu Drug Store and obtained some medicines; and also to a Kobe civilian drug store and obtained medicines. As to those Kawasaki, Mitsubeta, and Marine Dispatch Camps I rendered an effort and asked the company to furnish medicines and we did receive the medicines.

Q Was there any disposition on your part to deprive the prisoner of war of necessary medicines and thereby lessen their capacity or ability to perform the labor on the docks and in other installations or industries?
A No.

Q The purpose of the camp was to keep as many workers working as possible, was it not?
A Yes, we followed that system.

DEFENSE: No further questions.

PROSECUTION: The prosecution has no further questions.

EXAMINATION BY THE COMMISSION

Questions by the Members:
Answers through the Interpreter:

Q Did you have any military training before you went to medical school?
A Yes, I received training when I was going to high school.

Q For how long?
A Approximately five years.

Q After you left medical school and before you became commissioned as a medical officer did you undergo any military training?
A Yes, I did.

Q For how long?
A Approximately three months.

Q What was the nature of this training?
A I would receive training as to the medical officer; however, it was the training for the regular infantry officers.

Q During that training were you struck or beaten by any Japanese officer?
A Yes.

Q For what?
A When I did not salute, and when I had my hand in my pockets, and when I moved my eyeballs when at attention.

Q I believe you testified that Captain Kanada told you that it was okay for you to strike prisoners of war; is that right?
A That is correct.

Q What were his duties?
A He was the assistant camp commandant in the Osaka Main Camp.

Q That is, he was assistant to Colonel Murata.
A That is correct.

Q Why is it that all the testimony before this Commission is to the effect that you were the only one who held surprise tenkes?
A That I could not understand.

Q You testified that an hourly bed check was held during the night; was the purpose of that to make sure that no prisoners had escaped?
A That is the main purpose.

Q What was the purpose then of holding surprise tenkes in the middle of the night?
A It was also to see that prisoners do not escape, and fire hazards, and for the reason that whenever they have air raids they will be trained to fall out right away.

Q If a bed check was held every night, or during the night, is it not a fact that in holding surprise tenkos in the middle of the night it was done for the purpose of harassing prisoners of war?
A No, it is not true; the reason is whenever we are going to have the night tenko, the every hour bed check would not be performed.

Q For how long a period were the men kept from their sleep during one of these surprise tenkos?
A Approximately twenty minutes.

Q Testimony has been presented here that when you held tenkos they lasted two to three hours; what about that?
A It is not correct.

Q Can you explain the prisoners' calling you by the nickname of the "Bad Doctor"?
A I could not understand that.

Q Can you explain why the prisoners, when they knew that you were to be duty officer, were especially afraid of what might happen during your tour?
A I don't think they were afraid of me so I don't understand why.

Q Did you have a camp rule or regulation with regards to fire?
A Yes.

Q Were they in English as well as in Japanese?
A The rules and regulations pertaining to the fire hazards that I received were written in Japanese; however, the prisoners of war received a regulation prior to the time I entered this camp. That was written in English.

Q What did this regulation say about cigarette smoking?
A The regulations were as follows: they were permitted to smoke after the morning roll call until thirty minutes before the night roll call and during this thirty minutes they were to clean all ashtrays in their barracks.

Q With reference to Specification 4 wherein it is alleged that officers were forced to scrub the streets, what kind of streets were there in Kobe Camp -- of what were the streets made?
A It was asphalt.

Q How old were you when you graduated from medical school?
A In Japanese age I was twenty.

Q Was that younger or older than the average age of a Japanese medical graduate?
A The youngest compared to the average.

Q You testified that during your military training prior to receiving a commission you had been struck by an officer; describe the beating that you received from a superior.
A The content of the beating varied; there was a time when I would be knocked down and a time when I would be just stood to attention and a time when my face would be swollen and a time when it would not be swollen, and a time when I could not eat my meals.

Q Do you have any scars as a result of any of these beatings?
A No.

Q At any time you were beating Burbridge, did he fall to the ground?
A No.

Q Did McDougall at any time during the time you were beating him fall to the ground?
A No.

Q After you had beaten these prisoners of war for an alleged offense, did you make any reports of your actions to the camp commander?
A There was a time when I reported and times when I didn't report.

Q Did you report the Burbridge incident?
A No.

Q Did you report the McDougall incident?
A No.

Q Did you report the Harrington incident?
A No.

PRESIDENT: No further questions by the Commission.

PROSECUTION: The prosecution has no further questions.

DEFENSE: No further questions by the Defense.

PRESIDENT: The witness is excused.

(There being no further questions, the accused was excused and resumed his seat in the courtroom)

PRESIDENT: The Commission will take a short recess.

The Commission then at 1015 hours recessed until 1030 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: At this time does the defense have further evidence to present?

DEFENSE: The Defense does not; the defense rests.

PROSECUTION: At this time I would like to ask the Commission if they desire that any witness that has appeared before this commission be recalled or any other witnesses be called?

PRESIDENT: Apparently not.

PROSECUTION: I believe this is the proper time for any motions the defense might have.

DEFENSE: The defense moves for a finding of not guilty on Specification 7 for the following reasons: Specification 7 sets out the date as the latter part of 1944 at the Kobe Branch Prisoner of War Camp and the only evidence in support of that specification before this Commission is Exhibit No. 14 - the affidavit of Elbourne, who is the alleged victim of this beating. This affidavit in Paragraph 4 specifies the time of this beating as "Towards the end of 1944". It further specifies that the so-called "Mad Doctor" was acting as duty officer of the day at that time. The accused has stated under oath he never acted as duty officer after he had been assigned to Headquarters Camp, that when he made those visits to Kobe Camp he never acted as duty officer; furthermore, he has testified and the evidence shows that he was transferred out of Headquarters Camp in August 1944. Therefore, on the basis of this very affidavit the record shows that this accused could not have committed that beating. Furthermore, in Paragraph 3, the affiant states that he does not know this accused by name; the identity of the accused is in doubt. It is also stated there that this accused was a big man for a Jap and was probably about 5'10" tall. Now, we argue that because of the definiteness of that date "toward the end of 1944" and because of the lack of proper identification - - he says he was told by somebody else that this doctor's name was Miyatake - - We argue further two reasons, the prosecution has not made out a case against the accused in this specification because the very evidence that has been introduced - Colonel Fliniau did not mention this beating at all - and the only evidence shows on its face that it is unworthy of credibility. We think for those reasons a finding of not guilty on Specification 7 should be entered. That is all.

PROSECUTION: The Defense has requested a directed verdict on Specification 7. I wish to cite to the Commission the affidavit of George E. Elbourne, Exhibit No. 14 as to the identity "I remember seeing the Mad Doctor deal with Gnr. Jeans (who was known to me as "Tibby" and was a Queenslander). He was caught smoking after hours and was struck by the Mad Doctor with a similar stick to that previously described". Now, as to being general, certainly there are about nineteen affidavits that definitely identify the accused. They refer to the beating of Jeynes and definitely identify the accused as the man Elbourne speaks about. Now, he does state "Towards the end of 1944". The accused himself has testified that he was in Kobe Camp on various visits in 1944. As to his statement that he was never duty officer in 1944 that is a matter of credibility and should not be a deciding factor in a motion for a directed verdict. This deponent also in his affidavit describes the beating by the Mad Doctor who we contend is this accused. He describes the beating by the Mad Doctor of Lieutenant Fuller and Lieutenant Colonel Fliniau before this Commission testified as to the report Fuller made to him of Fuller's beating by the Mad Doctor. We submit there can be no question of identity. It is possible for this Commission to make an amendment in the specification to conform to the proof, provided it has no substantial injustice to the accused, provided the accused has had a full adequate opportunity to present any defense he might have had. We submit this accused has had that full adequate opportunity. He had those affidavits translated to him, he heard the testimony of Colonel Fliniau and he had the opportunity to say anything he might want to say in reference to this charge. Having had that opportunity the prosecution contends that he has not proved beyond a reasonable doubt that he was not the man mentioned by George E. Elbourne. It is only a question of whether this Commission will believe this man, George E. Elbourne, or the accused, and as such we believe the motion for a directed verdict should be denied.

PRESIDENT: The Commission will be closed.

The Commission then at 1540 was closed until 1645 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will be opened.

LAW MEMBER: Subject to objection by any Member of the Commission the Commission denies the motion of the Defense.

PROSECUTION: Has the Defense any further motions to make at this time?

DEFENSE: The Defense has no further motions at this time.

(The Prosecution and the Defense then presented final argument)

PRESIDENT: The Commission will be closed. We will reopen at 1600 this afternoon at which time the Findings and Sentence will be announced, if ready, or if they are not ready at that time, another time will be set for the announcement of the Findings and Sentence.

The Commission was then closed at 1600 hours and opened at 1600 hours at which time the personnel of the Commission, prosecution and defense, interpreters and accused, and the reporter resumed their seats.

PRESIDENT: The Commission will be opened.

FINDINGS

PRESIDENT: KENZO MIYATAKE, this Commission, in closed session and upon secret written ballot, two-thirds of the Members of the Commission present at the time the vote was taken, concurring in each finding of guilty, finds you

Of Specification 1	Guilty
Of Specification 2	Guilty
Of Specification 3	Guilty
Of Specification 4	Guilty
Of Specification 5	Guilty
Of Specification 6	Guilty
Of Specification 7	Not Guilty
Of Specification 8	Guilty

Of Specification 9	Guilty, except as to the words "thereby contributing to his death"; to the excepted words, not guilty.
Of Specification 10	Guilty, except as to the words "and refusing"; to the excepted words, not guilty.
Of Specification 11	Guilty, except as to the words "and thereby contributing to the death of E. E. Hill, an Australian prisoner of war, who, because of exhaustion after two early morning roll calls in one week, fell from a scaffolding at work on 12 August 1943 and received fatal injuries"; to the excepted words, not guilty.
Of Specification 12	Guilty
Of Specification 13	Guilty, except as to the words "thereby contributing to and accelerating his death"; to the excepted words, not guilty.
Of Specification 14	Guilty
Of The Charge	Guilty

SENTENCE

PRESIDENT: And further, the Commission in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you

To be confined for twenty (20) years at hard labor at such place as the Reviewing Authority may direct.

The Commission then at 1610 hours, 31 January 1947, adjourned to meet at the call of the President.

John P. Langhna
JOHN P. LANGHNA
Chief Prosecutor

AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution's Exhibits 1 to 42 and Defense's Exhibit "A", accompanying, referred to, and identified therein, except such portions of the exhibits as have been lined out, deleted, and initialed, constitute the complete record of trial in this case.

Willard S. Curtis
WILLARD S. CURTIS
Colonel, GSC
President and Law Member

John P. Langhna
JOHN P. LANGHNA
Chief Prosecutor

I examined the record before it was authenticated, and Prosecution's Exhibits 1 to 42 and Defense's Exhibit "A", accompanying, referred to, and identified in the record are a part thereof except such portions of the exhibits as have been lined out, deleted, and initialed.

John L. Fuller
JOHN L. FULLER
Advisory Counsel for the Defense

(233J)

VOLUME II

E X H I B I T S

to

RECORD OF TRIAL
(6th Original Carbon)

in the case of

UNITED STATES

vs

K U N I O M I Y A T A K E

Case Docket No. 162

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama, Japan
21 January 1947 - 31 January 1947

Doc 26422

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
MILITARY INTELLIGENCE SECTION, GENERAL STAFF
ALLIED TRANSLATOR AND INTERPRETER SECTION

CERTIFICATE OF DEATH

1. NAME and IDENTIFICATION NO.: HALL, Walter, Edward 4716

2. SEX: Male

3. NATIONALITY: Australian

4. RANK or STATUS: Army - enlisted man

5. DATE OF BIRTH: 24 Jun 22

6. CAUSE OF DEATH (Specify whether by illness, suicide, toxic poisoning, etc.): Death from sickness.

7. NATURE OF ILLNESS: Concussion of brain and wound on the left temple.

8. DATE OF ILLNESS: 12 Aug 43

9. DATE OF DEATH: 2200 hours, 15 Aug 43

10. PLACE OF DEATH: OSAKA PW Internment Camp, KOBE Sub-Camp (BUNSHO)

I, the undersigned, hereby certify the foregoing to be a true report to the best of my knowledge.

DATE: 15 Aug 43

NOSU, Shoichi ( )
1ST LT, Medical Officer
(s) Attached to OSAKA PW Internment Camp

(Signed by) C R Boyce, Captain M D

I, the undersigned, hereby certify the foregoing to be a true and accurate translation of the original document.

10 Jan 47

/s/ Harry N. Sekiya 2nd Lt AUS

A TRUE COPY:
John R. Pritchard
Capt. Inf.

Pres. Ex-No-1

Doc 26422

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
MILITARY INTELLIGENCE SECTION, GENERAL STAFF
ALLIED TRANSLATOR AND INTERPRETER SECTION

CERTIFICATE OF DEATH

1. NAME and IDENTIFICATION NO.: KNUTSEN, Thomas 1121

2. SEX: Male

3. NATIONALITY: American

4. RANK or STATUS: Civilian

5. DATE OF BIRTH: 4 May 07

6. CAUSE OF DEATH (Specify whether by illness, suicide, toxic poisoning, etc): Death by illness

7. NATURE OF ILLNESS: Broncho-pneumonia

8. DATE OF ILLNESS: 23 Dec 43

9. DATE OF DEATH: 0250 hours, 8 Jan 44

10. PLACE OF DEATH: OSAKA-Shi, MINATO-Ku, YAMATAYA, MATSUNO-Cho, 1 Chome
OSAKA PW Internment Camp, MAIN CAMP No 3 Barracks

I, the undersigned, hereby certify the foregoing to be a true report to the best of my knowledge.
DATE: 8 Jan 44

NOSU, Shoichi ( )
1st Lt, Medical Officer
(s) Attached to OSAKA PW Internment Camp

(Signed by) JACKSON, C A — M B B S (LON)
M R C S — L R C P (ENG)
Surgeon — Lieutenant, R N V R

I, the undersigned, hereby certify the foregoing to be a true and accurate translation of the original document.

10 Jan 47

/s/ Harry N. Sekiya 2nd Lt AUS

A TRUE COPY:
John R. Pritchard
Capt. Inf.

Pros. Ex. 74.2

STATEMENT OF COMPLAINT.

Ill Treatment by Nippon'se Staff at Kobe Sub-Camp.

Complaint against Lieutenant Mieteki, Resident Doctor.

On 13th July, 1943, I L/Sgt. BURBRIDGE, R.E., was employed on the Cookhouse Staff at Kobe Sub-Camp.

It was the usual procedure of the Staff to have supper after RoLL Call Parade at 7.30 p.m;

On the above mentioned date the Cookhouse Staff were at supper, at approximately 8 p.m.

Lieutenant Mieteki, walked into the Cookhouse, dressed in a Kimono and slippers, he walked over to the table, where ten Cooks were eating and said to me "You eating" I said "Yes" "I am having my supper" He said " Go to the Guard Room"

I made my way to the guard room, where I was met by Cpl. Hoblitt, United States Marine Corps, who was acting as Camp Interpreter. I explained the case to him, and he spoke to Lieutenant Mieteko, who was not in the least bit interested in what Cpl. Hoblitt had to say.

Lieutenant Mieteki ordered me to stand in front of the guard room, and to hold a bowl of water above my head .

I was left in this position until approximately 9.30.p.m;

Lieutenant Mieteki then appeared with a Nipponese Army Waist Belt, he ordered me to put the water down, and stand to attention.

He then commenced to lash me with the waist belt, about the body, head and legs. I was dressed at the time in Nipponese Army K.D. tunic and K.D. shorts.

Despite repeated protests by British and American Officers, and the British Camp Commandant Major Houghton,R.E. , he continued his brutal treatment until approximately 10 p.m;

He then ordered me to take up the bowl of water and resume my former position in front of the guard room. I remained in this position until approximately 11 p.m; when Lieut. Mieteki again appeared with the waist belt and carried on his inhumen and sadistic treatment. At approximately 11.30.p.m. he threw the bowl of water in my face and ordered me to go to bed.

My cuts and bruises were given medical treatment the following day by British Medical Orderlies, whilst Lieut. Mieteki was away from Camp.

72 Lashes were counted in the first beating by fellow prisoners who slept in the room opposite the guard room.

I was at this time undergoing treatment for Beri-Beri, caused by Malnutrition , and accordingly my health was poor.

This incident of brutal treatment is only one of many carried out by Lieut. Mieteki, and members of the Camp Staff, which despite strong reported protests by the British Camp Commandant, Major Houghton R.E., still persisted.

/s/ H Burbridge L/Sgt R E

Regt;No. 1871396.
Prisoner of War No. 100.
Do. at time of above
incident 362.

A CERTIFIED TRUE COPY
JOHN R. PRITCHARD
CAPTAIN, INFANTRY

Pros. Ex. No. 3.

I, Ronald Alexander CAMPBELL of 184 Church Street Brighton, in the State of Victoria make oath and say —

1. I refer to my previous affidavit made the 21st day of August 1946 regarding war crimes in KOBE Camp JAPAN.

2. The following Japanese were connected with the administration of KOBE Camp while I was there and were concerned in war crimes - Col MURETA the officer commanding OSAKA Prisoner of War System, Lieut (now Capt) MORIMOTO the OC KOBE Camp from 5th October 1942 until 30June 1944, Lieut TAKEUCHI the OC KOBE Camp 1st July 1944 to 15th August 1945, 2nd Lieut KIMURA the Medical Officer KOBE Camp from June until August 1943, Sgt MORITA the Camp Sergeant-major in 1943, 1944 and 1945, Sergeant-major FURI the Camp Paymaster in 1945, Pte NAKIDAKI (since deceased) on the Camp Staff and a private known as "HORSE FACE" who was on the camp staff.

/s/ R.C
/s/ RSH

3. Under the heading of crimes of omission I say that Col MURETA, Capt ~~MORIMOTO and Lieut TAKEUCHI are guilty of war crimes.~~

~~These three failed to provide suitable accommodation for prisoners~~ in that approximately 700 prisoners were crowded into two buildings each consisting of four floors each of which was approximately 57 feet by 48 feet. The ventilation for each floor other than the ground floors consisted of ten windows 4 feet by 2 feet 6 inches fitted with steel shutters which were closed at night. These floors were used for sleeping and messing and during the whole period had an average of over 100 occupants. The ground floors were used for kitchens, showers, stores and latrines.

5. The latrines were of the cruchest consisting of a large concreted pit over which a wooden superstructure of cubicles with a hole in the floor was placed. Emptying of these latrines was by coolies with buckets and the night-soil was tipped in the one case past the kitchen door and in the other case past the ration store. Emptying was done sporadically and never before the cess-pits were full to overflowing and in one case at least only when there were protests from civilian Japanese because the effluent was seeping through the wall into the street. Frequently the cess-pits overflowed and invaded the kitchen and ration store. Latterly the prisoners of war with the consent of the Japanese staff kept the level down by pumping the liquid into the town drains with a fire-pump. The atmosphere of the top floor of each building at Rokkoshi during the summer months is indescribable due to the hot air rising through the building taking with it the by-products of the latrines, plus the foul air from the two hundred odd troops on the first and second floors.

6. Mosquito nets (accommodating six men per net) were provided during the summer months, but the majority of the men preferred the mosquitoes to the added suffocation provided by the nets. Situated as it was in the centre of the city the camp had no outside space and the narrow passages between the buildings (approximating an average of 6' in width) were lined with ablution places. As a result all parades were held in the street and laundry had to be hung and dried on ropes stretched across the bed spaces on the troop accommodation floors.

7. A playing field adjacent to the camp which could have served as a recreation space was denied to the troops on all except approx. half a dozen occasions during the entire history of the camp.

8. The remaining building in the Camp consisted of a rambling lath and plaster structure two-storied in some parts and three-storied in others which for the most part comprised Japanese office and staff accommodation, ~~a small portion being set aside for prisoners of war Administration office and Camp Hospital.~~

/s/ R.Campbell

/s/ R S Hatch

Pros. Ex. No. 4

I, Ronald Alexander CAMPBELL of 184 Church Street Brighton, in the State of Victoria make oath and say —

1. I refer to my previous affidavit made the 21st day of August 1946 regarding war crimes in KOBE Camp JAPAN.

2. The following Japanese were connected with the administration of KOBE Camp while I was there and were concerned in war crimes – Col MURATA the officer commanding OSAKA Prisoner of War System, Lieut (now Capt) MORIMOTO the OC KOBE Camp from 5th October 1942 until 30June 1944, Lieut TAKEUCHI the OC KOBE Camp 1st July 1944 to 15th August 1945, 2nd Lieut HIRAIKI the Medical Officer KOBE Camp from June until August 1943, Sgt MORITA the Camp Sergeant-major in 1943, 1944 and 1945, Sergeant-major FURI the Camp Paymaster in 1945, Pte NAKIDAKI (since deceased) on the Camp Staff and a private known as "HORSE FACE" who was on the camp staff.

/s/ R.C
/s/ RSH

3. Under the heading of crimes of omission I say that Col MURATA, Capt ~~MORIMOTO and Lieut TAKEUCHI are guilty of war crimes.~~

~~4. These three failed to provide suitable accommodation for prisoners~~ in that approximately 700 prisoners were crowded into two buildings each consisting of four floors each of which was approximately 57 feet by 48 feet. The ventilation for each floor other than the ground floors consisted of ten windows 4 feet by 2 feet 6 inches fitted with steel shutters which were closed at night. These floors were used for sleeping and messing and during the whole period had an average of over 100 occupants. The ground floors were used for kitchens, showers, stores and latrines.

5. The latrines were of the cruchest consisting of a large concreted pit over which a wooden superstructure of cubicles with holes in the floor was placed. Emptying of these latrines was by coolies with buckets and the night-soil was tipped in the one case past the kitchen door and in the other case past the ration store. Emptying was done sporadically and never before the cess-pits were full to overflowing and in one case at least only when there were protests from civilian Japanese because the effluent was seeping through the wall into the street. Frequently the cess-pits overflowed and invaded the kitchen and ration store. Latterly the prisoners of war with the consent of the Japanese staff kept the level down by pumping the liquid into the town drains with a fire-pump. The atmosphere of the top floor of each building at Rokkoshi during the summer months is indescribable due to the hot air rising through the building taking with it the by-products of the latrines, plus the foul air from the two hundred odd troops on the first and second floors.

6. Mosquito nets (accommodating six men per net) were provided during the summer months, but the majority of the men preferred the mosquitoes to the added suffocation provided by the nets. Situated as it was in the centre of the city the camp had no outside space and the narrow passages between the buildings (approximating an average of 6' in width) were lined with ablution places. As a result all parades were held in the street and laundry had to be hung and dried on ropes stretched across the bed spaces on the troop accommodation floors.

7. A playing field adjacent to the camp which could have served as a recreation space was denied to the troops on all except approx. half a dozen occasions during the entire history of the camp.

8. The remaining building in the Camp consisted of a rambling lath and plaster structure two-storied in some parts and three-storied in others which for the most part comprised Japanese office and staff accommodation, ~~a small portion being set aside for prisoners of war Administration office and Camp Hospital.~~

/s/ R.Campbell

/s/ R S Hatch

Pros. Ex. No. 4

9. The Camp Hospital comprised a room approx. 40' x 30' with matting bedding lining the walls. In this case the beds were on floor level and not raised as in the other buildings. There was a maximum accommodation for 15 patients, while the Medical Officer and prisoner of war orderlies were also required to live in this room. It was also the site of the daily sick parades — frequently well over 100 men attending those parades.

10. Drugs were always in short supply, particularly in the early days before the arrival of Red Cross supplies. Repeated application for even the simplest drugs met with little response even when prisoners of war offered to make payment. Indeed had it not been for looted supplies of such things as Aspirin, Vitamin tablets and M. & B. tablets which prisoners of war were able to "acquire" on the various jobs on which they were employed and the occasional purchase made privately by a sympathetic member of the Japanese staff the outlook would have been far worse. The very fact that prisoners of war were able to steal these drugs shows that little, if any, effort was made officially by the Japanese staff to obtain the necessary supplies.

11. The rations supplied were of the meagrest variety and it was impossible to obtain any information regarding an authorised ration scale. This in itself made possible the obvious misappropriation of prisoners of war ration by members of the Japanese staff. Personnel who did not work received 1/3 ration (in actual fact, although 1/3 rations were drawn for these personnel, by common consent the rations were equalised, although the Japanese took steps to try and prevent this being done). Thus officers and sick personnel were officially on 1/3 rations. This included the medical officer, who was probably the hardest-worked man in the Camp, and responsible to the Japanese for keeping a maximum of prisoners of war at work. Here again, as with the drugs, had it not been for the unique facilities available to prisoners of war for the looting of foodstuffs, the health of the Camp would have been much worse than it actually was.

12. It is no credit whatsoever to the Japanese that of the 300 personnel of "J" Force who left "Changi" Singapore, for Japan in May 1943, 282 returned to Australia.

Actual figures are as follows.

Departed from Singapore	300	
Died in Kobe Camp		7 (One by accident)
" " other Camps		6
Lost in Aircraft accident on evacuation		5
Returned to Australia		282
	300	300

13. Col MURATA, Capt MORIMOTO and Lieut TAKEDAKA also showed a complete disregard for the well-being of prisoners especially the sick resulting in the deaths of a large number of prisoners whose lives might have otherwise been saved. This applies more particularly to MORIMOTO and through him to MURATA and more particularly to the period 5th October 1942 until 8th June 1943 before the arrival of the Australians. According to statements made to me by Major W.H.J. PITT R.A. and Lt-col FRANKLIN D. FLINLAU of US Army 100 British and American prisoners (the British being survivors from the LISBON MARU) died as a result of neglect by the Japanese authorities.

14. These Japanese officers also failed to control their staff and countenanced acts of sadism by them.

/s/ R S Hatch /s/ R. Campbell

~~15. Capt MORIMOTO and Lieut TAKEMAKI knew of and allowed the rations~~ of this camp staff in converting to the use of the staff prisoners' rations and Red Cross supplies.

16. The most glaring instance of the misappropriation of Red Cross stores occurred during the term of Lieut TAKEMAKA when 18 boxes consisting of 72 individual Red Cross food parcels were taken by the Japanese staff for their own use from a consignment of 844 boxes brought into the camp in November 1944. On a number of other occasions ~~Red Cross parcels were opened and distributed among the Japanese~~ by Sgt MORITA.

17. 2/Lieut MIATAKI was the medical officer, during the whole term of his stay in KOBE prisoner of war Camp carried out a reign of terror and all instances of his brutality are too numerous to record. The following are outstanding instances of his acts.

(a) 11 July 1943. MIATAKI unmercifully beat two British ORs with sword and scabbard for no apparent reason.

(b) 12 July 1943. A cook (British), whom he found eating in the cook-house after evening roll call (a usual custom owing to lack of time beforehand) was made to stand for 30 minutes holding a basin of water at arms' length above his head and was thereafter thrashed by MIATAKI with the buckle end of a leather belt, over the head, face and legs, severely wounding him. MIATAKI subsequently beat Cpl HUGHES (NCO i/c Cook-house) for reporting the incident.

(c) 15 July 1943. MIATAKI compelled two British officers— Capt M.P. WEEDON, 1st MIDDLESEX REGT, and Lieut. D.H. BAIRD, 1st ROYAL SCOTS, to stand to attention for 40 minutes holding basins of water at arms' length over their heads. At the conclusion of this MIATAKI punched them with his fists until Capt WEEDON fell unconscious whereupon MIATAKI kicked him in the body, including the private parts, severely injuring him.

(d) 26 July 1943. MIATAKI unmercifully beat and kicked QX23340 Pte A.S. JEYNES, 2/26 Bn, and Pte LIPSCOMBE a British OR using the buckle end of a leather belt for approximately 1 hour, causing both to lose consciousness.

(e) MIATAKI frequently called unnecessary roll-call parades during the night for the sole purpose of satisfying his sadistic impulses. On these occasions troops were made to stand stiffly to attention for periods up to 1½ hours whilst MIATAKI and others egged on by him indulged in beatings and kickings. This resulted in loss of sleep, fatigue and nervous exhaustion among prisoners of war and after two such incidents on the nights 5/6 Aug and 11/12 Aug 1943 a work accident occurred on 12 Aug at 1530 hours in which NX3174 Pte W.E. HALL, 2/30 Bn sustained a fall whilst working for SEMPAKU Stevedoring Coy and received injuries from which he subsequently died at 2200 hrs on 15 Aug 1943. In my opinion fatigue and nervous exhaustion mentioned above was a contributing cause to Pte HALL's accident.

/s/ R.C /s/ RSH

(f) A favourite pastime of MIATAKI on roll call or works parades was to walk down an entire rank of prisoners of war striking each one in turn on the head with his sword.

/s/ R.C /s/ RSH

~~18. Sgt MORITA acted as Camp S/Major from the end of 1943 until the end of 1945 until the end of the war. He frequently beat prisoners of war, a favourite weapon being a shoe used on the face and head.~~

/s/ R S Hatch /s/ R. Campbell

~~The specific instances of his actions are as follows:—~~

~~(a) 18 Dec 1943. MORITA struck and injured NX54875 Lieut J.C. FULLER, 2/18 Bn.~~

(b) 20 Jan 1944. MORITA beat and rendered unconscious NX[illegible]398 Pte L.B. KELLY, 2/18 Bn.

19. S/Major FURI displayed a particularly sadistic temperament and his outbursts usually coincided with JAPANESE reverses, air raids, etc.

Specific instances:—

(a) 3 Feb 1945. FURI attacked both NX344875 Lieut J.C. FULLER, 2/18 Bn and TX[illegible]075 Lieut B.H. GORDON, 2/40 Bn, the two AUSTRALIAN Group Leaders, with a wooden sword stick. The attack on Lieut GORDON was particularly severe and consisted of heavy beating over the head, shoulders and arms, in which the stick was broken and Lieut GORDON was incapacitated for several days.

(b) On or about 3 Feb 1945. FURI severely assaulted VX59273 Pte J.R. MASON, 8 Div Sig, causing severe bruises and lacerations for which MASON had to receive hospital treatment.

(c) 19 Feb 1945. FURI sadistically attacked NX67191 Pte R.C. ABRAHAM, 10 AGH The attack lasted for about ½ hour during which time Pte ABRAHAM was rendered unconscious on several occasions, being revived each time by having a bucket of water thrown over him. (This was a favourite method of FURI's.)

20. The Japanese private known as HORSE FACE frequently attacked prisoners of war. The outstanding incident of this man's behaviour occurred on 6 March 1944, when he attacked NX43462 Pte R. KAVANAGH, 10 AGH, with his fists, stick, boots and finally a rifle butt causing severe injuries.

21. A fair indication of the policy for treatment of prisoners of war throughout the OSAKA System is given by the message of Col MURATA to all prisoners of war and communicated to inmates of KOBE prisoner of war camp on 24 June 1943, a verbatim translation of which reads as follows:—

"Recently most Prisoners of War were working conscientiously, but there are still some whose attitude is not what it should be. It seems to me that you are forgetting just where you are standing. You fought to protect your colours, for which I honour you as soldiers. At the same time our people will not forget that you shot at our brothers and sons, killed some of them and wounded others. To this fact you must pay your toll very heavily. You fought well, but lost and were taken captive. It would be all natural and possible that you should be standing before a firing squad. However, by the August Virtues and Grace of His Majesty the Emperor, also the benevolence of our Military authorities you are still alive and sound, having necessary quarters to live in, with clothing and food properly supplied. Moreover you are allowed to communicate with your loved ones. Did this fact never occur in your mind? If not, just stop and think it over. If there is anyone who does not live up to our expectations in every respect, those are the ones that forget the above fact.

We are doing our utmost to make your life comfortable under the circumstances. Our treatment is fair and impartial in regard to our Military Laws as well as the International Treaties. This fact should be appreciated, although we are not insisting on it.

/s/ R S Hetch /s/ R. Campbell

~~When you work hard, you may think that you are helping your~~ enemy and by slacking down your work or by disobeying our orders you may think that you are doing your country justice. It may be true, but you are certainly not doing justice to yourselves, because we are watching over all prisoners of war individually and keeping daily records in every respect, so that when the time comes for you to return to your country, we will give the first preference to the best ones, and those who do not do their best will probably never get a chance to join their beloved ones.

So it is only natural that you should do your tasks conscientiously to acquire your freedom and join your beloved ones at the earliest date.

To conclude this statement, I should like to say that to acquire freedom, there is always hardships and sacrifices. Without these sacrifices and hardships freedom can never be acquired. ~~Bear this in mind, never forget, and then you will know how to behave in the future.~~"

Sworn at BRIGHTON in the State of Victoria this second day of September 1946.) /s/ R. Campbell

Before me.

/s/

R S Hatch

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
CAPTAIN, INFANTRY

I, John Anthony Quinn, of Brisbane Street, st Ipswich, and formerly NX48130 Sigmn Quinn J.A. of 8 Aust Div Sigs, and now discharged being duly sworn make oath and state as follows:

/s/JAQ

I was a prisoner of war at Kowasaki in Japan, and on or about ~~20th June 1945, all the prisoners including myself were~~ paraded, and the Japanese Sergeant-Major, and Quartermaster (Names unknown) called Sigmn Sheriff, and Cpl Skinner out from the ranks; they were accused of stealing which was not true. Sheriff and Skinner were then unmercifully beaten and bashed with sticks, hammers, fists, and boots, until they were knocked unconscious, their wrists were then lashed together with wire, and tied up to trees, their feet just touching the ground.

The Japanese Sergeant-Major, O.W., and all the guards with the exception of one nicknamed Angel, participated in the beating and bashing. The names of these Japanese guards were not known to me, but the following are the nicknames of some of the members of the guard at Kowasaki : Horseface, Darkie, Gentleman Jim, George Formby and Angel.

/s/JAQ

I remember that NX Sgt Harry Fox, formerly of Ord or A.A.S.C.M.T., now residing at Sydney N.S.W., Gnr Walter Bird 2/10 Aust Fd Regt, now Townsville and Gnr Keith Hooper, 2/10 ~~Aust Fd Regt, were present, and witnessed the beating.~~

I was also present when NX Pte Jeynes, 2/26 Aust Bn and Jim Burridge (English soldier) during the latter part of 1943 were bashed by a Japanese Doctor at Kobe, I then being held a P.O.W. at Kobe. I do not know the name of the Japanese doctor, he was known to me asthe Mad Doctor. Jeynes and Burridge were bashed by the Doctor with belt buckle and sticks for no apparent reason and when knocked unconscious removed to hospital.

Pros. Ex. No. 5

I swear that the contents of this my affidavit are to the best of my knowledge and belief, true in every particular.

Signed and Sworn by the)
within named Deponent)
at Darra this)
Twentyeight Day of March 1946) Signature /s/ J.A.Quinn

Before me
A Justice of the Peace..... /s/ Geo. Cumham J.P.
Signature

A CERTIFIED TRUE COPY

JOHN R. PRICHARD
Captain, Infantry

Kobe Camp

~~June 1943.~~ A Nipponese order existed that no smoking was permitted on the Nipponese-type bed-platforms. On this day, at the conclusion of the midday meal, I rose from the table in order to fetch something from my shelf behind my bed-space. I had in my hand my pipe, which, though not alight, was still warm from being smoked. At this moment the Nipponese guard commander entered the room. He ordered me downstairs to the guard room and would listen to no explanations which both I and Cpl F. Hobblitt, (U.S. Marines), the camp interpreter, attempted to make. The guard commander, a sergeant whose name is unknown to me, kicked my bare shins with heavy army boots, and struck me repeatedly in the face with his clenched fists. Eventually I was rendered unconscious. This incident took place in full view of the ~~N.C.O's and men of the camp. I submit that the treatment was both unjust and inhuman.~~ -

/s/ N. P. Weedon
Captain
The Middlesex Regt.

A CERTIFIED TRUE COPY

CLAUDE A. MUZZY,
C.W.O., U.S.A.

Pros. Ex. No. 6

15 July

Kobe Camp On this day I was feeling unwell, and, having slept badly the previous night, was asleep on my bed at about 1000 hrs when 2/Lieut MIATAKI, the Nipponese Medical officer, entered the room unexpectedly. He demanded to know why I and Lieut Baird, The Royal Scots, (who was also unwell) were asleep. He refused to accept our explanations, but ordered us downstairs, where we were compelled to stand at attention for 1½ hours holding a heavy pail of water at arm's length above our heads. Whenever water slopped over, owing to the fatigue in our arms, we were struck. The Nipponese doctor remained to watch us, laughing and jeering at our position. After 1½ hrs, the Nipponese doctor rolled up his sleeves and proceeded to strike first Lieut Baird, then myself, in the face with his fists until each of us were unconscious. When on the ground, he kicked us with his heavy boots.

I submit that this treatment was absolutely unmerited and brutal.

This incident is only one of many cases of similar inhuman treatment by this same 2/Lt MIATAKI, for which evidence is being produced.

/s/ N.P. Weedon
Captain

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

On this fifteenth- day of March One thousand nine hundred and forty-six NX71121 Captain Alan Rea CARRICK of RR & GDT Eastern Command AMF in the State of New South Wales, makes oath and says as follows:-

1. As NX71121 Capt A.R. Carrick of 2/1 Heavy Battery RAA I was taken prisoner in Timor on 24 Feb 42. I subsequently spent periods of imprisonment at Timor, Java and Singapore. In May 43 I left Singapore and on 8 June 43 arrived at No.1 Sub-Camp KOBE with a party of 250 PWs under command of Lt-Col L.J.A. BYRNE who was CAASC MALAYA. My posting was adjutant to the Force. At the time of our arrival there were already 439 British and American prisoners at the camp. I was informed that up to that date twelve officers and ninety ORs had died in the prison while three officers and twenty-six ORs had been removed to Hospital at OSAKA and had not returned. The senior British officer in the camp was Maj W.N.J. PITT of the Royal Artillery. The senior American officers were Commander Wilson H. HARRINGTON of the USNR and Lt-Col Franklin M FLINLAU of the US Army.

JW 2. ~~The Jap Commander of OSAKA PW Camps was Colonel MURATA~~ and No.1 Sub-Camp, Kobe, was included in his command. Murata was a full colonel. He was tall for a Jap, being approximately 5' 10" in height and well built. He had greying hair and a moustache. His face was lined with wrinkles and I would estimate that he was about 50 years of age. He met us when we first arrived and made an opening speech. He subsequently made inspections of the camp on 22 June and 9 July. These inspections did not produce any improvement in our living conditions and he either did not know or did not bother to find out how the prisoners were being treated. He never at any time gave us an opportunity to express our grievances to him and since the camp was included in his command he must be ~~held responsible for the brutal assaults on prisoners which were carried out by the Jap~~ Camp Staff.

3.- ~~The 250 Australians were quartered in a three storied brick building which, pre-war, was the warehouse of a British firm named Butterfield and Swire. The ground floor of this building was taken up with a cook house and a most primitive and unhygienic form of latrine which consisted of 24 cubicles~~ JW

/s/ AR Carrick

/s/ LShifoin JP

Pros. Ex. 10.7

erected over a concrete pit from which a few buckets of excreta were removed by coolies when the pit filled and overflowed into the street outside. Urinals lined both walls and these likewise drained into the concrete pit. Five officers and 126 men were quartered on each of the second and third floors. The floors were approximately 57' by 48' and there were only ten windows to each floor which were all barred and provided with steel shutters. When the Force was being prepared at Singapore for embarkation we were told that we were moving to a convalescent camp and as a result the force was composed mainly of men who were in need of medical treatment. All the men were suffering from various deficiency diseases and some were not long out of hospital on leaving Singapore. Despite this fact, sick men were forced to do normal work most of which was too heavy for them. The prisoners were employed at the docks, the steel factory, peanut factory and the railway goods yard. The food ration was quite inadequate to enable the men to do strenuous work and retain their physical condition.

4. A sick parade was held from 0530 hours to 0600 hours daily but the fact that the Australian MO, Capt C.R. BOYCE of 13 AGH considered men unfit for work did not make any difference to the Jap medical officer, Second Lt MIATAKI or the Jap medical orderly. Men who were badly in need of medical treatment were forced by Miataki or his orderly to go out in working parties despite protests by Capt Boyce and the health of the prisoners suffered severely as a result. Miataki was a second lieutenant (Shoi) and would be about 25 years of age. He was very short and fat and had an excellent set of teeth. He had no marks or scars that are known to me.

5. ~~The Jap Camp Commandant of No.1 Sub-Camp KOBE~~ was 1st Lt (Chui) MORIMOTO. He was about 35 years of age and very fat. He earned the nickname of JACK OKEY because of his resemblance to the American film star. He was about 5' 6" tall and did not wear glasses. He showed complete indifference to the welfare of the prisoners and permitted his staff to do practically what ~~they pleased in the way of ill-treatment and brutal~~ bashings. Beatings in the camp were a frequent occurrence and the worst offender in this regard was the aforementioned MO Miataki who took an obvious delight in brutally assaulting prisoners at the slightest provocation. The brutal treatment and bashings which the men received at the hands of Miataki and the Jap guards all helped to keep them in a nervy, underfed condition so that when they contracted illnesses they had no strength with which to resist. Numerous complaints were made to Morimoto but he made no attempt to improve conditions.

6. As an illustration of the brutal treatment of prisoners ~~at Kobe Camp I quote the following specific instance. On 29 Jun 43~~ Cpl PATTERSON W.G of 4 M.T.Coy (WX10934) who was suffering from a sore mouth washed his mouth out at the ablution bench with a solution of Condy's Crystals. The Jap guard commander came up behind him, grasped him by the shoulder and turned him around without speaking. He then struck Patterson eleven times on the ~~face with his hand causing his mouth to bleed and reopening cracks on his lips.~~ On 11 Jul 43 two British ORs who were undergoing detention at the time for having disposed of a pair of boots were beaten severely over the head with a sword and scabbard by Miataki for no apparent reason. On 15 Jul 43 Miataki found two British officers, Capt WEEDEN and Lt BAIRD, asleep at 0800 hours. He made them stand holding a basin of water above their heads for about 40 minutes and then beat them with his fists until Capt WEEDEN fell unconscious whereupon Miataki kicked him in the body and privates. On 26 Jul 43 Pte JEYNES of 2/26 Bn (QX23340) was found by one of the guards

/s/ AR Carrick
/s/ / Shifein JP

with an unlighted cigarette in his mouth after evening roll call and was struck by the guard three or four times in punishment. Mintaki then arrived and refused to accept Joyne's explanation that he had not been actually smoking. Mintaki spent about half anhour thrashing Joyne with the buckle end of a leather belt and violently kicking him each time he fell unconscious. Before attacking Joyne, Pte LIPSCOMBE of British Army was also severely thrashed and kicked by Mintaki in a similar manner for allegedly failing to bow to the guard though he had definitely bowed to Mintaki.

7. On 31 Jul 43 I left Kobe Camp with Lt-Col Byrne. Maj McA. CAMPBELL of 2/40 Aust Inf Bn was the senior Australian officer at Kobe from that date until the end of the war and he could furnish evidence of conditions in the camp during that period. I know that Lt-Col Byrne gave evidence before Mr. Justice Webb in Brisbane in Nov 45 with respect to conditions during the period he spent at Kobe PW Camp.

SWORN by the abovenamed deponent)
NX71121 Capt Alan Rae Carrick at))
Sydney this 15 day of March)
One thousand nine hundred and)
forty-six.

/s/ L.Shiffin
JP.

BEFORE ME
A Justice of the Peace.

/s/ A.R.Carrick.

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
Captain, Infantry.

AUSTRALIAN WAR CRIMES

BOARD OF INQUIRY

LESLIE JAMES AUSTIN BYRNE, sworn and examined:

BY MR CUPPAIDGE: What is your number, rank, name and unit?-- NX34829 Lt-Col Leslie James Austin Byrne, I was Commander A.A.S.C., A.I.F., Malaya.

~~In the fighting prior to your capture did you see any war~~ crimes committed by the enemy?-- I saw none personally.

Can you give the name of someone who might have such information?-- I can give the name of one officer who visited the battlefield 12 months afterwards, Lieut F. Hiddleston, 1 Coy A.A.S.C.

What happened at the time of surrender?-- We surrendered on the Sunday. Late on the previous day, the Saturday, I informed the General that the normal system of supply had broken down, that I had put what I thought to be sufficient food in the perimeter for the A.I.F. and that I had distributed ammunition and petrol around the area. I asked him if he was satisfied and he said he was.

Changi BY HIS HONOUR: Who was the general?-- General Gordon Bennett. At the cease fire the Japanese ordered us to close in on the buildings on the barrack space. That occurred on the Sunday night. We were there the next day and we moved out on the Tuesday or the Wednesday. We set out to march to Changi, which was previously a barracks for two or three units. We arrived in Changi on the 18th.

Food BY MR CUPPAIDGE: What was the food situation?-- In Changi I was able to get in a few supplies. Supplies were taken over by D.D.S.T. Malaya Command. We were put on a reduced ration for a period of a fortnight and then for the next two or three months supplies of rice were adequate, although the rice was mostly full of weevils, maggots and so on.

BY HIS HONOUR: Maggots in the rice?-- Yes. All the cold storage installations had gone. It had been affected by tropical rains and so on. A number of us could not eat the rice, but it was there if we wanted it. It was bad rice.

All of it?-- Yes, all of it. The natives on the plantations would not have eaten it. We were reduced to eating grasshoppers and leaves. Some people collected big snails and cooked these. Things were pretty terrible for 2 or 3 months. This period was, I think, from March to about June. I had notes on these matters, but they are now lost and I am giving this evidence from memory. They gave us a scale of the rations and I will tender that ration ~~scale. The food supplied was never up to the scale.~~

 L.J.A. Byrne

This is the 1st sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne.....
DEPONENT.

Chairman,
Australian Board of
Inquiry into War Crimes

Pros. Ex. No. 8

~~The main item of food was rice~~ - roughly 500 grammes, 1½ ounces of meat or fish, 15 grammes of salt, 50 grammes of vegetables. They oversupplied us with tea, but salt was non-existent. It was a most meagre ration.

Can you estimate roughly the shortages?-- Salt was a thing we never got and needed very badly. We never got vegetables in full quantity and what we did get were rotten. Baskets of squash which were supplied were just pulp and water. Fish would be all trash. We got 1½ ounces of meat per day, but we got it twice weekly and that weight included bone, fat and meat. We would actually get, I suppose, about three-quarters of an ounce to an ounce of meat out of that per man. The vegetable situation was pretty bad. Later on we managed to get seeds and grew our own vegetables.

What happened to your own stores?-- We were allowed only 8 vehicles for 6 hours to transport foodstuffs from Tanglin Barracks out to Changi. The Japanese allowed us that to carry the stuff out.

Did you have ample stores of your own if you had been allowed to use them?-- Yes, any amount of them. It was estimated when we got on the island that we had available 90 days supplies. Certain x units took food out with them. We took about 170 tons. It was mainly biscuits and bully beef. D.D. S.T. Malaya Command took certain items from one show and gave them to another.

Can you say what proportion of your rations was retained by the Japanese?-- I would say that they had available there anything up to 80 per cent, or more than that. Between 80 and 90 per cent. They did give us some afterwards, when things settled down after a couple of months. We then started to get groceries, but they supplied those according to the Japanese idea and they were totally inadequate for our needs.

Accommodation What was the accommodation?-- The accommodation was crowded. I was in an officers' house. It had three rooms upstairs and one large room downstairs. If I remember rightly we had 200 officers and men to quarter in that house. Naturally we could not quarter them there. We just scrounged iron and made shelters outside and erected a few tents. There was no furniture.

What provision did you have for eating and sleeping?-- Just the bare floor on which to sleep. There was no furniture.

What was the sanitary accommodation?-- The water flush system had been blown up by the British before they left, but there was equipment amongst the engineer stores - bore hole augurs - and we dug pits for a start. Afterwards we got this bore hole working and put them down in that way. It was always a terrific job to provide latrine accommodation.

Did you ask the Japanese to help you to get the material?-- They said, "You have all that is available". Of course, that ~~came under the C.R.E., Colonel O'Donnell. He will give you more information~~ about the actual equipment.

 L.J.A. Byrne

This is the 2nd sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne

DEPONENT

Chairman
Australian Board of
Inquiry and War Crimes

Work ~~What have you to say about work? -- In March they came out~~ and took the first party, I think, of 300 men as a working party in Singapore. That was the start. Their work at first comprised cleaning up places. Then they took working parties in to build a shrine on the golf course near the reservoir. Then they took some of my people, A.A.S.C. drivers, and they finished up driving practically all the transport for the Japanese around Singapore.

Was it Army transport?-- Yes, Army transport taken over by them and their own transport, too.

Was it war work?-- Yes, to some extent. Lieut Len Allen, one of my officers, was the O.C. of this transport section and he has a lot of data as to what work them did; carting ammunition to the wharves, loading ammunition on to hospital ships, etc.

You cannot give any details of the work they were doing?-- No. All I knew was what they told me when they came out for a job or brought some Japanese out to Changi camp. They would come over and I would see them for a few minutes only. They would hurriedly tell me what had happened since they last saw me. Mostly I was concerned with health, and there was not very much time for them to tell me things.

What was the health of the men like?-- The healath of the men in Singapore was good. They few the working parties rather well.

Medical Supplies Did you have any medical supplies for the sick?-- Only what we recovered.

Did you have amny sick?-- Quite a number, suffering mostly from dysentery. I am speaking as a layman now, but we had a far smaller incidence of deaths than the British percentages. That was due, I think, to our better hygiene and sanitation. Later on an Australian officer was appointed sanitation officer over there and that resulted in their death rate being considerably reduced. I do not want to throw tricks into their yard, but their standard of hygiene and sanitation was not very good. I think most officers there would agree with me. Changi appeared to be more in the nature of an encampment. We had our own administration. Our own soldiers guarded the entrance. The only Japanese we saw were the guard who occasionally rode through the camp on bicycles.

How did they behave?-- Quite well. They would go to the kitchens and have a cup of tea, handing their rifles over to the men. At the start the lads had a bit of sugar. If they put sugar in their tea, they would come back the next day.

Property Did they respect your personal property?-- In most cases, yes. We watched them pretty closely, of course, and, if they were given the opportunity, they would steal, but it was not just appropriation of our property under our view.

Correspondence What was the position in regard to correspondence, both inwards and outwards?-- I was able to write. For a start, of course, they tried to make us broadcast but we refused. In June they gave 100 priority messages to be radioed to Australia. ~~As Malaya Command and A.I.F. Headquarters were doubtful~~

 L.J.A. Byrne

This is the 3rd sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne.....
DEPONENT.

Chairman,
Australian Board of
Inquiry into War Crimes

~~that any information had gone back to Australia, they gave~~ approval for these messages to be written and sent. The idea was to mention as many prisoners as possible. I wrote one of those messages and gave as much information about my headquarters personnel as possible.

Did they allow you to write letters?-- Very sporadically. In the 15 months I was in Changi I only wrote twice. I received one letter. That was in February or March 1943.

Pay Were you paid?-- I think it was about July that they started to pay us. Actually, that was controlled. We signed a general receipt for A.I.F. H.Q. I think it was for 40 dollars, but we got varying amounts of 15 to 21 dollars, the balance going into the fund for the improvement of the men's ration. We had our pay staff there and they kept a full account of that and of all casualties. I was told that General Callaghan and Capt Thyer brought those records back. There is also a report on the supply situation made out as at 30 April 1943, giving the food situation from capture up to that date.

Canteen Did you have a canteen?-- We had quite a good canteen in Changi. Foodstuffs were available in the early stages at quite moderate prices, but the law of supply and demand sent the prices rocketing. Generally we were able to buy a few luxuries in the canteen, such as fresh fruit, limited quantities of tinned meat and tinned fish and sauces. The Japanese only allowed us one of our own ration cigarettes a day, but it was possible to buy Java tobacco - native tobacco - and native cigars or midget cigars.

Recreation What recreation did you have?-- There was ample room for the men to hold a competition in Australian Rules. There was a competition among the Victorians. There was a padang outside for cricket and they played hockey. There was a large area.

Discipline Were you compelled to salute the Japanese?-- We were only obliged to salute officers.

Not the men?-- Not the men. The Brigadier in charge of administration, Malaya Command, objected to saluting a second lieutenant and an order came out from Yamashita's successor to the effect that all officers would remove their badges of rank and wear a star on the lapel of their left shirt pocket. At the same time the remark was made, "You are all now second lieutenants and can have no complaints about saluting all Japanese officers."

Were punishments of a severe nature?-- They were mostly collective punishments. One occured on 30 August or 31 August, when they put us into the barracks square and kept us there for four days, because we would not sign the non-escape form.

Did you witness any executions?-- I did not.

Or beatings?-- I did not see any beatings there.

Why did they put the force in the barrack square and keep them there for four days?-- We refused to sign the non-escape form. The Japanese lieutenant-colonel was trying to

This is the 4th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/.L.J.A. Byrne.....
DEPONENT.

Chairman,
Australian Board of
Inquiry into War Crimes

~~Had some form of conciliation and it was clearly suggested to~~ this person that if he gave us an order to sign it we would have to obey the order. He recalled the previous order, making it a voluntary effort on our part, and issued an order ante-dated ordering us to sign.

How many were crowded into the square?-- 19,000 in an area of about one-eighth of an acre. The men were sleeping in three relays. There were buildings surrounding the square and we were able to push people into those buildings and let them sleep in there.

How did you manage for sanitary accommodation during that period?-- They did not take the whole of the hospital staff and put them into the square. They left one man to every patient. They had rather a hectic time running the hospital on that basis. We had a general R.A.P. on this square and they were evacuating personnel at the rate of about 20 or 30 a day. There were bad cases of dysentery and a few appendix operations. The medical people were very worried and said that some solution would have to be arrived at, or epidemics would occur and probably wipe the whole show out. The latrines were dug in the square. Then we thought of this order to sign and it was given on 4 September. That satisfied the Japanese and we were marched back to our old quarters. During that period they took Colonel Callaghan and Peach, his Adjutant, out to witness the execution of a corporal and a private who had attempted to escape some months before. One had been in hospital. As a matter of fact he was taken out of the hospital to be executed. I do not think they would have executed them if it had not been for this demonstration.

What arrangements were made for feeding you during that period?-- We had in the supply depot all the odd bits and pieces that could not be divided among the units. We had a reserve of rice and other foodstuffs and on a limited ration we were able to exist in the square for the four days. They drew our bi-weekly ration and had it at their headquarters about a mile away. We were told it was there and that as soon as we signed we would receive it. We eventually got it less the meat, but we only got it as the next issue.

After you marched out what happened?-- Things went on as usual.

How long were you at Changi after that demonstration?-- Eight months.

What were conditions like during that period?-- Clothing and boots were our greatest problem. We could see the trouble coming before that. We still had a bit of clothing and boots, but during those 8 months the position got gradually worse. Of course, you did not need much.

Were you doing any work?-- Making gardens.

You were not working for the Japanese?-- No, not at Changi. They would probably come and take 50 men for a day's work. We had to supply working parties to go in and draw supplies and we ~~had working parties out chopping fire wood, green rubber. It~~

This is the 5th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne.....
DEPONENT

Chairman,
Australian Board of
Inquiry into War Crimes

~~first we had a fishing party for the hospital and they were~~ doing quite well, but the natives, who were starving too, started to break open our traps and take the fish, so we gave that up.

Changi to Japan

When did you leave Changi?-- 15 May 1943, with a party of 900, comprised on 600 British and 300 Australians, which included in all 30 officers. It was called J Force and I was put in command. We were out on a steel tramp. The deck plates showed that it was the S.S. Catherine built, I think, in ~~the~~ 1913. I think it was one of the boats they had purchased for scrap and were still using. All the Australians were supposed to go in No. 1 hold, but a number of Australians were diverted to the after holds and we got some British and some American mercantile people. There were 320 in No. 1 hold. The size of that was 61 feet by 45 feet by 8 feet.

Food

What was the food like?-- The food for the first four or five days was, on our standards, excellent. It was the usual soup and rice, but we had a pork soup for one meal, a fish soup for a meal and a vegetable soup for the third. It took four or five days to get to Cape St. Jacque off Saigon. They were lying off Saigon for five days and said they were afraid to go out on account of submarines. They had heard of two submarines being outside.

Sanitation

What was sanitation like?-- The usual thing - a framework on the side. That was in a terrible mess when we went aboard, but we suggested that we be allowed to have our own hygiene squad wash it out two or three times a day with salt water, and the Japanese thought that was an excellent idea. I just do not know where the disinfectant came from, but we had a small amount. I think Capt Clive Boyce, the medical officer, got hold of that. We had bowls of water and disinfectant outside the latrines for the men to sluice their hands in after they came out. We had only one case of dysentery on board and actually he was all right.

Medical Supplies

Did you get any medical supplies?-- Capt Clive Boyce drew medical supplies from Changi before we left. According to the Japanese method of travel, we had rather a good trip. We had Lieut Tanaka on board. He was quite good to us. We approached him for everything we wanted and he went to the ship's officers and made representations. We got a salt water hose for the men. It was going for quite a long time all day. The only time they switched it off was when they wanted it for ship use. As soon as the ship was finished with it, we got it back. That was only for No. 1 hold. We tried to get it down to the aft holds, but we could not get it down there. They were cooking the food there. They did not have such a good trip in the aft holds.

Did you see their conditions?-- Yes. They issued Carrick with an arm bank. I asked for one, but they refused to issue me with it. I just bluffed my way through with Carrick and used to go and see them every morning.

Saigon to Japan

Did they really suffer any hardships?-- No. They had the usual complaints, but they were allowed on deck for reasonable periods. ~~Up to the time of leaving Saigon the food was all~~

This is the 6th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne
.....
deponent

Chairman,
Australian Board of
Inquiry into War Crimes

~~right, but then it went off. The rice was in sufficient~~ quantity, but the soups were made from dehydrated weeds, which we were not accustomed to and which were most unpalatable. Although the men were hungry, after two or three meals they could not eat it. They just fed on rice and mostly threw the soup overboard. We were carrying some reserve rations. The whole supply situation was so complicated in Changi and we had to put certain supplies away for these emergencies and not let it be known. We had these reserve rations on board. Each unit was able to put mix aside commodities against working parties going away. 2/30 Battalion were rather good in that respect and they gave their contingent the equivalent of about a tin of food for each man - a tin of meat or a tin of fish. They had been delivered to me and, when the food on the ship got very bad, I issued those to 2/30 Battalion personnel, who were entitled to it. I eked out the other reserve rations I was carrying - margarine, some meat, green peas and so on - over the journey to the various holds and each unit landed with some supplies. They were never taken or interfered with by the Japanese. We had quite a lot of tea. ~~We had been oversupplied with tea at Changi and we left the boat with a 50 lb. chest unbroken.~~

~~What was your destination?~~-- We arrived in Moji Japan on the 6th. ~~That is the port of Kyushu on the Inland Sea. Approaching Moji we got orders to separate the force into the~~ three groups, A, B and C. Group A was 300 Australians, less 50 OR's and to include the sick. Group B was to comprise 500 British. Group C was to ~~xxx x~~ comprise 50 A.I.F. OR's and 100 British, which included Lieut Humber, a British officer, and a medical officer, and to include all the sick. The medical officer, as far as I ~~xx~~ remember, was Major Murray, a British M.O. We disembarked at Moji in those three groups.

What happened to the three groups?-- Group C was marched off and whisked away and we never saw them again. Group A were told to form up and Group B was taken about 200 yards away and was further subdivided into groups of 250. They were too far away for us to hear what was happening. We had been warned that the moment Group A was landed there was not to be any communication with Group B. We could observe that they were splitting them into two groupds of 250. Before disembarkation we were medically examined. They glass rodded all the Japanese soldiery and ship crew first.
After we were ashore they gave us quite a good meal, comprised of a bowl of rice and some tit-bits of fish and vegetables. It was a reasonable meal. Then we were marched to a ferry and taken across the straits to a place called Shimonoseki. This was on the south-western tip of Honshu. We had to carry our ~~gear. Unfortunately we had taken a little too much gear and it was quite a job to carry this gear about a mile.~~ Then then put us on the train which left about 2300 and we arrived in Kobe station at about 0845 hours next day, being given breakfast on the train with buckets of tea. Then we were marched through the street about a half or three-quarters of a mile to what we ~~x~~ found out afterwards was the Nazi baseball field.

~~How many went there?-- Group A and Group B and C stayed~~ on the train and went north. We met up with those officers afterwards, but we never saw the men any more. The Japanese went through the usual procedure with us. They checked us off with their rolls. There was quite a lot of face slapping of the men.

Slapping by officers?-- By anybody. They did that when ~~the men did not jump to it quickly, but there was nothing~~ ~~[illegible]~~

~~Did th[illegible] slap our officers like that?-- [illegible] A few days~~ later I saw a Group Commander. They disregarded anybody but the junior officers. They really put the senior officers out of the way and did not give them a voice at all.

Were you struck?-- I was never struck during the whole time. The only officer I saw struck at this Kobe camp was Lieut Brian Gordon. He was struck by the corporal of the guard because there was a bit of dust on the floor which had not been swept up. He was smacked rather hard.

What were you doing at this camp?-- We were given some days as a quarantine period. They supplied boots to the men and then they took the boots away from them. We were supposed to rest for 10 days, but as far as my memory goes we rested for 8 days. Then they sorted the men out to various factories.

What was the food like?-- We were in a warehouse. It was a three-story warehouse and we occupied the first and second floors, 125 to a floor. The accommodation was not bad, compared with what we experienced afterwards and before. It was comprised of what they called a footan, a raised platform running right along the wall. They were in parallel rows right along the warehouse. That was a metre wide and about 6 feet 3 inches long. Above that were two shelves for the man to keep his personal gear on and they had set down what he should have on each shelf. When we arrived that still had set out the winter supply of blankets. There were five blankets and all quite good, clean blankets. At that time of the year it was fairly hot and they were used to sleep on rather than to sleep under. Some days afterwards they withdrew two of the blankets and left us with three. The platform was covered with some sort of padding, which was reasonably soft stuff called tatami. A grass mat was tacked down over that and another mat over that. The sleeping quarters were not bad, but the floor above had lice. They must have got them from the floor above again. On the floor I was sleeping on there were no lice and it was quite clean.

No vermin?-- No vermin. The windows had wooden louvres. The food on their standards was quite good. There was plenty, but, of course, it was only soup and rice.

Hygiene

What have you to say as to the hygiene?-- We complained bitterly about that. On the ground floor there was the kitchen, the bath room and then the latrines. They were next to each other in that order. Our portion of the first floor was immediately over the latrine. We were told that it had not been cleaned out for a months prior to our arrival and had been in use. There was a terrible stench from it. Maggots were crawling all over the walls and up into our sleeping quarters. A few of them came through the cracks in the floor. It remained in that state for three weeks to a month after we arrived. The weather was getting hotter each day. Flys were bad. We managed to scrounge some lime and threw it about anddo casual work on the latrine.

Did you make any protests to the Japanese?-- Yes. We got no response for a month, but then they came and took ~~1500 eight-allon containers of latrine matter were taken~~

L.J.A. Byrne

This is the 8th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne.....

DEPONENT Chairman,
Australian Board of
Inquiry into War Crimes

camp. Lieut Morimoto was the commandant and the commander of the district was Lt-Col Murata.

Who were the other officers there?-- There were two officers at this camp, Morimoto and the medical officer, Lieut Miyataki. He is the only one of that bunch who I can accuse of brutal treatment.

What brutal treatment did he indulge in?-- The system there was to have a duty officer and a duty N.C.O. every day. When this fellow was due for duty the nervous tension in the camp could be sensed. Everybody tried their hardest to stop this fellow finding any fault, but he always found fault. The worst case concerned two British officers. I did not witness this.

Did you know their names?-- Yes, Capt Weedon and Lieut Baird. They were found having a sleep at 8 o'clock in the morning. We were not supposed to lie down. He stood them up for 90 minutes holding basins of water over their heads, with a sentry watching them. They could not lower their arms. They had to keep their arms at full stretch over their heads. At the end of the time they were told they could put the basins down. Immediately they did this Miyataki personally started to punch them and hit them until he knocked Capt Weedon unconscious. When he fell to the ground Miyataki kicked him in the ribs and in the private parts. That was normal procedure for him. We put in a combined complaint. Major Pitt came to me and asked me would I support him in a complaint. We put in a combined complaint. There were 26 American officers there. We put in a combined complaint from all the senior officers of all nationalities about that. On 26 July Pte Jeynes A.S., QX23340, 2/26 Battalion, was discovered during the night after having visited the latrine about to have a cigarette. He had an unlighted cigarette in his mouth. He admitted he was going to have a smoke, which was against the regulations. He was just going over to the electric lighter to light his cigarette when the guard caught him and smacked him three or four times in the face. He was on his way back to bed with Miyataki came along and wanted to know what it was all about. From witnesses I have been informed that the guard seemed to be trying to explain to Miyataki that he had caught the man about to light a cigarette and had punished him for it and the matter was all over, but Miyataki said it was not and said, "Bring him to the guard room". Jeynes was then taken to the guard room..

Did you see this?-- No, I did not see this, but I can give you the name of the officer who was an absolute eye witness to the whole thing, that is, the group commander on the floor. It happened some time about 11 o'clock at night. Fuller, the Group Commander, can give an eye-witnesses statement. This fellow took his belt off. Their belts are about 4 inches wide with a brass buckle at one end. Using the buckle end, he flogged X Jeynes for from half an hour to three-quarters of an hour. He knocked him unconscious twice, kicked him while he was on the ground and each time he went unconscious threw a bucket of water over xx him and revived him. He would then stand him up again and belt him again with the

This is the 9th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne
.....
DEPONENT.

Chairman,
Australian Board of
Inquiry into War Crimes

belt. I had Fuller make out a report, which I was going to take in to Morimoto, the commandant, when I received a request from Morimoto for a report of the occurrence. One of the Japanese medical orderlies, it appears, had tried to get this Miyataki to stop this punishment and he could not. He tried two or three times to get him to stop it and he reported Miyataki to the Camp Commandant next morning.

What happened as a result of that?-- The man was paraded to Morimoto. Morimoto said that he would see Miyataki and he would see that such a thing did not occur again.

Was Miyataki allowed to remain?-- That happened on the 26th. On the 27th this report went in and Morimoto had Miyataki before him. He came out in a blazing rage and said he was going to the front; that probably the prisoners would be happy to know that he was at last going to the front. We took that to mean that Morimoto had told him that he was going to have him sent away from the camp. He was still there on the 31st, on the night of which day I left.

Who was with you at that stage?-- I handed over to Major Ron Campbell, 2/40 Battalion. He was supposed to be in charge of the A.I.F. contingent, whilst I was C.O. party, but in the split up he became my 2i/c. I passed over to him and he had instructions to continue pay records etc. after we left.

On what date did you leave?-- On the night of 31 July 1943. ~~We had been there only roughly about 6 weeks. They took myself, Capt Carrick, acting as my Adjutant, Robertson~~ and Pitt to Zentsuji camp. That is on the island of Shikoku.

Zentsuji

The Camp Commandant was a Capt Hositani.

Have you any breaches of the rules of war to report in respect of that camp?-- Not particularly. That was an officer camp.

Food

What was the food like?-- The food was never the same as that supplied to the staff, but compared with what we had been getting it was good.
Our food was never as good as theirs or up to the standard that they gave their camp staff.

Work

Did they work you?-- At first, yes, we were made.

On military work?-- No, on gardens. We worked about 7 hours a day.

Pay

Were you paid?-- We were allowed to remain 50 yen monthly. If you had some yen over on the 15th of the month, you had to declare it. If you had 20, they would give you 30 to bring you up to 50.

Accommodation

What was the accommodation like?-- Good.

Hygiene

What have you to say about hygiene?-- The hygiene was carried out by ourselves.

~~Recreation~~ ~~Was recreation permitted?-- Yes, in limits, but we could walk around.~~

L.J.A. Byrne

This is the 10th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne
DEPONENT

Chairman,
Australian Board of
Inquiry into War Crimes

~~Correspondence. [illegible] about correspondence? Did you receive or send any~~ letters?-- Letters were slow in coming at first, but after that they arrived and arrived in good quantity.

Discipline What was the discipline like? Did they beat you?-- There were isolated cases. Lieut A.G. Robertson, O.C. 2/2 M.A.C., was beaten and kicked by a guard. The only name we knew the guard by was Club Fist or White Club Fist.

Was he a Korean?-- No, a Nipponese.

Did you witness that?-- No.

What happened to him?-- We could never find out exactly what the trouble was, but he was on what we called the security watch. Two officers had to patrol the dormitories all night long. This guard was a returned man who had seen service in China and had a deformed hand. He never used it. He came along and had something to say about the electric light. Robertson did not know what he was talking about and just shrugged his shoulders. The guard worked himself into a rage and attacked the officer. I left Kobe and got to Sanchono.

BY MR CUPPAIDGE: Have you anything to report in the way of breaches of the rules of war in respect of that place?-- The only think I can remember utterly contrary to the convention was the order to work making it compulsory for officers to work.

What work?-- Agricultural work. At that time we had no guarantee that we would participate in the produce, or that it would be solely for our own use.

You had been told that you were going to grow produce for your own use, had you?-- We made terms after having a show down. Sugiyama was told by an officer of the information bureau who came down that he would not make officers work, if they did not want to. Sugiyama issued an order to the effect that officers in future would not be required to work unless they wished to.

How long were you working before that order was given?-- The camp had been working from its inception, according to reports that I got from one of my junior officers. It had been working compulsorily from its establishment, which I think was about April 1942, until I arrived on 1 August 1943.

Did you do any work?-- Not personally. They excused lieutenant-colonels and above and those over 50 years.

Did you see any of our officers working?-- Yes, I saw them at work. They were digging and making gardens and growing vegetables.

Who were they?-- Major Lawrence, Major Mathieson, Major ~~Wilson and many others. If I could think of them,~~ I could ~~give the names of about 80.~~

This is the 11th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne.....
DEPONENT

Chairman,
Australian Board of
Inquiry into War Crimes

The ~~were working under instructions~~ -- Yes.

~~Not voluntarily? -- No. I arrived in August 1943.~~ I occasionally went out. It was the only way you could get out of the camp for a walk. I occasionally joined the party and did a little digging for exercise when I got out there, but I did not let any of the guards see me in case they might make me join the compulsory workers. I actually saw all nationalities made to work.

Food

What was the food position there?-- Food up till the end of 1943 and for several weeks in 1944 was quite good, although it was not up to the standard of the food they were eating, and wasting. They were wasting quite considerable quantities of rice and soup and stews. We could see them throwing it away. From about March or April 1944 up to the time of the arrival of Red Cross supplies on 21 November the food position deteriorated considerably. Cereal adjustments was the trouble. If we had got our 390 grammes of straight rice, we would probably have got through on it, but they substituted other grains which would not give bulk. At one time they substituted sweet potatoes as portion of the rice ration, but only gave us weight for weight. The bulk was not there. They would substitute one gramme of sweet potatoes for one gramme of rice. It was insisted by Capt Lynebury, who was a dietician, that it was necessary from a calorific point of view that we should have three and a half times the weight of sweet potatoes for the rice. They were substituting beans and other things for the rice and barley, but the volume was not there. We considered ourselves lucky if we got a container between 10 and 11 ounces. We used to measure out the cookedrice in a tin, a Red Cross tin in which 12 ounces of meat came. By the time we put a plunger in there, it reduced the content of the tin to between 10 and 11 ounces. If we got that tin to capacity, we just got the contents in a breakfast cup. Mostly we got two-thirds of a cup for each meal. There were no means of getting any other good and we had to spend the money we had in buying vitamin tablets and various preparations they had, which were mostly made of rice polishings and sweetened up with grape sugar. We used to mash them with water and bake them out in the sun - anything to allay the pangs of hunger.

Did you get any Red Cross parcels?-- Yes, in November 1944 we got them every 15 days up till about March 1945. They kept a few back and gave us one after two months. I moved out of there on 3rd June. They took me to the north-western tip of Honshu.

What were your experiences there?-- I have really little to report. There was one brush between a Japanese N.C.O. and a couple of officers. He told them to pull nails out of a case. They said they were only doing agricultural work and would not pull the nails out. He threatened them, but all he did was to walk after them and push one of them.

What have you to say about the food at that place?-- They wanted us to go and work without first having given us the increased ration. We were sticking out until we received the ~~increased ration and then we would work voluntarily~~. They

This is the 12th sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne.....
DEPONENT

Chairman,
Australian Board of
Inquiry into War Crimes

~~wanted us to work voluntarily for some days and then they would~~ give it to us. By this time we knew the Japanese and we would not do it. They put up into confined quarters and stopped our cigarettes and gave us the 305 grammes ration of rice. When we were given the 500 grammes the only complaint I had was about the lack of things to go with the rice. They would give us flavoured water and weeds etc. The whole thing about it was that we did not lose weight, except those officers who said that rather han work they would stay on the 300 grammes. Those conditions only applied from the end of June to 15 August. When we got to Hanoka we found that they drew from the mining company 700 grammes . They gave us 500 but they gave the other 200 grammes to 240 odd American enlisted men who were in that camp and who were simply working coppers.

They were treated badly!— Not in this camp. They were taken in Shanghai and brought over to steel works outside Seoul. ~~They were trying their hardest to feed these fellows up.~~

---

and last

This is the 13th/sheet of the evidence of Leslie James Austin Byrne taken and sworn before me at Brisbane in the State of Q'land this 5th day of October 1945.

/s/ L.J.A. Byrne
DEPONENT

Chairman,
Australian Board of
Inquiry into War Crimes

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

When COMPLETED this document must be classified as SECRET.

AUSTRALIAN WAR CRIMES COMMISSION.

QUESTIONNAIRE.

NOTES:—

(a) This questionnaire should be completed by:—
  (i) All repatriated Australian prisoners of war (A.I.F., R.A.A.F. and R.A.N.).
  (ii) All repatriated Australian civil internees.
  (iii) All repatriated British civil internees in the Pacific Area (excluding Malaya and China).
  (iv) All members and ex-members of the Allied forces who have actual knowledge of war crimes committed by the enemy.

(b) It will be completed in the presence of an officer who will countersign the signature of the person making the statement.

(c) It is important that a full statement on page 3 (carried on to page 4 if necessary) be furnished as well as the answer to 8 (f).

1. Army number 186949 2. Rank CAPTAIN

3. Full name (in BLOCK letters) BAIRD, DOUGLAS HORACE

4. Unit at time of capture and/or place of capture 2nd BN. THE ROYAL SCOTS, HONG KONG

(State here unit in which soldier was serving at time of capture, e.g., 2/1 Fd. Regt. or H.Q. 6 Aust. Div. &c.)

5. Home address c/o MRS. H. RUSSELL, 27 BANK ST. GREENOCK, SCOTLAND

~~6. At what enemy camps and hospitals were you confined and when were you confined and when were you at each?~~ JM

7. Do you have any information about any atrocities against, or mistreatment of, Allied soldiers, prisoners of war, civilian internees or the civilian population for which you think the perpetrators should be punished? (Answer by stating YES or NO in the spaces provided below)—

(a) Killings or executions .. .. YES
YES or NO

(b) Rape, torture, beatings or other cruelties .. YES
YES or NO

(c) Imprisonment under improper conditions .. .. YES
YES or NO

~~(d) Massacres, wholesale looting, pillage, or burning of towns or villages~~ .. .. .. ~~NO~~
YES or NO JM

(e) Use of prisoners of war or civilians on enemy military works or operations .. .. YES
YES or NO

Pros. Ex. No. 9

~~(f) Exposure of prisoners of war to danger of gunfire, bombing, torpedoing, or other hazards of war~~ .. .. ~~YES or NO~~

~~(g) Transportation of prisoners of war under improper conditions or deportation of civilians~~ .. .. ~~YES or NO~~

(h) Public exhibition or exposure to ridicule of prisoners of war .. ..YES.... YES or NO

(i) Failure to provide prisoners of war or internees with proper medical care, food or quarters.. .. ..YES.... YES or NO

(j) Collective punishment of a group for offence of others .. ..YES.... YES or NO

(k) Breaches of rules relating to the Red Cross .. ...YES.... YES or NO

~~(l) Cannibalism~~ .. ..NO.... ~~YES or NO~~

~~(m) Mutilation of the dead~~ .. ..NO.... ~~YES or NO~~

*(n) Any other war crimes not specifically mentioned above for which you think the guilty persons should be punished .. ...YES.... YES or NO

If any question is answered YES then state the facts in 8 (f) and on pages 3 and 4.

8. Details of Atrocities.—

(a) Kind of crime.....BEATINGS.....

(b) When and where it happened.....KOBE CAMP.....

.....

(c) Who was the victim? (Give complete description including name and whether military or civilian personnel).....

EVERY PRISONER IN CAMP

.....

(d) Who was the perpetrator? (Give as complete description and as much information as possible).....

LIEUTENANT HATAKI (MEDICAL OFFICER)

.....

MORIMOTO (CAMP COMMANDANT)

.....

.....

(e) State if you saw it yourself. If you did not see it, who told you about it? (Give names and addresses of other witnesses).....

EXPERIENCED IT MYSELF

.....

.....

(f) Give brief story of crime. Full statement required on pages 3 and 4.

I was found sleeping during the day, was made to hold bucket of water above head for over one hour then beaten up very badly. This was one of many times that I received corpoeal punishments.

Was on board Jap. transport "Lisbon Maru" details have been given by Capt. BROWNLOW, N. 2nd BN. THE ROYAL SCOTS.

To the best of my belief the above particulars are correct.

/s/ R. Daurpier
(Signature of Interrogating Officer.)

/s/ D. Baird Capt.
(Signature.)

21-9-1945.
(Date.)

3 Au gs Maunle
(Place and/or Unit at which interrogation was made.)

~~Comment by Interrogating Officer~~

*Other war crimes not specifically mentioned include:—

(i) Usurpation of sovereignty during military occupation.
(ii) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
(iii) Attempts to denationalise the inhabitants of occupied territory.
(iv) Confiscation of property.
(v) Exaction of illegitimate or of exorbitant contributions and requisitions.
(vi) Debasement of the currency and issue of spurious currency.
(vii) Deliberate bombardment of undefended places.
(viii) Wanton destruction of religious, charitable, educational and historical buildings and monuments.
(ix) Use of explosive or expanding bullets and other inhuman appliances.
(x) Directions to give no quarter and refusal of quarter.
(xi) Misuse of flags of truce.

FULL STATEMENT OF ATROCITY OR CRIME.

~~This must be signed by the person making the statement and countersigned by the interrogating officer at the end of the statement.~~

A CERTIFIED TRUE COPY:

CLAUDE A. LUZZY,
C.W.O., U.S.A.

AUSTRALIAN MILITARY FORCES.

AFFIDAVIT

/s/JNB PWA

I?, JACK NICHOLAS BAYLY of 49 Burnett Street, South Bundaberg and formerly QX22270 Pte. BAYLY, J.N. of 2/29 Aust. Inf. Bn. now discharged make oath and state as follows:

I. I was a prisoner of war having been captured by the Japanese at Singapore on the 15th February, 1942. I was interned in CHANGI prison camp from that date until 15th May 1943, when with a number of other Australian prisoners of war I was transferred to prison camp at KOBE in JAPAN.

2. We were made to work hard and on short rations and treatment was generally harsh at the KOBE camp for approximately the first twelve months. The worst offender in the harsh treatment was the Japanese army doctor Lt. MIATAKI. He was of squat build, strongly built, about 24 or 25 years of age and about 5ft. 4ins. in height. I knew him well by sight as he was Medical Officer for the camp for about six months. I have seen this officer frequently bashing and hitting Australian and British prisoners of war within the confines of the camp. There did not appear to be any reason whatever for these punishments. The bashing was done by Lt. MIATAKI sometimes with a sheathed sword, sometimes with sticks, fists or any other articles available. Prisoners of war were hit and bashed mostly on the head during these bashings.

In approximately August or September 1943 I saw Lt. MIATAKI bash Australian prisoner of war Pte. A.S.JEYNES. Pte. JEYNES was standing by his bunk on the second floor of a warehouse used for prisoner of war quarters when Lt. MIATAKI walked through the buildin At the time I was sitting on a bunk nearby. I heard Lt. MIATAKI accuse Pte. JEYNES in english of having smoked after roll call at night. I heard Pte. JEYNES reply that he had not been smoking after roll call. I then heard Lt. MIATAKI in Japanese instruct

Pros. Ex. No. 10

two of his guard to conduct Pte. JWYNES to the guard house. This guard house was a small building attached to the warehouse and jutted out into an enclosure formed by this warehouse and another one opposite to it.

This is page One of my Affidavit made at BUNDABERG.....

on Twenty third day of MARCH 1946

/s/ J. N. Bayly.....
Signature of Deponent

/s/ B. W. Allecot.....J.P.
Signature of J. P.

I with other prisoners, which I believe included Pte. VERNON /s/ J.M.B. CORNOW followed the guards and Pte. JEYNES to a vantage point within approximately 50 yds of the guard house. I saw Lt. Miataki, on arrival of Pte. JEYNES at the guard house take off his, Lt. MIATAKI's sword belt, a thick leather belt with a heavy buckle and chain and strike Pte. JEYNES about the head with it. Lt. MIATAKI /s/BWA JNB continued to strike Pte. JEYNES with the belt in this manner for about twenty minutes. I notice that Pte. JEYNES fell to the ground two or three times during this bashing and that at times he appeared to be unconscious. Pte. JEYNES was then taken by his guards into a room behind the guard house. I could not see what happened to Pte. JEYNES after he was taken into this room, nor did I see him again until next day. he was then almost unrecognizable. His face and head were lacerated, bruised and swollen. He received attention from Australian prisoner of war medical officer Capt. BOYCE.

3. Although I cannot now definitely name another eyewitness to this assault on Pte. JEYNES, some of those in prisoner of war camp KOBE at the time were Pte. E. ANDERSON of Cairns, Pte. W. TRAPP, Pte. R. HANN, Pte. G. ARTHUR of Perth, ERIC HOMAN of Brisbane, Sgt. NOBLE, Cpl. C. CUPPLES of Sydney, Pte. J. HORN, Pte. ARMSTRONG, known to me as "Warwick" and Pte. E. FRASER.

~~4. I am not in a position to make a definite statement regarding alleged drastic illtreatment of prisoners of war by Sgt/Mjr. MARETA. I frequently saw Sgt/Mjr MARETA strike prisoners of war but did not notice any real hurt resulting on those occasions. I saw Cpl. C. CUPPLES, Pte. J. HORN and Pte. ARMSTRONG on the morning after all allegations of torturing by Sgt/Mjr. MARETA. All three of these prisoners of war men /s/JNB appeared to be in great pain. There was a great deal of talk amongst the prisoners of war in the camp of torture by Sgt/Mjr. MARETA of those three men. I cannot now recall the names of fellow prisoners of war who actually stated at the time that they saw this torture carried out.~~

I swear that the contents of this my affidavit are to the best of my knowledge and belief true in every particular.

Signed and Sworn by the)
withinnamed deponent)
at BUNDABERG)
this Twenty third - day of)
MARCH 1946.)

/s/ J. N. Bayly.....

/s/ B. W. Allcock, J.P.....

Before me
A Justice of the Peace.

This is page Two of my affidavit made at BUNDABERG on TWENTY-THIRD day of MARCH, 1946.

/s/ J. N. Bayly.....
Signature of Deponent.

/s/ B. W. Allcock, J.P.
Signature of J.P.

A CERTIFIED TRUE COPY,

CLAUDE A. MUZZY,
C.W.O., U.S.N.

AFFIDAVIT

I, Arthur Stevens JEYNES of MITO in the State of Queensland formerly QX 23340 Pte. A.S. JEYNES of 2/26 Australian Infantry Battalion, now discharged, being duly sworn make oath and state as follows:-

On 27 July 1943 I was a P.O.W. at KOBE P.O.W. Camp in which were approximately 10. (ten) Officers and 250 (two hundred and fifty) Other Ranks. (Pte's Cpl's Sgt's) also 17 (seventeen) Americans, Navy, some Chinese, 50 (fifty) Dutch, and a few Scotch.

We were employed as Wharf Labourers, working in Steel Factories, loading trains of coal, also working in a Graphite Factory. Some men were allotted Camp Duties such as Cooks, Sanitary men, also a few Gardeners. My particular duties were Wharf Labouring and feeding a Furnace in a Steel Factory.

The general conditions of the Camp were Very Bad. The Camp was an old Warehouse five stories high in which 600. (six hundred) men were camped. Sanitary conditions were Terrible. The lavatories were situated on the ground floor of the building. Food was bad and consisted mostly of rice and a few beans. We were forced to live on our wits which amounted to looting food stuff and smokes and if caught we were beaten to within an inch of our lives. After the days work was done we were compelled to walk 6 (six) miles to cart wood for the camp.
The Camp was a Military Objective. After being bombed out on 6 June 1946 with four direct hits, we were shifted into an old school, situated in a Steel Factory Area. There was 72 (seventy two) Chimney Stacks around us. /s/ A.S.J. and L.M. J.P.

I remember a Japanese Lieutenant named MIATAKE, commonly known as the "DEVIL DOCTOR" or "THE MAD DOCTOR". He was the Camp MEDICAL OFFICER.

On 27 July 1943, shortly after evening roll call, I was seen by a Japanese Guard with an unlighted cigarette between my lips. I was not smoking. I immediately put the cigarette away. The Guard who caught me with the cigarette took me to the Guard Room where he asked me, in English, whether I was smoking or not. I answered no. He then knocked me down and whilst on the ground another Guard rushed at me and swung a left hook at me which I ducked. He then flogged me around the yard with a stick. At this juncture Lt. MIATAKE came on the scene and asked me what I wasdoing there, and I told him. He then sent for J.C. Fuller, Cpl. W.D. Triver, Capt. Houghton, Capt. Hay, U.S. Army, Cpl. Holbert, U.S. Marines (Interpreter) who came to the Guard Room.

Lt. MITAKE then proceeded to question me, with the aid of the interpreter. He accused me of telling lies and then ordered the people referred to above to leave the Guard Room. He asked what punishment I would take. I answered I had already been punished by the two Guards. This did not satisfy him. He, Lt. MITAKE, then proceeded to strike me on the head and face with his fist, several times knocking me down, whilst on the ground he flogged me with a heavy leather belt, using the buckle end to hit me with.

When I was almost unconscious with the painof the blows he ordered me to stand up where upon he again knocked me down again and flogged me as before. This he repeated several times until I finally became unconscious.
.....
I was revived by having water thrown over my head.

This punishment lasted about fourty five minutes. My face was swollen and cut by the belt and covered with blood, both my eyes were badly swollen, my legs and arms were bruised and badly swollen and there were large lumps on the back of my head.

I collapsed before reaching my Quarters. Lt. FULLER picked me up and gave me a bath and a cup of hot tea also a Morphia Tablet to put me to sleep.

I spent a week in hospital after which I went back to my job on the docks.

Pros. Ex. No. 11

Whilst Lt. MIATAKE was questioning me Pte. Lipscombe, British Army, came out of the building after visiting the lavatory. He saluted Lt. MIATAKE and then the Guard, but in the wrong position owing to the crowded area in front of the Guard Room.

Lt. MIATAKE called him back and made him repeat the salutes, complaining that he had failed to salute properly. He then proceeded to push him in the face and knocked him to the ground stunned. He then proceeded to flog him with the buckle end of his belt with which he punished me and he treated him in a similar manner to the way he treated me, as described above. This punishment of Pte. Lipscombe was witnessed by Lt. J.G. Fuller, Cpl. W.D. Triver, Capt, Houghton, R/Mnc., Capt. Hay, U.S. Army Cpl. Holbert, U.S. Marine.

This is page one of my affidavit made at MONTO in the State of Queensland Australia on ..7 August 1946.....

/s/ A. S. Jeynes.....
Deponent's Signature.

/s/ L. Moone, J.P.
.....
A.Justice of the Peace's Signature

A description of Lt. KIATAKE, commonly known as "THE MAD DOCTOR" or "DEVIL DOCTOR" is as follows:-

Approximate age 35 years. Approximate Height 5 feet 6 inches.

Build. Stocky.

I noticed no scars on him. His manner of speech was very loud and excited.

I swear that the contents of this my Affidavit are, to the best of my knowledge and belief true in every particular.

Signed and Sworn by the within named Deponent at Ronto in the State of Queensland on the Seventh day of August 1946.

/s/ [illegible] J. Joynes
Deponent's Signature

/s/ [illegible] J.P.
A Justice of the Peace's Signature

Before me
A Justice of the Peace

A CERTIFIED TRUE COPY

Claude A. Huzzy

CLAUDE A. HUZZY,
C.W.O., U.S.A.

On this eighth day of April, One thousand nine hundred and forty-six, Donald Geoffrey Kentwell, of 16 Berry St., Clyde, in the State of New South Wales, labourer, makes oath and says as follows:-

1. As NX26144 Sjt D.G. KENTWELL, I was taken prisoner of war whilst a member of 2/30 Inf Bn at Singapore on 15 Feb 42.

2. As one of a party of 250 Aust PsW I was transferred to KOBE sub Camp, known as "Kobe House" on 8 Jun 43. OC Aust PsW was Major CAMPBELL of 2/40 Bn and our MO was Capt C.R. BOYCE.

3. Camp Commandant was a Jap named MORIMOTO. He was a man of about 50 yrs, 5'6" high, solid build with corporation. He did not wear glasses. The Jap M.O. was a man named MIETAKA. He was a Lieut, aged about 23 yrs, very pale compexion, solid build, height about 5'4", and was nicknamed the "Mad Doctor." He was supposed to be a drug fiend.

4. Whilst at Kobe Sub Camp I witnessed the beating of Pte JEYNES of 2/26 Bn by Lieut Mietaka. The incident occurred one night about six months after our arrival at the camp. At about 2020 hrs on this night the guard came into our quarters and accused JEYNES of smoking. Jeynes had had a cigarette butt in his hand but was definitely not smoking. After being accused by the guard Jeynes denied it and was ordered outside by the guard and made stand to attention outside the guardhouse. The guard then gave Jeynes a few smacks across the face and ordered him back to the quarters.

5. Just as Jeynes was leaving the guardhouse Lieut Mietaka came on the scene. He then demanded to know why Jeynes was at the guardhouse. On the guard explaining to Lieut Mietaka that Jeynes had been caught smoking, Mietaka proceeded to give Jeynes a severe bashing. He bashed Jeynes with his hand, the buckle of his sword belt and whilst he was unconscious on the ground kicked him.

6. The bashing lasted at least half anhour and when it was over Jeynes was in a shocking condition. His face was badly cut about and his left ear was terribly lacerated. He was also suffering from injuries to the body through Mietaka having kicked him on the lower portion of the body with his boots. He had to be given medical attention and Capt Boyce would not permit him to work for at least a week.

7. ~~Through Kobe House being burned out by Air Raids, all PsW from this Camp were transferred to MARUYAMA Camp on 6 Jun 45. Our Camp Comdt was then Lt TAKANAKA, who was a Jap about 5'6" high, solid build, aged about 45 yrs and he wore glasses.~~

8. ~~He had on his staff at MARUYAMA Camp the following Japanese - Sgt MORITA, who was second in command to TAKANAKA, the "Pay Sgt", "Horseface", "Gentleman Jim", and "Smiler." A description of these Japs is as follows:-~~

~~Sgt MORITA - a solid thick-set Jap, height about 5'6" and age about 30 yrs.~~

/s/ D Kentwell

/s/ L Shifien J.P.

Pros. Ex. No. 12

~~"Pay Sgt" - Correct name unknown, average build~~, height about 5'6", age about 30 yrs. He earned his nickname through being the paymaster at the camp. He was good-looking for a Japanese..

"Horseface" - Correct name unknown, height about 5'1", solid build, had a long thin face with protruding teeth which earned him his nickname. He had one glass eye and wore glasses. His age was about 40 yrs and he was employed as a guard in the camp.

"Gentleman Jim" - Correct name unknown, height about 5'4", solid build, very broad. He was a very vain man and kept himself particularly clean. This habit earned him his nickname. His age was about 32 yrs and he was employed as a guard..

"Smiler" - Correct name unknown, height about 5'6" medium build, age about 30 yrs. He had a continual smile on his face at all times. He was employed as a guard.

9. The aforementioned Japanese are responsible for the brutal bashing of Sgt STRINGER of 2/19 Bn and Pte SHERRIFF of 2/19 Bn.

10. I witnessed this bashing which took place on the morning following our arrival at MARUYAMA Camp.

11. Sgt STRINGER and Pte SHERRIFF had previously been imprisoned at MARUYAMA Camp and as Ps" had lost their eating utensils in the fire at Kobe House Sgt STRINGER and Pte SHERRIFF went into the Jap storeroom at Maruyama Camp to obtain some messing gear for the Ps"

12. They were caught in the storeroom by one of the guards, and accused of thieving. The incident was then reported to Lieut TAKANAKA. STRINGER and SHERRIFF were taken to the guardhouse.

13. I next saw them being tied to a tree in the camp by Sgt MORITA and the Pay Sgt. Their feet were tied and their hands were tied behind their backs. They were tied to the tree in such a manner that their hands were pulled up behind their backs compelling them to stand on their tip-toes. They were left in this position for one day and one night.

14. As the rope stretched during the day, allowing them to stand on the balls of their feet the Japs would tighten the rope bringing them on to their toes again. I actually saw "Horseface" tighten the ropes on one occasion.

15. They were bashed and punched on the face at various intervals whilst they were tied to the tree.

16. They were black from the middle of their backs to their knees from being beaten with sticks.

17. The bashing is definitely the worst I have seen whilst being a P"W. They were in such a condition when they ~~were released that it was difficult to recognise them. Their faces were badly bruised and swollen.~~

/s/ D. Rentwell

/s/ L. Shifien J.P.

18. JM ~~After they were untied from the fence they were~~ ordered to return to their quarters.

19. I do not know whether they were given medical treatment or not immediately after the bashing but I do know that Pte SHERRIFF had to have a surgical operation performed by Capt BOYCE some time later because of blood that had congealed inside him through the beating with sticks.

20. The Japs I have mentioned were implicated in the beating in some way or another. The Guards being responsible for the actual beating. The Jap I consider wholely responsible is Lieut TAKANAKA, as it must have been through ~~orders given by him that the beating was carried on.~~ JM

SWORN by the abovenamed deponent,)
Donald Geoffrey Kentwell, at)
Sydney, on this eighth day of) /s/ D. Kentwell
April, One thousand nine hundred)
and forty-six)

BEFORE ME /s/ L. Shifien J.P.
A Justice of the Peace

A CERTIFIED TRUE COPY

John R. Prichard

JOHN R. PRICHARD
Captain, Infantry

For The WAR CRIMES OFFICE

Judge Advocate General's Department —War Department

United States of America

****

In the matter of exposure of prisoners of war to gunfire, bombing (etc).

* Perpetuation of Testimony
* of Lyle J. Fitzpatrick,
* Lt. Col., O-300496.

****

Taken at: Headquarters, Fort Benning, Ga.

Date: 3 August 1946

In the Presence of: Capt. Jesse B. Halprin, CMP, O-336[illegible] Assistant Provost Marshal.

Reporter: Sgt. Myrtle L. Brush, CMP

Questions by: Captain Jesse B. Halprin

Q. State your name, rank, serial number and permanent home address.
A. Lyle J. Fitzpatrick, Lt. Col., O-300496, 3500 W. 8th Street, Los Angeles, Calif.

Q. Have you recently been returned from overseas?
A. Yes. I returned to this country 15 October 1945.

Q. Were you a prisoner of War?
A. Yes.

Q. In what places were you held, and state the approximate dates?
A. I was captured on 26 May 1942 at Misi, Ilo Ilo Province, Panay, Philippine Islands. First confinement was at Ilo Ilo Provincial Jail, from 28 May approximately 10 July 1942. From there we were moved to Ft. San Pedro. That was also at Ilo Ilo. We stayed there until 3 October 1942, at which time we were transferred to Bilibid Prison, Manila. We left there on 1[illegible] October 1942, and arrived in Kobe, Japan, 27 October 1942. We were confined in a warehouse there in Kobe, known as the Kobe Sub-Camp # 1. We remained there until 31 July 1943, at which time we were transferred to Zentsuji Camp on the island of Shikoku. We remained at this camp until 33 July 1945. We were then transferred to Rokuroshi, and remained there until our release on 8 September 1945.

Q. Did you witness or have you been told of any atrocities or mistreatment American Citizens at any time?
A. Yes, I have.

Q. State what you know of your own knowledge regarding this.
A. <u>Kobe Sub-Camp, Osaka District:</u>

Colonel Murata was the District Commander, and was personally responsible, had full knowledge of, and condoned the happenings and events which took place in this camp.

1. Approximately 185 men died (2 americans and the rest British) from absolute lack of medical attention. They died in the foulest circumstances, from diseases caused by starvation and exposure, and were laughed at and jeered by the Japs. ~~We have personally seen the Colonel high ranking American officer to see if he was dead yet. The slightest sign of protest from any of the other prisoners brought on severe beatings and loss of of rations.~~ One statement made by Col. Murata to the assembled American and British officers, of which I was one, covers his attitude towards the whole thing. This was made in the spring of 1943, quote, "Nippon has won the war. We control all countries facing the Pacific Ocean. You are not prisoners of war but are slaves, and will be treated as such. You will work or die, and you would be better off dead." [illegible]

Pics for 3.10.13

2. This concerns a Lieutenant of the Jap Medical Corps who was at Kobe from about May 1943 until I left there 31 July 1943. His name can probably be obtained from C 1. F. M. Flinian, 36C6 SCU Det. 1, University of Michigan, Ann Arbor, Michigan.

I personally saw the beginning and end of this instance. An Australian soldier picked up a cigarette butt that had been thrown away by a guard. The man had had no cigarettes for some time. For this he was beaten by the Doc (?) about the head with the buckle end of a leather garrison belt and over kidneys with a sheathed saber. The man was unconscious after the first half hour or so. He was beaten to a bloody mess and as a result lost an ear, eye, and practically all his teeth. The doctor turned the saber on an Australian Officer (a Lt. Fuller?) for trying to interfere andhad the guard lined up with fixed bayonets to keep anybody else from trying to.

On another occasion, when evidence of illegal smoking was found and nobody would admit to it, twenty American Officers and seven enlisted men were lined up at attention in front of the guard house and under flood light from 1500 to 2400. The slightest movement called for a beating over the head with a "Kendo" stick. The Doctor, Corporal of the Guard, and two of the guards, went down the line one at a time in a contest to see which one could knock down the largest number with one blow of their fist. Anyone who went down and didn't get back up, was kicked unconscious by the guards, doused with water and stood back in line. At 2400 we were released with the promise that next morning the doctor would pick ten of us to be shot. If it hadn't been for a M/Sgt. Oshima, who heard about it and talked the doctor out of idea, I have no doubt but that he would have carried out his threat.

~~3. Lieutenant Morimoto ("Jack Oakie") was camp commander at Kobe, and~~ thoroughly enjoyed the proceedings. He helped the rest of the staff in creating incidents, but was too lazy to take part physically.

4. The procedure for removing dead bodies from the camp was to double them up in a half barrel. Once they let a body lay too long before doubling it up, so by the simple process of cutting the flesh and breaking the bones they got it stuffed into the barrel.

Zentsuji

1. Colonel Tanu Kondo was C.O. of Zentsuji Camp #-1. He was harmless personally but knew of and condoned anything his staff or guards did, so long as they did not do it in front of him. His excuse was that he didn't see anything happen so it wasn't so, and the person who made the complaint would be punished for lying. Reducing rations was his favorite sport.

2. Lieutenant Nakajima, adl., (Saki Pete) was drunk most of the time. His favorite methods of torture were solitary confinement, with nothing but salt water to drink, or, to get a guard to do the beating, all depending on the state of his hang over.

When Red Cross supplies arrived in November 1944, Lt. Nakajima caused them to be put under lock and key. There had been at least one death in camp due to starvation, and many others were on their last legs, including myself. The Lieutenant refused to release any Red Cross food until we had agreed to share equally, not only with himself but with every Jap in camp, including the Colonel. How much they took was never actually known as we had no check on it.

3. Kayashi, Yasuo ("Donald Duck") was a civilian interpretor and guard. His main purpose in life was to make the P.O.W's. as miserable as possible in any way his warped mind could devise. He was too small to do much damage himself but would order the guards to do the dirty work. He liked to see them use their rifle butts and feet.

~~Hashimoto ("Club Fist") was another Civilian Guard. He had been~~ medically discharged from the army due to the loss of one hand, and wore a lead weighted leather cover over the stump. He had a fanatic hatred for al white men and did not hesitate to break noses and knock out teeth. No excuse was necessary for these outbreaks, which occurred especially during a raids.

Fujimoto was a civilian interpretor. I encountered him first at Rokuroshi. He found out that I came from California, and used to talk to m quite a bit. I found out from him (and I think this is correct) that (1) He was born and raised in New York. (2) He had travelled all over the Unit States in some capacity or other and knew the states and cities as well as do. (3) He knew most of the army posts, especially the West Coast, and wh I would act vague about them, he would tell me. For instance, he knew Ft. Ord and the surrounding country as well as I did, and I had been stationed there. (4) He got out of the United States just prior to 7 December and from the respect shown him by the camp and visiting officers, he stood prot high in military circles. (5) I feel that if other prisoners' statements on this man were checked, some interesting things could be found out, especially on his connections in the United States. (6) He told me one time that he was a personal friend of the contractor who built the camp in the Sant Barbara-Ventura area in California. (7) I have heard other pris ~~ers condemn him for previous episodes at other places, but have no personal knowledge of this.~~

Fujimoto gave me his address as: H. Fujimoto, Osaka Hizashi-Ku, Azuc Machi, Sanchame 8.

/s/ Lyle J. Fitzpatrick
LYLE J. FITZPATRICK, Lt. Col.

A CERTIFIED TRUE COPY

John R. Pritchard

JOHN R. PRITCHARD
Captain, Infantry.

STATE OF: Georgia
COUNTY OF: Chattahoochee } SS:

I, Lyle J. Fitzpatrick, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Lyle J. Fitzpatrick
Lyle J. Fitzpatrick, Lt. Col.

Subscribed and sworn to before me this 5th day of August 1946.

/s/ Jesse B. Halprin
JESSE B. HALPRIN, Captain, CMP
Summary Court Officer.

C E R T I F I C A T E

"I, Jesse B. Halprin, Captain, CMP, 0-336044, ASU 1447, certify that Lyle J. Fitzpatrick, Lt. Col., 0-300496, personally appeared before me on 3 August 1946 and testified concerning war crimes; that the foregoing is an accurate transcription of the answers given by him to the several questions set forth."

Place: Headquarters, Ft. Benning, Georgia.

Date: 5th August 1946.

/s/ Jesse B. Halprin
JESSE B. HALPRIN, Capt., CMP
Assistant Provost Marshal

A TRUE COPY.

John R. Pritchard
JOHN R. PRITCHARD, Captain, Infantry.

In the Supreme Court of Victoria

Affidavit by GEORGE ERNEST ELBOURNE.

I GEORGE ERNEST ELBOURNE of Dimboola in the State of Victoria Tyre Retreader make oath and say:-

1. My number is VX38317 and I was a member of 22nd Bde. Workshops. At the time of the surrender I was in Singapore. With other members of my unit I was confined in Changi prison camp a few days after the surrender.

2. On 16th May 1943 I left Changi and was taken to Kobe arriving there some time in July. I remained there until released by allied troops in August 1945.

3. During the first twelve months I spent in Kobe I was in frequent contact with a Japanese doctor whose name I understand was Mieteka. He was not known as such to me during the time I was in Kobe but I was informed of his name by an Australian Interrogation Officer in Manila. He was known to me I believe to all members of the Kobe and Osaki prison camps by the name of the "Mad Doctor". He was a big man for a Jap and was probably about 5'10" height ; he was aged about 24 years and was rather heavily built. He had no distinctive marks that I remember.

4. Towards the end of 1944 when I returned from work I was searched and some sugar was found about my person. I was ordered to fall out from the parade and remained at the position of attention for about 4½ hours. About mid-night the Mad Doctor who was Duty Officer of the day came to the front of the guard house where I was standing. He came up to me and hit me on the head with a wooden stick ; this stick was about 4ft. long and one inch at least in diameter and was made out of some kind of hard wood. This blow was repeated a number of times on the head, and back of the neck as well as on the buttocks. I was struck twelve times while still standing on my feet and then one blow knocked me to the ground. As I lay on the ground too dazed to get on my foot he kicked me with his heavy knee boots five or six times. The kicks landed mostly in the area of my stomach. I was left on the ground for ten minutes when I struggled to my feet and was allowed to return to my sleeping quarters.

5. I remember seeing the Mad Doctor deal with Gnr. Jeans (who was known to me as "Tibby" and was a Queenslander). He was caught smoking after hours and was struck by the Mad Doctor with a similar stick to that previously described. I saw the Mad Doctor strike him about a dozen heavy blows mostly

/s/G.E. Elbourne. /s/ H.C. Clundy.

Pros. Ex. No. 14

in the face : as a result of these blows his eyes nose and mouth were in a bad mess; he could hardly see, his mouth was badly swollen and he had bruise all over his face. No one could possibly recognise him. He was unable to work for three days and a man had to be very sick indeed before he was permitted to absent himself from work.

6. I also recall seeing the Mad Doctor strike Lieut. Fuller of the 2/2C Bn. and the officer in charge of all Australians in Kobe Camp. Lieut. Fuller tried to get more rations and clothing and was generally bashed for his pain On this occasion I saw him being struck on the face with a wooden clog : he was struck from 8 - 12 times and the blows were fairly heavy. Lieut. Fuller face was marked for some days as a result.

7. During the time the Mad Doctor was in Kobe I say that at least one Australian received a similar bashing each day : on many occasions the offe was most trivial and on many more occasions there was no offence at all.

~~8. In Kobe camp there was a Japanese Pay Sgt. who was responsible for a number of bashings : he told us Australians that we were no good as soldier I saw him strike Australian: many times using his sword in its scabbard as a weapon. As far as I know he did not cause serious injury to anyone in Kobe but it was said that he had killed a man in Osaka. I do not know his name a he had no distinctive marks but would be well known to prisoners in Kobe.~~

~~Sworn at Dimboola in the State of~~ Victoria by the abovenamed GEORGE ERNEST ELBOURNE this 7th day of May 1946. Before me,

/s/ G.E. Elbourne.

/s/ H.C. Clundy.

A Commissioner of the Supreme Court of Victoria for taking Affidavits 1928.

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
Captain, Infantry.

I Clive Rodney Boyce of Toowoomba Mental Hospital Willowburn Queensland Australia formerly

VX23518 Captain Boyce C.R. of 13 AGH now discharged being duly sworn make oath and state as follows:

At approximately 0900 hours on the 8 eighth day of June in the year one thousand nine hundred and forty three under the command of L.J.W. Byrne Lt. Colonel AASC I arrived as a prisoner of war at Kobe House Sub-camp Osaka POW Camp being part of J Force having left Changi POW Camp Singapore Island on the fourteenth day of May one thousand nine hundred and forty three. J Force consisted of three hundred prisoners which number included ten Officers including myself as Medical Officer.
Soon after arrival at Moji Japan on the seventh day of June one thousand nine hundred and forty three a party of fifty men being the most sick of J Force were drafted to a camp in the neighbourhood of Moji leaving two hundred and fifty of J Force to take up quarters at Kobe House.
J Force was essentially a Convalescent party selected from some thirty five units at Changi and being called a Convalescent party we were promised by Japanese authority prior to leaving Singapore that we were going to a Rest Camp and not to a Work Camp; that we would have motor transport on arrival; that the food would be good; that vitamins would be plentiful and that there would be a six hundred bed hospital where we were going.

Details of Kobe House Camp are:

(a)
I. FOOD.
The usual and average ration of food per man was three small bowls of rice and three similar bowls of thin vegetable soup per day. Total daily rice was less than 15 ounces and the calorific value less than 3000 C.
Vegetables were cabbage, onion, tomato, egg plant, sea weed, potato, sorghum seed, tops of sweet potato, various roots and at all times either dried or fresh giant radish. The only vegetable every in any quantity was potato of which there seemed to be a seasonal glut.
Beans and barley varied in quantity and times of issue.
The camp rule was that non-workers (the sick, the in-door staff and the Officers) were to receive one half the ration described above; this rule was however in the main circumvented in various ways.
Most working parties received extra rations while at work provided by the companies for whom they worked.
Additional food for the whole camp was obtained from Red Cross parcels which were distributed in December one thousand nine hundred and forty three and again in December one thousand nine hundred and forty four and the total Red Cross food averaged one parcel per man per year of imprisonment.
Leakages in food supply occurred in the store run by the camp Nipponese quarter master especially of meat and of fresh fish which foods we were supposed to receive twice weekly. The total protein value of fresh meat and fish was negligible in the total diet.
Many troops (especially the British who had the best jobs) worked among food godowns and obtained valuable additions to their diet by looting; some of the loot was brought back to the camp and some of it was enjoyed by the sick and by the indoor staff.

2
(B) MEDICINES.
The Camp Hospital was a room forty feet by forty feet in an old wooden building between the two warehouse barracks situated at a street corner and immediately above the Nipponese administration Offices and below

This is page one of my Affidavit made by me at Toowoomba on the ninth day of October 1946

/s/ C.R. Boyce
.....
Deponent

/s/ Richards J.P.
.....
A Justice of the Peace

Pros. Ex. no. 15

their sleeping quarters.
The ceiling was eleven feet from the floor and there were several windows in three of the walls.
This room provided accommodation for seven to eight prisoner medical orderlies, one to two prisoner doctors and twenty patients who lived, ate and slept there. During the last twelve months three patients were insane (two British and one American) and they required constant attention.
Flies and mosquitoes were bad in summer and the room was very cold in winter. During the first winter which was mild two small charcoal fires were not allowed.
During the second winter with influenza, pneumonia and pleurisy patients for three days and nights the indoor room temperature was below freezing point the thermometer registering just below 0 degrees Centigrade at its highest and minus four degrees at its lowest for that period of seventy two hours. This was in the month of January one thousand nine hundred and forty five and during this month the average outdoor temperature for the daily 0700 work parade was minus two degrees C.

Surgical equipment supplied by the Japanese was one small pocket size instrument case such as a medical student has during his dissecting second and third years of medical studies. Frequently these would be asked for in vain and scalpels were improvised from some dental probes which Major Campbell had brought with him. (R.A.Campbell Major 2/40 Bat a dentist in civil life and OC AIF after the departure of Lt Col Byrne in July one thousand nine hundred and forty three did invaluable work with his dental instruments for the whole of the mixed camp of some six hundred and fifty prisoners).
Local anaesthetics were present in abundance as war loot from China and the Nipponese did not seem to know what it was.

Medicines were provided in plenty at first being brought monthly from Osaka POW HQ by our camp Nipponese medical orderlies. After the first few months the supply fell off in quantity and in regularity of arrival until for almost the whole of the last twelve months the Nipponese gave us nothing.
Influenza in some form was always present and aspirin became increasingly rare; a stock of quinine was used and then a large quantity of magnesium carbonate was used up in treating influenza.
Diarrhoea was alwaysprevalent and most of the time there was nothing to use for treatment. Some of the men were able to buy medicines for this from friendly civilians at work; some obtained medicines as loot and great risks were run in smuggling these into the camp.
Sepsis increased rapidly with malnutrition and thousands of boils, abscesses and carbuncles were opened with improvised scalpels; the common antiseptic used was some type of phenol compound provided by the Nipponese in concentrated form mainly for the cleansing of their own staff urinal. Seldom was it possible despite repeated requests to obtain disinfectants for the prisoners deplorable lavatories.
Bandages were in the main any bits of rag used and washed again and again and the bulk of these were brought in as loot. One or two Nipponese would obtain medicines for us purchased with money contributed by the prisoner Officers and these ran a great risk; occasionally the Camp Commandant would grant permission for the purchase of a special medicine.
American Red Cross Medical Relief Supplies were given to us in April one thousand nine hundred and forty four and again in November of the same year but not again until after the Nipponese capitulation when on demand three large cases of invaluable medicines and equipment were yielded. Increasing demands were made by the Nipponese on our stocks of American drugs and vitamins which we were most carefully husbanding for our own use.

This is page two of my Affidavit made
by me at Townsville on the ninth day
of October 1946

/s/ C.R. Boyce	/s/ Richards J.P.
.....	.....
Deponent	A Justice of the Peace

Much of our stock was taken from us and much which we knew had arrived at the Camp was not issued to us and many troops direfully in need of it were caused much suffering and pain. No particular individual can be indicted for the crime rather the whole Camp organisation from Colonel Murata down.

3.
CLOTHING.
Except for sox and boots this was appropriate and adequate. Three blankets were issued for summer and five for winter. Summer prisoner work and rest suits of cheap material were given out as were heavier ones for winter (coats and trousers). Underpants and undershirts light and heavy were issued in summer and winter.
Several issues of American Red Cross comforts were made and they included one set of warm underwear.
Each man was given a Nipponese raincoat for summer and an overcoat for winter and everyman received a Nipponese army cap.
Two pairs of white cotton socks were the total issue per man in two years and the only boots given were Nipponese rubber ones.

4. Quarters.
The camp consisted of two ex-british warehouses of three stories each with attic made of brick with heavy rough wooden floors and each story connected by two fairly wide stairways and a jumble of old wooden Nipponese buildings between them the whole being bounded by three streets close to the docks and in the commercial area of the town.
Furnishing were highly inflammable pine sleeping benches raised about eighteen inches from the floors.
Sleeping side by side each man had twenty seven inches lateral space with a depth of about six feet and a total air space of two hundred and ninety cubic feet.
Window space was one thirtieth of floor space all windows being barred and provided with iron shutters which had to be closed when air raid sirens sounded.
Quarters were always dirty dusty and foul smelling and material for cleansing were always denied us.
Vermin abounded. Rats always present while summer produced myriads of mosquitos and flies and winter brought forth bedbugs and body lice.
Lavatories were primitive and consisted of cement pits hand or pump emptied by gangs of coolies who came at irregular periods and only when faeces and urine were overflowing on the floors. In summer one always crunched ones way over the lavatory floors the bodies of countless white maggots causing the crunching sound underfoot.
Reported requests for disinfectant were disregarded and no interest could be aroused even among the more intelligent members of the Nipponese staff in mosquito or fly prevention.
Two lavatories supplied the camp and one of them was separated from the Camp food store by a cracked flimsy pine wall. It became necessary to pile bags of rice on wooden blocks to endeavour sometimes unsuccessfully to prevent contamination of our food from urine and faeces which had overflowed the cement pits.
The Camp Hospital has been partially described but it may be added that the only exit from it was one narrow twisted wooden stairway which became ablaze early during the final incendiary raid by Fortresses and by Task Force 38 on the fifth day of June one thousand nine hundred and forty five. Great difficult was experienced in evacuating the sick and stretcher cases. The Hospital had no water laid on and all excrement had to be carried out in buckets by the Orderlies.
The Camp was ill placed being always a military target and it was finally the only camp in Kobe not evacuated when air raids became frequent.

This is page three of my Affidavit made
by me at Tewkesbury on the ninth day
of October 1946

/s/ C. R. Boyce
.....
Deponent

/s/ Richards J.P.
.....
A Justice of the Peace

When Kobe House Camp was demolished by incendiaries which included large oil bombs on the date mentioned above the rest of the day was spent resting in the rubble of previously destroyed neighbouring buildings and a meal of rice was issued just before sunset. Immediately after this at about seven o'clock in the evening all troops were assembled and marched to the abandoned camp of KAWASAKI in the westerly foothills of Kobe. The march lasted until just after midnight with two short halt and the hospital cases included three stretcher cases (one an American with tetanus and having numerous convulsions) and the three insane cases.
Kawasaki has probably been well described by members of C Force from Changi and Kobe House Camp resided there for just over a fortnight with the survivors of Kobe POW Hospital staff and patients. Volunteers numbering one hundred of the personnel of Kobe House Camp marched next day to the site of this Hospital and carried on improvised stretchers the unfortunate patients in pouring rain to Kawasaki.
On the morning of the twenty first of June one thousand nine hundred and forty five at 0300 hours Kobe House Camp prisoners marched across Kobe over a mile beyond the remains of their old camp to Tokinohama Camp nestled among a myriad of tall chimneys and large works and there remained said many air raids until the conclusion of the war with Japan and until recovery by Recovery Squad 49 on the morning of the sixth day of September one thousand nine hundred and forty five. Motor conveyance could have been provided for the sick and the lame in fact food stores and cooking staff were so transported but requests for amenities for the sick were always ignored.

(b) WORKING CONDITIONS.

As often as possible I went out on work parties which at times were allowed for Officers and always voluntarily and I found conditions for work very crude. The outings however provided fresh air some extra food and strenuous exercise.
Troops on the whole were benefitted by hard work and regular hours but many were sent to work when sick and unfit and many were the victims of accidents, due to improper tools with which to work, dangerous conditions of work, to improper footwear in ice sleet and snow and almost invariably the victim received very crude treatment from the doctor employed by the company where troops were working. After treatment they had to lie in what was always a crude rest hut until the end of the day when work was finished before they could return to camp.
Work parade was at 0700 hours and return from work at about 1530 hours. There was no work when rain fell heavily in the morning but troops had to work on the next rest day usually a Sunday to make up for the lost time.
An average limit of twenty five including hospital cases were allowed to remain in camp sick in a camp population of six hundred and fifty, even when an epidemic of influenza was raging.
About twenty two working parties left the camp daily and most had to march to work, a few parties went in motor lorries and some to more distant jobs by train.

(c) EXECUTION, TORTURES, BEATINGS.

There were many severe beatings one only of which can be given in detail but several instances will be given where death occured where contributory to the death was Nipponese medical negligence, complaisance, unfeeling, ignorance and incompetence.
They are as follows:

This is page four of my Affidavit made
by me at Townsville on the ninth day
of October 1946

/s/ C. R. Boyce
.....
Deponent

/s/ Richards J.P.
.....
A Justice of the Peace

Nx23340 A.S.JEYNES Private 2/26 Bat.
Admitted to Camp Hospital from twenty seventh to twenty ninth July one thousand nine hundred and forty three with facial and auricular haematomata which required incision.
The injuries were the result of seventy three double handed slashes across the lower part of the face with a heavy Officers leather belt.
I witnessed some of the blows and the loud whacks were counted by my medical orderlies.
The perpetrator was the "Mad Doctor" who was Duty Officer and who was a positive terror in the camp, always on the look out for a victim for his sadisti nature.
The cause of the punishment was a denial by Jeynes that he had smoked after lights out.
The "Mad Doctor" is a short chubby pleasant faced paradox of pyknic physique aged twenty four years in that year. A recent graduate he exulted in his military rank of Lieutenant and was just as harsh and cruel to His own Guards as he was to australian prisoners.
At night he often came to the Hospital off duty and delighted in airing his scant knowledge of English to the British and Irish medical orderlies and in showing them snapshots of his home, his family and of himself at the University. His particular hate was the AIF who would have litt to do with him that was not absolutely necessary.
He resided in Kobe House Camp during the month of August of t year mentioned and later visited a fe time for a medical inspection of the sick.

Nx2174 W.E.HALL Private 2/30 Bat.
Died at 2200 hours on the fifteenth day of August one thousand nine hundred and forty three as the result of a work injury to his head.
He lay for seventy two hours unconscious from the time of arrival at the Camp Hospital until his deat and was seen only twice by the "Mad Doctor" who as stated was actually in residence in the camp.
His would a vertical incision on the left temple an one and one quarter inches long was not seen at all by the "Mad Doctor" and we were forbidden to touch him. Nipponese treatment was twenty cubic centimetres of glucose every five hours intravenously and an injection of camphor every two hours and also the doctor considered he had done all required of him by writing the diagnosis in German: "Commotio Cerebri schwere form, kontusion an der L.Temporalgegend".
Our requests for removal to hospital, for shaving and dressing the wound and for Xray were refused.
We did however examine and dress his wound, clean coal from and dress his eyes and give other general treatment.
The "Mad Doctors" name sounded like MIYATAKA.

JM ~~Nx36974~~ ~~R.G.TOWERS Private~~ 2/29 Bat.
~~Died at 2230 hours on the eight day of November one thousand~~ nine ~~hundred~~ and forty three from Pneumonia. He was debilitated, ~~feverish~~ for two days after getting wet at work and permission to keep him in camp and to admit him to hospital was refused.
He was finally admitted on the nineteenth day of October frankly pneumonic and he died of exhaustion s days after the abatement of his ~~fever. Earlier admition~~ and treatment may have saved his life. JM

This is page five of mt Affidavit made by me at Toowoomba on the ninth day of October 1946

/s/ C.R. Boyce
.....
Deponent

/s/ Richards J.P.
.....
A Justice of the Peace

The culpable Nipponese who could have sanctioned the patient remaining in camp and his admission to hospital was a medical orderly Private OKISAKI known appropriately as "Rat shit" by the troops. Aged probably in the late twenties and undersized even for a Nipponese he had sharp features and looked like a rat.
He refused my request for many admissions to hospital at this time and he was particularly brutal and officious on work parades.

9x7814 M.DAVIS Gunner 2/10 Field Regiment.
Died at 0820 hours on the second day of December one thousand nine hundred and forty three from influenza, pleurisy and pneumonia.
Requests for his admission to hospital were refused for five days prior to his admission with frank pneumonia by OKISAKI. He was eventualyy admitted on the twenty third day of November and admission on the eighteenth day of that month may have resulted in recovery. At this time there was no appropriate remedy for pneumonia available despite a severe epidemic of influenza with pneumonia in our first winter after many months in the tropics. We used a drug called CIBASOL which was a type of M & B 693 brought in earlier as loot in large quantities by the British prisoners. Most of the latter gave all they had to the hospital.

Sx11722 W.C. WILLSDON Driver 2/4 Reserve M.T.
Died also of pneumonia after being refused admission to hospital for two days. He died at 0535 hours on the tenth day of December in the same year.

Wx9226 H.TYSOE Private 2/4 Machine Gunners.
Died of acute beriberi on the twenty sixth day of November in the same year. He had chronic beriberi and with an attack of influenza he was refused admission to hospital until acute beriberi was evident and severe.

Detail of other reprehensible crimes are vague but two Nipponese medical orderlies deserve severe punishment.
One was a solidly built very flat faced man of average Nipponese build probably less than thirty years of age and who always wore glasses. He was known as "Fouroyes" or "The Fouroyed Bastard". He insisted on treating all diarrhoea cases so that he could impound their bread roll lunch ration for his own gluttony.
He would eat their bread in the hospital, sometimes sending medical orderlies down to the kitchen to toast it and sometimes sweetening it with invaluable cough linctus which he had.
I reported him to the Camp Sergeant Major through the Interpreter and had the satisfaction of knowing that he received a hiding and eventually dismissal to another camp. I narrowly avoided two choice hidings from him mostly by outstaring him and making him lower his eyes to mine.

The other medical orderly was ASABA a cadaverous lean Nipponese of about twenty five years. He had a prognathous mandible and overlapping lower tooth a high voice and he was tall for a Nipponese. He made free and easy in the year one thousand nine hundred and forty four with American Red Cross Medical Relief Supplies and daily devoured ten Vitamin Compound pills when I could give only three per day to really deserving avitaminosis cases.

This is page six of my Affidavit made by me at Toowoomba on the ninth day of October 1946

/s/ C. R. Boyce
.....
Deponent

/s/ Richards J.P.
.....
A Justice of the Peace

~~The Camp Commandant Lieutenant TAKANAKA set a bad example by~~ administering punishment freely on parades for trivial offences.
He also held me personally culpable for the existence of a severe epidemic of influenza and gave me a direct order through the Interpreter that there be "no more Influenza" and this despite my statement to him that he had supplied no asperin for nine months nor any medicine for its treatment.
He is culpable for the withholding of three cases of Relief Supplies surgical and medical equipment until after the total surrender of Japan. We had been in dire need of these for many months and in fact had had none issued since November of the year one thousand nine hundred and forty four.
He also withheld large supplies of Red Cross parcels of food and it was galling during the last few months of prisoner life to smell our fragrant tinned meat being fried in the Nipponese quarters and to smell the aroma of American cigarettes being smoked by them.
We frequently asked for both the medicines and for the food parcels.

Paragraphs c, d, e, f, and h, have been fully answered to the best of my ability under the heading (c) Executions, tortures, beatings.

In the conclusions to my Medical Report despatched to A.DERHAM Col ADMS AIF 8 Div Malaya on the thirteenth day of October one thousand nine hundred and forty five among other statements I said:
Nipponese rations were inadequate for maintainence of normal health. Indifference, cruelty and lack of co-operation of Nipponese staff caused needle pain hospitalisation and death of prisoners. Nipponese mentally capable of supreme endurance are individually physical cowards; they are imbued with a racial inferiority complex which is ever conflicting with their racial pride and military and spiritual background, in their racial evolution aboriginal traits faintly persist, dominated by Mongol intelligence, and under their thin veneer of Western civilisation lurks the ferocity and brute cruelty of their Malay blood.
I have no reason to alter that opinion and I will add to this affidavit ~~that any lenience towards them will not be appreciated nor understood by them.~~

I swear that the contents of this my affidavit are to the best of my knowledge and belief true and correct in every particular.

SIGNED AND SWORN by the with-)
inamed Deponent at Toowoomba)
on the ninth day of October)
1946

/s/ C. R. Boyce
.....

Before me
A Justice of the Peace

/s/ Richards J.P.
.....

This is page seven of my affidavit made by me at Toowoomba on the ninth day of October 1946

/s/ C. R. Boyce
.....
Deponent

/s/ Richards J.P.
.....
A Justice of the Peace.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

I, Ronald Alexander CAMPBELL of 184 Church Street, BRIGHTON, in the State of Victoria, make oath and say:-

1. Prior to demobilisation, I was VX 27472 Major R.A. CAMPBELL of 2/40 Bn, and was taken prisoner of war in TIMOR on 23 February 1942.

2. From June 1943 until the end of hostilities, I was in KOBE Camp JAPAN and in charge of Australian troops in this camp.

3. The Japanese Medical officer in this camp was second Lieut. MIYAKI. He was one of the most sadistic and brutal Japanese that I encountered, and he beat prisoners unmercifully for trivial reasons.

4. On 26 July 1943, he beat and kicked Pte. JEYNES of 2/19 Bn. and Pte. LIPSCOMBE, a British soldier, for some trivial offence in a most brutal manner. I did not witness the beating, but a report was made to me by Lieut. FUJIWARA of 2/19 Bn.

5. MIYAKI used to have roll calls at all hours of the night and keep the men standing for hours, thus losing sleep. This made the men so tired that they were unable to work properly.

6. On 12 August 1943, I sent a letter signed by Major PITT O.C British troops, and by myself to Lieut. MORIMOTO complaining of these midnight roll calls. A copy of which is as follows:-

KOBE HOUSE
12 Aug 1943.

To. Lieut. MORIMOTO
Camp Commandant,
KOBE HOUSE.

Subject— NIGHT TENKO

Sir,

1. Twice during the past week the normal sleeping hours of the Camp have been disturbed by the Tenko Officer ordering a roll call during the night. In the first instance the soldiers lost one hour's sleep (0100-0200hrs), and again last night the time lost was greater than one hour and a half (0300-0440hrs).

2. As this interruption to rest, if continued, at frequent intervals, will have a bad effect on the working capacity and health of the men it would be appreciated if Group and Section Leaders could be informed of any breach of discipline which may have led to the night Tenko, so that they may instruct their groups accordingly

3. It is realised that it may be occasionally necessary to practise Alarm Drill (Air Raid and Fire) but in both instances mentioned neither of these drills was practised and the parade took the form of a normal Tenko.

4. In those cases where it is necessary to call a Night Tenko could it be arranged that Groups may return to bed as soon as they have been checked instead of waiting until the whole Tenko is completed as has been the case in the two instances mentioned.

W.N.J.PITT Maj. /s/ R.C
O.C. British Troops /s/ J.C.B.

R.A. CAMPBELL Maj. 2/40 Inf Bn. AIF.
O.C. Australian Troops.

Pros. Ex. No. 16

7. This letter was sent before I heard about the accident to NX 2174 Pte. W.E. HALL of 2/30 Bn, who was injured in a fall from a freighter while coal loading for the SEKAKU Stevedoring Coy, at KOBE at 1530 hours on 12 August 1943, and subsequently died at 2200 hours on 15 August 1943.

8. I consider that a contributing cause of the accident to Pte. HALL was fatigue, due to lack of sleep caused by the roll call held in the early morning of that day from 0300 hours to 0440 hours as mentioned in my letter to MORIMOTO.

Sworn at Brighton in the State of
Victoria this 21st day of August 1946.

/s/ R. Campbell

Before me,

/s/ J.C. Butler

/s/J.P.

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
Captain, Infantry.

I Allen Raymond IRALL of 50
Russell Street West End Bris-
bane in the State of Queens-
land formerly

QX13963 Pte IRALL A.R. of 2/26 Inf Bn now discharged being duly sworn make oath and state as follows:

1. From the eighth day of June one thousand nine hundred and forty three until the fifth day of June one thousand nine hundred and forty-five I was a Prisoner of War at KOBE HOUSE PW Camp JAPAN in which camp were approximately six hundred and fifty Officers and Other Rank Prisoners of War of English, Australian, American and Dutch Nationalities.

2. We were employed as labourers loading and unloading stores on wharves in warehouses and labourers in the TOYA steel factory and YOSHIHARA oil refinery.

3. Conditions at this camp were generally bad although rough clothing and poor quality footwear were occasionally issued.

4. Food always in short supply, was of poor quality and inadequate. The daily issued consisted of three pints of rice and an occasional bread roll. On occasions this ration was supplemented by an issue of egg plant soup, barley soup, and once monthly, a watery meat stew. I cannot remember ever having green vegetables. On two occasions a tomato and a portion of potato were provided.

5. Accomodation was bad and overcrowded. Each man was allowed only approximately eighteen inches by six feet sleeping space. The living quarters were infested with vermin, such as bugs, lice. Hygiene was particularly bad. The kitchen and open-trench latrines accomodating approximately six hundred Prisoners of War were built side by side. The latrines were of permanent construction and had to be constantly emptied. This work was carried out by the Japanese staff who invairably spilled excreta carried from

Pros. Ex. no. 17

the latrine to the "manure carts", with the result, millions of flies were attracted consequently such diseases as dysentery and diarrhea soon became rampant.

6. Medical supplies were in such s ort supply that treatment of these diseases was almost impossible although in some cases, a powder was issued but proved inadequate as a relief.

7. Working conditions varied greatly. Some parties were forced to work from 0730 hours until 1630 hours with only ten minutes luncheon "break"

This is page one of my affidavit made by me at Brisbane on the tenth day of October 1946

/s/ A. R. Inall	/s/ W. B. Roberts J.P.
Deponent	A Justice of the Peace

Other parties were allowed up to two hours break. In all cases, the work was heavy and men were continually being driven, kicked, beaten with heavy sticks and otherwise assaulted for alledged "Go slow methods."

8. The Japanese Commander of this camp was a Lieutenant named MAURIMOTO commonly known as "JACK OAKIE". After twelve months, he was relieved of his command and replaced by a Lieutenant named TAGANAKA (phonetic) Both of the above-mentioned were fairly reasonable in their treatment of Prisoners of War but favoured corporal punishments for any breach of regulations such as pilfering food from ware-houses etc.

9. The second in Command during Lt MAURIMOTO's Office was a Japanese Medical Officer named MIATANE commonly known as "THE MAD DOCTOR." This Officer was most unreasonable in his treatment of Prisoners of War and would brutally assault any PW on the slightest pretext of provocation.

10. One on occasion QX23340 Pte JEYNES A.S. 2/26 Inf Bn was accused by a guard of smoking. JEYNES tried to explain that he was merely holding the cigarette unlighted in his hand. He was escorted to the guard room and forced to stand to attention and was beaten by several guards. Lieut MIATAKE arrived on the scene and was informed by the guard of JEYNES, alledged "breach of rules". MIATAKE flew into a violent rage and struck JEYNES with the buckle-end of his "Sam Brown" belt, across the face, head and body. This assault lasted for approximately one hour during which time JEYNES was knocked unconscious three times, only to be revived by a cold douche of water and the assault repeated.

11. On another occasion I was questioned by MIATAKE concerning the loss of one button on my shirt. I did NOT have time to explain the loss of the button. MIATAKE began to work himself into a fury and knocked me down and kicked my face rendering me unconscious and left me lying on the camp floor. This was typical of MIATAKE's treatment of all PW at this camp.

12. ~~I remember a Japanese civilian at the SHOWADENKI Factory located approximately fifteen miles from NOBE Camp. He was in charge of all PW working in this camp but I did NOT contact him personally.~~

13. A Japanese civilian known to me as "SPEEDO" was directly in charge of my party who was continually slapping Prisoners of War faces and other wise assauling them when he considered they were NOT working at "top speed." which was often.

14. We were ~~continuously billetted in a potential~~ target area and

This is page two of my affidavit made by me at Brisbane on the fourth day of October 1946.

/s/ A. F. Inall
Deponent

/s/ W. B. Roberts J.P.
A Justice of the Peace

10. One on occasion QX23340 Pte JEYNES A.S. 2/26 Inf Bn was accused by a guard of smoking. JEYNES tried to explain that he was merely holding the cigarette unlighted in his hand. He was escorted to the guard room and forced to stand to attention and was beaten by several guards. Lieut MIATAKE arrived on the scene and was informed by the guard of JEYNES, alledged "breach of rules". MIATAKE flew into a violent rage and struck JEYNES with the buckle-end of his "Sam Brown" belt, across the face, head and body. This assault lasted for approximately one hour during which time JEYNES was knocked unconscious three times, only to be revived by a cold douche of water and the assault repeated.

11. On another occasion I was questioned by MIATAKE concerning the loss of one button on my shirt. I did NOT have time to explain the loss of the button. MIATAKE began to work himself into a fury and knocked me down and kicked my face rendering me unconscious and left me lying on the camp floor. This was typical of MIATAKE's treatment of all PW at this camp.

12. ~~I remember a Japanese civilian at the SHOWADENKI Factory located approximately fifteen miles from KOBE Camp. He was in charge of all PW working in this camp but I did NOT contact him personally.~~

13. A Japanese civilian known to me as "SPEEDO" was directly in charge of my party who was continually slapping Prisoners of War faces and other wise assauling them when he considered they were NOT working at "top speed." which was often.

14. We were ~~continuously billeted in a potential~~ target ~~area and~~

This is page two of my affidavit made by me at Brisbane on the fourth day of October 1946.

/s/ A. R. Inall
Deponent

/s/ W. B. Roberts J.P.
A Justice of the Peace

~~whenever there was an air raid all Prisoners of War would be locked in the billets until it was over. One one occasion, fifth day of June one thousand nine hundred and forty-five we were bombed out. Several Prisoners of War sustained injuries and it was not before the whole building was on fire that we were permitted to leave.~~

15. A description of MAURIOTO commonly known as "JACK OAKIE" is as follows: Height approximately five feet seven inches, build, very stout, stocky. Age approximately thirty-five years, well educated, carried himself very well.

16. A description of Lieut TAGANAKA (phonetic) is as follows: Age approximately thirty-seven years, height five ~~feet six inches, stout and stocky build, wore glasses, well educated.~~

17. A description of the Japanese Medical Officer named MIATAKE commonly known as "THE MAD DOCTOR" is as follows: Age approximately thirty-five years, height approximately five feet six inches, very stout build, wore glasses.

~~18. A description of the Japanese civilian known to me~~ as "SPEEDO" is as ~~follows:~~ Age approximately thirty years, height approximately five feet nine ~~inches,~~ thin build, very ~~active man, had a habit of showing his teeth which were very large.~~

I swear that the contents of this my affidavit are to the best of my knowledge and belief, true and correct in every particular.

SIGNED AND SWORN by the with-innamed Deponent at Brisbane on the fourth day of October 1946 /s/ A. R. Inall

Before me /s/ W. B. Roberts J.P.
A Justice of the Peace

A CERTIFIED TRUE COPY

CLAUDE A. MUZZY,
C.W.O., U.S.A.

On this Twenty Sixth day of August one thousand nine hundred and forty-six, JOHN ERNEST GREY, of 114 Louis Street, Merrylands, via Granville, in the state of New South Wales, Labourer, makes oath, and says as follows:-

1. As NX48100 Sig J.E. GREY of 8 Div Sigs, I was taken PW at Singapore on 15 Feb 42. I subsequently arrived at KOBE on 7 Jun 43.

2. Our quarters were a disused three-storied warehouse in a bad state of repair - 610 PsW were accommodated there. Each man had about 1'x7' of living space, there we slept and ate. Latrines were in the same building, and consisted of merely a hole in the floor and cement pit, which was emptied three times a year. No disinfectant was used. We had 4 blankets - they were very thin in texture and did not provide adequate warmth. No means of heating were provided.

3. Food consisted of rice three times a day, this was occasionally supplemented by small quantities of vegetables. We were never given meat or fish. Our food was on the basis of 14 ozs per man, per day. The sick received only half rations. We only received one Red Cross parcel a year. It was full American parcel. At all times the Japanese were well fed. There were plenty of vegetables in the district.

4. Medical supplies were very poor, consisting of some aspirin, and a few bandages - medical treatment by an Australian PW doctor, CAPT BOYCE AAMC, who was severely hampered by his lack of medical supplies. About 15 died in this camp, mainly Englishmen.

5. My clothing consisted of 1 Japanese Army uniform, 1 khaki shirt, 1 cap, 1 pair of rubber boots - this clothing was replaced as it wore out. The Japanese guards and staff in the camp were always plentifully supplied with clothing.

6. Our work in the area was to supply working parties for the KOBE docks, where we were loading and unloading ships; we handled food, armament, ammunition, etc. Our working day was from 7am when we left camp - we marched two miles to work, returning to camp at 6 at night. The work was particularly heavy. We were controlled by civilian overseers at the docks - there was no let-up - we were continually stood over.

7. The commandant of the camp on arrival was LT MORIMOTO. I am not sure of the spelling of his name. He was about 5'8" - about 12 stone in weight - unusually dark - full-faced - I could recognise him from a photograph. He was superseded in about Dec 44 by LT TAKANAKA - he was about 5'8" - medium build - thin-faced - wore glasses. Neither of these commanders ever ill-treated PsW, but failed to take any action to prevent the beatings that did occur in the camp. Protests were often made by CAPT BOYCE and MAJ CAMPBELL of 2/40 Bn - no action was ever taken.

/s/ J. E. Grey

Witness /s/ E. Harley

Pros. Ex. No. 18

8. I recall an incident in about Sep 43, when Pte JEANS 2/29 Bn was caught by the Japanese Medical Officer after "lights out" with a cigarette butt in his hand. I walked past the guard hut, and saw a bashing in progress. In accordance with the normal custom, I stood at attention and watched the bashing - "THE MAD DOCTOR" - the Jap MO, was belting over the head and face, PTE JEANS - with the buckle end of his belt. I remained there about 35 or 40 minutes, the beating continued all that time. I saw "THE MAD DOCTOR" get a bucket of water and throw it over his victim, he then kicked him, made him get up, belted him again. As JEANS collapsed, he ordered the medical orderlies to carry him away. On the following day "THE MAD DOCTOR" compelled JEANS to go to work. As the result of this bashing, JEANS was permanently disfigured. "THE MAD DOCTOR" was rather short - about 5'4" - rather thick-set - very heavy lips. He was a 1st Lt in the Japanese Medical Corps. /s/ J.G. He was about 30. He told us that he had done his studies in Germany. He spoke English rather well. Protests were made about this beating by Maj CAMPBELL and Capt BOYCE. We were told by them that they had complained to both MORIMOTO and to COL MARATA at OSAKA HQ.

9. On another occasion, approximately 1 month later, an English PW, whose name I don't remember, was caught coming home from work by "THE MAD DOCTOR" with a button of his shirt undone. He was fallen out, and we were compelled to watch the bashing. "THE MAD DOCTOR" used the buckle-end of his belt. The beating lasted about 20 minutes. The PW was made stand at attention during the beating.

10. I left KOBE on 15 Feb 45, ~~and moved to SHAWADINKY CAMP which was half way between KOBE and OSAKA.~~ We were worked in the local Carbon factory carrying coal in baskets from barges to the factory. No proper washing facilities were supplied. Camp quarters, food and medical supplies were much the same as at KOBE - 3 Americans died in this camp. /s/ J.G. Whilst working in the factory, we were constantly strafed by American dive-bombers. The factory was on the edge of a big fighter drome. We had no protection during these attacks. The attacks became too fierce, we were moved to NAGOYA - 250 men were crowded into one railway car, with their gear. The trip lasted about 15 hours. The move was carried out under the personal supervision of COL MARATA and LT TAKANAKA - TAKANAKA controlled SHAWADINKY.

11. NAGOYA PW Camp was a new camp - it was only half completed on our arrival there. Accomodation consisted of long single-storied barracks - we slept on straw on the boards. We had more living space than at any time hitherto. Food was much the same, but in reduced quantities; medical supplies were absolutely nil. We had an American doctor and 1st Lt - I cannot remember his name. He was hampered in his work by the total lack of medical supplies. Five Americans died of beri-beri. Our clothing was exactly the same during our stay at NAGOYA.

Hq. /s/ J.G.

12. We arrived at NAGOYA about May 1945. The Camp Commander was LT FURIYAMA - he was much the same as TAKANAKA in appearance - we thought he was TAKANAKA on first seeing ~~him. He did not ill-treat PsW himself, but knew, because~~

/s/ J. E. Grey
Witness /s/ E. Harley

~~of the protests that were made to him, of what went on in~~ the camp. He made no effort to stop it. Protests were made by an American Major and LT GODDARD. The 2 i/c of the camp was SGT ICHIKAWA, who was very short - thin - wore glasses - small round face - he stuttered slightly.

/s/J.G.

13. At NAGOYA we were working on the docks unloading ships and trains. We loaded nearly all armament and military supplies. Our working day extended from 7am till 6 in the evening. We marched about 3 miles each way to and from work.

14. Whilst working on the docks, we were continually bombed. TOYAMA was ultimately completely wiped out. Our camp just missed being totally destroyed. No protection was provided against these attacks at the docks. Whilst in this camp PsW were made work whether sick or not. This was done on the orders of FURIYAMA and ICHIKAWA. Most deaths in this camp were as the result of this ICHIKAWA continually belted PsW, but never administered any major bashing or torture. Every PW in the camp was belted by him on one occasion or the other.

SWORN by the abovenamed deponent John Ernest Grey, at Sydney, this Twenty Sixth day of August one Thousand nine hundred and forty-six

/s/ John Ernest Grey

BEFORE ME /s/ Edwin S. Harley

A Justice of the Peace

A CERTIFIED TRUE COPY

CLAUDE A. MUZZY
C.W.O., U.S.A.

I, Charles Frederick HOLT, Painter of 2 Cyril Street, WINDSOR in the State of Victoria, make oath and say :-

1. Prior to discharge I was VX40568 Dvr. C. F. HOLT, of 4 Res M.T. (AIF). I was taken prisoner of war at Singapore on 15 Feb 1942.

2. On 15 May 1943 I left Singapore and arrived at "OBE" HOUSE on the 8 Jun 43.

3. The Camp Commandant at "OBE" HOUSE was "JACK CAVIE". He was stoutly built about 12 stone, about 5' 6" in height and about 35 to 40 years of age. His rank was Lieutenant.

4. The quarters were very cramped. There was no place for recreation purposes. They were vermin infested at first but later on some measures were taken to counteract this. There were about 650 prisoners housed at the Camp.

5. The ration was rice and on occasions we received a meat stew but later on the stews contained only vegetables. The quality of the food was good.

6. We would start work at about 8 a.m. and finished at about 4.30 p.m. We were allowed an hour for lunch and had two smokos one in the morning and one in the afternoon. The work consisted mainly of labouring at the wharf, Showadonki Factory and a coal siding.

7. Also at the Camp was a Japanese medical officer named the "Mad Doctor". He was well built, about 11 stone and occasionally wore glasses. On one occasion he brutally beat an Australian prisoner named "Tibby". JEYNES for having an unlighted cigarette in his mouth in restricted smoking hours. Although I did not actually witness the beating JEYNES was badly knocked about the head and face. This beating was carried out in front of the guard house. After this beating with a sword stick JEYNES was made to stand to attention in front of the guard house for at least two hours. As a result of this treatment he spent 3 or 4 days in hospital.

8. A favourite pastime of the "MAD DOCTOR" was to come into the sleeping quarters at all hours of the night, get everyone out of bed and make them do exercises. This procedure would take an hour.

9. Also when marching prisoners he would call out halt and if they did not stop the moment he ordered them to, he would beat them with his sword stick around the head.

10. After the "MAD DOCTOR" left the camp in about Oct 43, there came to the camp a Japanese known as the DAY SERGEANT. ~~He was about 25 years of age, about 5' 4" in height and about 8 stone~~ 7 in height.

11. I have seen the DAY SERGEANT beat prisoners with a stick. He once made a statement to us that he would not be satisfied until he had killed someone. After beatings he would make a prisoner kneel on the concrete with a piece of bamboo behind the knees until they lost the circulation and all power in their legs. After this treatment they would be taken to hospital. This form of torture happened quite often.

12. ~~Also at "OBE" HOUSE was a Japanese named "GEORGE FORBY". He was about 5' 6" in height, solidly built about 10 stone in weight.~~

/s/ Charles F. Holt

/s/ HFD

Pro. Ex. No. 19

13. ~~In about June 1945 I saw [illegible] brutally beat~~ Pte Russell DIXON ~~(AIF)~~ with his fists on two occasions for about 15 minutes on each occasion. He then had to stand ~~to attention outside the guard house for approximately three hours.~~

SWORN at MELBOURNE in the STATE of VICTORIA this 23rd day of OCTOBER, 1946. /s/ Charles F. Holt

Before me,

/s/ HF Duri

A Commissioner of the Supreme Court of Victoria for taking of affidavits.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

I Walter Charles BIRD of 51 Aherne Street Hermit Park TOWNSVILLE in the State of QUEENSLAND formerly QX1874 Gunner Walter Charles BIRD of 2/10 Field Regiment now discharged being duly sworn make oath and state as follows:

1. On ninth June one thousand nine hundred and forty three I arrived at OSAKA No.2B Camp as a Prisoner of War in which Camp there were approximately eight Australian Officers and two hundred and forty other ranks. There were also three hundred and fifty English troops, thirty American and about thirty troops of other nationalities.

2. We were employed at the Carbon Works, Toya Steel Foundry, Yoshihara Oil Refinery, loading and unloading ships at the wharves, also worked at numerous warehouses lumping rice and beans. We had to carry loads in the vicinity of two hundred pounds weight from barges to warehouses.

3. On arrival at the Camp the food appeared to be ample to meet our requirements but whilst on the job we were given one and a half loaves of bread the loaf would be about six ounces - this was not sufficient to keep us going during the day. As the War progressed food became very scarce and our ration was cut accordingly. For a while in the Camp our morning and evening meal consisted of ample rice and soya beans, however this supply did not last very long. JMC ~~After the bombing raid on KOBE on the seventeenth March 1945 in which half the city was burnt out, those in~~ Camp only received two meals a day ~~which consisted of a small portion of rice and soup or stew made from vegetables.~~ JMC

Medicines were verynlimited and on one occasion we appealed for more medical supplies through a letter which the Japanese allowed us to write home. Medical supplies were so low that to relieve suffering in the Camp it was often stolen from the warehouses. In numerous cases men were suffering from beri beri and malaria and were forced to work despite their weakness and apparent inability to do so.

4. In October or November 1943 a lad named Tibby JEANS(of 26th Btn) was caught with a cigarette behind his ear by Lt. MIYATAKE - known as the "Mad Doctor" - and accused of smoking after "tenko". JEANS was not guilty of smoking but was nevertheless flogged by MIYATAKE with a leather strap over the face for one and three-quarter hours. After the flogging JEANS was treated by R.A.F. orderlies and was later

Pros. Ex. No. 20

returned to Camp with his face and ears covered with bandages. I was a witness to this cruel and torturous happening.

This is page One of my affadavit made by me at TOWNSVILLE on the twelvth day of October One thousand nine hundred and forty-six.

/s/ W. C Bird
Signature of Deponent.

/s/ W E Lloyd J.P.
Signature of a Justice of the Peace.

The next day JEANS was forced to work.

~~We came in from the Oil Refinery one afternoon and there lying on the roadway was one of our fellows who had been knocked out by Sgt. MORITA for stealing sugar. MORITA later on approached our party and found one of the lads with two water bottles of oil. He later set on to Les COOK of the 26th Battalion and rendered him unconscious. This beating took place whilst Lt. TAKAHAKA was Camp Commandant.~~ As far as I remember Lt. MIYATAKE(the "Mad Doctor" of KOME HOUSE) was a stout built man, height would be about five feet three inches, and possessed a natural aggressive demeanour.

~~Sgt. MORITA was a well proportioned man, height would be about five feet eight inches.~~

Lt. TAKAHAKA was ~~a heavily built man~~, height would be about five feet ~~one inch, weight about thirteen stone, and he wore spectacles.~~

I swear that the contents of this my affadavit are to the best of my knowledge and belief, true and correct in every particular.

SIGNED AND SWORN by the within-named Deponent at TOWNSVILLE in the State of QUEENSLAND on the Twelvth day of October One thousand nine hundred and forty-six.

/s/ W. C. Bird
Signature of Deponent.

Before me
A Justice of the Peace.

/s/ W E Lloyd J P.
Signature of a Justice of the Peace.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY
C.W.O., U.S.A.

I, John Alexander McIntyre of Kennedy Street, Kilcoy in the State of Queensland, formerly QX9748 Gnr McIntyre J.A. of 2/1o Field Regiment, now discharged, being duly sworn, make Oath and state as follows;

1 In the months of June, July, and August, One thousand nine hundred and forty three, I was a prisoner of war at Kobe House 5D, in which camp were approximately Six hundred and Sixty four prisoners of war of English, Australian, American and other nationalities.

2 We were employed as Dock Workers, Factory Workers, and Coal heavers-My particular job was mostly factory work and coal heaving.

3 General conditions at this camp were not good. The quality of the food was bad and consisted of Rice and watery vegetable stews, One meal a month of very poor quality Meat or Fish Stew The quantity was never sufficient.
Medicines were totally inadequate. The issue of clothing was One set of underclothes, One Japanese Uniform, One poor quality overcoat, and One Japanese Uniform to be worn on Rest days only. Four blankets and one pillow were issued to each prisoner of war.
The quarters were very crowded and each man had only a space of approximately two square yards (3 feet by 6 feet.
The Japanese Type Latrine and Lavatories were under the same roof as the sleeping quarters and within a few feet of the kitchen. When the lavatories were being emptied the stench permeated the whole building.
The working conditions were very hard and work commenced at Seven AM and finished at between 4pm and 6 pm-Forty minutes were allowed for Lunch.

4 In the month of June, July or August in the year 1943 a particular brutal beating was given to (TIBBY) JEYNES, a member of the 2/26 Battalion, whose address is Monto, Queensland, by one Japanese Officer nicknamed " THE MAD DOCTOR" The mad Doctor was a Medical Officer attached to Kobe House, age about 24 or 25 years, height 5 feet 4 inches or 5 feet 5 inches, fat, pale complexion and spoke very broken English, fairly active.
A standing order in the camp was "No Smoking" by Prisoners of War after nightly Roll call". JEYNES before going to bed was walking on the second floor of the building, with a cigarette behind his ear, The "Mad Doctor" who saw him, accused him of contemplating smoking after Roll Call. He took JEYNES to the Guard House, where with the buckle end of a Japanese Officers Issue belt he proceeded to beat JEYNES especially around the head and face, the beating lasted approximately one hour.
I was inside the closed building on the floor from which JEYNES was taken, and could very plainly hear the groans and moans of the victim.
He was finally rescued by four Australian Officers namely Lieut JOHN C. FULLER - 2/18 Batt. - Lieut ROBERTSON - A.A.C a Victorian. Lieut PRINGLE with an NX Number and Lieut GODDARD, an NX Man, the Unit I think was A.S.C.

Pros. Ex. No. 21

This is page ONE of my Affidavit made by me

at KILCOY on the Twenty eight day of October 1946.

/s/ J. A. McIntyre
(Deponent)

/s/ W. J. Whitten J.P.
(A Justice of the Peace)

I saw JENKES about five minutes after he was rescued and his head and shoulders were covered in blood and he was still moaning and did not appear to be quite conscious.
"THE MAD DOCTOR" was continually beating and inflicting painful punishments on prisoners of War for very paltry reasons, such as failure to catch a bug when ordered to do so.
I was a Prisoner of War at Kobe House from June 1943 to June 1945.

I Swear that the contents of this my affidavit are to the best of my knowledge and belief, true and correct in every particular.

SIGNED AND SWORN by the within named Deponent at KILCOY on the Twentyeight day of October 1946 /s/ J A McIntyre

Before me
A Justice of the Peace. /s/ W. J. Whitten J.P.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

I, Campbell KERR of 1214 Sturt Street, BALLARAT in the State of VICTORIA make oath and say:-

1. Prior to discharge, I was VX 22208 Pte Campbell KERR of 2 Con Depot and was made a prisoner of war in SINGAPORE on 15 February, 1942.

2. On 15 May 1943, I went to JAPAN with "J" Force and went straight to KOBE HOUSE Camp at KOBE.

3. About October, 1944, a Japanese known as the "PAY SERGEANT" arrived on the Camp Staff. He was about 5 feet 6 inches in height, slightly built with sharp features and rather a prominent nose for a Japanese.

4. He beat the prisoners continually. About January 1945, he stopped a concert because he disliked one item and took the concert party consisting of about ten in front of the guard house and beat each one with an iron bar. One man, Pte J. DENTON of Middlesex Regt., became unconscious and all the others were badly bruised. There were no Australians amongst them.

5. After the bombing of KOBE, we went to KAMASAKA in March, 1945. Two Australians, Sgt. STRINGER of 2/1st Bn and Cpl SHERRIT (known as "BUNNY") of 8 Div Sigs were looking for tins to use as mess tins having lost their own at KOBE. They were reported to the "PAY SGT" and he punched them in the face and then got a four feet length of bamboo and beat them. When this split he got a piece of wood. He also got members of the guards to assist in the beating and urged them on. This lasted for about 45 minutes.

6. The men were then taken to a duck pond and revived there with water. He then hung them with their hands behind their backs attached to a limb of a tree with their feet just touching the ground, where they were kept for about seventeen hours.

7. The following day he struck a British Sergeant Major named BARRON of the Royal Scots about the face with his fists for about 15 minutes and then hung him in the same manner from the same limb of a tree for about 8 hours.

8. About December 1944, he took Pte John MASON of 8 Div Sigs to the cook house and beat him with a wooden rice stirer for about half an hour for having his foot in the wrong place when standing at ease.

9. There were numerous other incidents of a similar nature. He used to continually say to his victims, "CRY YOU AUSTRALIAN BASTARDS."

10. In the SHOWADANGI Graphite Factory where we worked from June 1943 until October 1944 was a foreman nicknamed "SPEEDO". He was about 5 feet 8 inches in height, thin, with a dark complexion. He looked like a mongrel greyhound.

/s/CK

11. "SPEEDO" used to pick on the sick pushing them about and harassing them continually and refused to give them food at midday. Pte BELL of 4 Reserve MT fell our sick about May 1944. "SPEEDO" put him and a British

/s/ C.K. /s/HFD

Pros. Ex. No. 22.

~~soldier into a shed to sift graphite with a Japanese on~~ the ~~other~~ end of a sieve. Every time the ~~sick men~~ took their hands ~~from~~ the sieve "SPEEDO" would hit their hands with a stick.

12. Sick men were made to work longer than the fit and ~~kept an hour after the others had~~ finished.

13. In KOBE HOUSE Camp, when we arrived was a Japanese Doctor nicknamed the "MAD DOCTOR" and he was there until about June 1944. He was about 5 feet 3 inches in height, fat with a very clear skin and fair complexion and a round head.

14. He was a particularly cruel Japanese, not only beating the prisoners continually, but used also at odd times during the night to call out all the prisoners and give them drill. He then bashed those whom he thought were not quick enough.

15. About September 1943, the "MAD DOCTOR" beat Pte JEYNES of 2/26 Bn with the buckle end of a belt for about two hours dragging him to his feet when he fell down, and then beating him again. JEYNES was in hospital for a long time as the result of the beating.

16. He seemed to be conducting a war of nerves against the prisoners the whole time and he took delight in properly beating the prisoners. When drunk he used to parade through the Camp in a dressing gown with his sword drawn.

~~17. Lieut. TAKAWAKA was the Camp Commandant at KOBE~~ and KAWASAKI. He allowed the ~~guards to do what~~ they liked and he was in ~~his office~~ about twelve yards away, when the ~~"PAY SERGEANT" beat Sgt STRINGER and Cpl SHERRIT and hanged them to a tree by their~~ wrists.

Sworn at MELVOURNE in the State of
VICTORIA this 2nd day of April, 1946.

/s/ C. Kerr.

Before me
/s/ H. F. Deri

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

A CERTIFIED TRUE COPY

John R. Prichard

JOHN R. PRICHARD
Captain, Infantry

AUSTRALIAN WAR CRIMES COMMISSION.

I, Baxter Engberg OLSEN of 8 Hexam Avenue, MYRTLE BANK in the State of SOUTH AUSTRALIA, Clerk, make Oath and state as follows:-

1. That I /s/JMT was formerly SX6609 Sapper B.E. OLSEN 2/2 Reserve MT Company, A.I.F. and I was taken Prisoner of War by the Japanese at SINGAPORE on the 15th day of February 1942.

2. That after capture I was interned in CHANGI for fifteen months and on the 15th May 1943 embarked on the Wales Maru and was transferred to Moji where we arrived on the 9th June 1943. I was sent to Kobe House and arrived there on the 10th June 1943. I remained there until I was released on the 7th September 1945.

3. That Kobe House although a bad Camp by Australian standard, was not worse than the average Japanese Prisoner of War Camp. The ration authorized for issue by the Japanese Army was not over a period adequate to maintain physical condition. During the whole period June 1943 to September 1945 the ration remained reasonably constant and consisted of rice as a staple diet for every breakfast and tea while lunch consisted chiefly of one and a half buns of bread, a bun weighing about six ounces. These commodities were augmented by a stew morning and night made from daikon. This would contain also vegetable tops and about once a week a small quantity of meat or fish. During the time we were in Kobe House there were occasional issues of sea-weed. Since we were working on the wharves and handling foodstuffs we were able to various times to pilfer items to boulster up the diet. On various occasions we /s/JMT were able to loot tined fish, sugar, egg powder, salt, black tea, tobacco and cigarettes, peanuts. We considered that the necessity of trying to maintain our health justified pilfering with its risk of punishment if we were caught.

/s/ J. M. Tippett J.P.
A Justice of the Peace in and
for the State of South Australia

/s/ B. E. Olsen

Pros. Ex. No. 23

4. That we were quartered in, what before the War, had been a British biscuit ware house of three storeys. After the arrival of our party of 250 Australians the total number in Kobe House was nearly 670. The remainder of the prisoners were English, except for an odd, American, Chinese and Greek prisoner. The one big building was divided into Block A and Block B. Block A comprised kitchen, bathroom, latrines on the ground floor, the remaining storeys were quarters for prisoners. Block B approximately the same except that it was larger. About 260 prisoners were quartered in A Block and about 400 in Block B. Prisoners slept on wooden benches on straw matting about 18 inches off the wooden floor. Shortly after our arrival at Kobe House Australian hats and uniforms were withdrawn and Japanese type clothing was issued instead. It consisted of summer issue - work-shirt. under-pants, khaki work suit; winter issue - the same but the clothing was heavier and lined with thick cotton. We received Japanese issue overcoats and rubber boots. Replacements were difficult to obtain and clothing had to be almost in shreds before the Japanese would exchange it for serviceable clothing.

5. That we had an Australian Medical Officer, Captain BOYCE. We were permitted to report to Captain BOYCE if we felt sick, but he had no final say as to whether we worked or not. After Captain BOYCE had indicated the men unfit to work, these each day would have to parade before a Japanese private who would inspect the men and whenever he thought fit countermand Captain BOYCE's exemption from work. We were always short of bandages, and drugs although we had two series of injections, one immediately after our arrival, /s/.DMT the other in 1944 for tetenus, typhus and cholera. A small quantity of medical supplies was obtained from Red Cross

/s/ J. M. Tippett J.P.
A Justice of the Peace in and
for the State of South Australia

/s/ B. E. Olsen

sources, two chests of medical supplies in about September/ October 1944. The chief complaint about medical treatment was the persistent countermanding by the Japanese of Capt BOYCE's orders when men were unfit for work. The Japanese never allowed more than about fifteen men to be exempt from work on any one day no matter how many sick men there were. The number who were ill gradually increased right to the end of our captivity because of vitamen deficiencies which prevented prisoners from resisting diseases.

6. That while I was in Kobe House there were occasional issues of American Red Cross parcels. In Christmas 1944 we received one parcel per man; in Christmas 1945 two parcels per man; in March 1946, one parcel between seven men and in June 1946 one between two men. There was a certain amount of cricket material in the camp and on the two occasions when the Swiss delegate made an official visit the material was shown to him. It, however, was never permitted to be used.

7. That prisoners in Kobe House were used as labourers on the wharves. Reveille was at 0530 hours, tenko 0600 hours, 0615 breakfast, 0700 hours work parade. At 0700 hours we would be handed over to Japanese civilian overseers who would march us to the wharves for work and we would return to camp somewhere about 1700 hours. We were allowed from half an hour to an hour for lunch with two breaks of fifteen minutes morning and afternoon.

8. That when we arrived at Kobe House the Camp Commandant was a Lieutenant Morimoto. In about August 1944 he was
/s/JMT
replaced by a Lieutenant Takanaka. Morimoto was a corpulent Japanese about 5 feet 6 inches in height. His administration was generally good, he was fair inasmuch as he himself never inflicted a punishment unless it were for an offence. Morimoto however, exercised no control over the conduct of other

/s/ J. M. Tippett J.P.
A Justice of the Peace in and
for State of South Australia

/s/ B. E. Olsen

Japanese in the camp and the camp staff and in particular the "Mad Doctor" were responsible for brutal bashings without any justification. Morimoto was the Camp Commandant during the period when many of such bashings were inflicted. Takanaka was of average height and build for a Japanese and his administration was much the same as Morimoto except that he was rather more severe. He made an attempt to prevent looting and prisoners caught commiting this offence were severely beaten up, and given periods of solitary confinement. Takanaka also exercised no control over the punishments inflicted by the camp staff. These continued to be excessive and were often inflicted without reason.

9. That the most dangerous man in Kobe House was a Japanese Medical Lieutenant known to us as the "Mad Doctor". He was of average Japanese height, stockily built and was always fanatical and unbalanced in his behaviour. He was feared by every prisoner because he appeared to be a lunatic. Once a week he would be Orderly Officer and this was always a time of danger. He would order men alternatively to stand up and sit down for periods of a quarter of an hour and at any time would be subject to a sudden fit of rage for no apparent reason. At such a time he would yell 'Kiotski' the Japanese word for 'attention' and would then walk from prisoner to prisoner trying to catch the movement of a muscle. The unfortunate prisoner who moved ever so slightly would be struck on the head with the hilt of the "Mad Doctor's" sword. The sword would be in the scabbard lifted above his head with both hands and brought down with full force. On occasions prisoners would be knocked unconscious as a result. On such aparade as this when the "Mad Doctor" was Orderly Officer in about October 1943 I was knocked unconscious by the "Mad Doctor" by a blow from his sword when I was standing to attention. I was unconscious for a quarter of an hour

/s/ JMT

/s/ JMT

/s/ J. M. Tippett J.P.
A Justice of the Peace in and
for the State of South Australia

/s/ B. E. Olsen

/s/ JMT
and the effect of the blow troubled me for about seven days.

10. That in about July 1943 Private "Tibby" JEANES, of QUEENSLAND was on duty as a guard on one floor of A Block. He was caught by the "Mad Doctor" with a unlighted cigarette in his hand. JEANES stated afterwards that the "Mad Doctor" accused him of smoking on duty. When JEANES denied this he was knocked down and was kicked and punched down two flights of stairs. He was taken to the Guard House and beaten with a belt until he was dazed. This would be after about a quarter of an hour. Buckets of water were then thrown on him to revive him from his semi-conscious state, he was then stood to attention and beaten again. After about half an hour he was unable to stand: he was carried to hospital and admitted. I do not think there was a witness to the actual beating, but an English medical Sergeant named FLYNN was one of those who came down and carried JEANS to hospital.

JMT ~~11. That the Camp Sergeant Major for the whole time we~~ were in Kobe House was Morita. He was rather taller then the average Japanese, of slight build, spoke good English, was well educated, scrupulously clean. Generally, he tried to see that prisoners were properly cared for, although at times he administered brutal beatings, these would be because prisoners had been caught with loot. Sometimes for pilfering ~~prisoners at his orders~~ stood all night sometimes with ~~their hands tied, near the guard house.~~ JMT

12. That I know the facts deposed to herein of my own knowledge except where otherwise appears.

SWORN before me at KESWICK
this Eleventh day of October 1946

/s/ J. M. Tippett
JUSTICE OF THE PEACE
in and for the State of
SOUTH AUSTRALIA

/s/ B. E. Olson

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

Evidence taken at Manila on 30 September, 1948.

I, Arthur Douglas BROWN of Russel Road, Malaya, and formerly X15300 - Cpl BROWN, A.D., 2/26 Bn., 8th Div., now discharged, being duly sworn, make oath and state as follows:-

I was captured on 15 February, 1942, and was sent to Changi prison, where I remained until April, 1942. Food was extremely short and there was a lack of medical supplies.

I then went to a camp Bukittimah and was there from April to October 1942. There were about 600 Australians in this camp. We worked long hours on quarries, breaking stones and loading lorries; we rose about daylight and within about an hour we had to be at work; we would return shortly before dark. Later we had to work night shifts. Almost every day some body or other would be beaten with a thick handle. About June 1942 at No.4 camp, L/Cpl.Annette or Ennett of 2/26 Bn. with another man were taken by the Japs in the car park; there had been Jap petrol being stolen. This L/Col. was stood in front of the Jap commander's house - either Ude or Mendi was the camp commander at this stage. I and others saw this in the morning; the men stood in front of the commander's house; this Jap sergeant Matsumoto arrived with a cane in his hand and struck the two men across their jaws with a heavy cane. They registered great pain from the expression on their faces. They were taken to the Jap Commander's presence and shortly afterwards returned. The Jap sergeant stood them on the house verandah where there was a step of a foot to the paved ground below; he made them take off their shirts and as they put them down Annett or Ennett was given a punch over the face. He fell onto the paved portion and died of a fractured skull. The other man was returned to Changi prison camp.

Food varied. At times it was plentiful and there were times when we had plenty of rice but not of food quality. Many men suffered from malnutrition - particularly on the mouth and between the toes, beri beri and also a malnutrition which caused blindness. We got no Red Cross parcels there. We were paid 25 cents for officers, 15 for NCOs and 10 for ORs. We had small cent-ens but most of our money was used in black market outside with Chinese, under cover. In November, 1942, I went back to Changi and was there until May, 1943. At Changi food was very short; we were very crowded, and malnutrition was having its effect. Many died there. We worked in a large garden plot and had to haul our own firewood up to a distance of four or five miles. We used to bring pretty good loads and all had to be hauled by hand. It was hard going. When some of the chaps were sick we slept on cement floors in clothing.

After being at Changi I went to Kobe House in Japan, arriving there on 8 June, 1943, by ship and then by train. The trip occupied 23 days. In my hold on the ship were 300 men; it was 60ft by 45ft - we measured it, and we had to keep our baggage there. There was not enough room to lie down. It was hot. We got three meals a day, rice and soup; it was not the best. Kobe House was an old warehouse, dark inside, poorly lit and ventilated; the latrines were open and were below us. We slept so close that each man's shoulder touched. First I worked at a factory and then on dock work. We had rice of reasonable quality but insufficient. There were 600 (?) when we arrived working in the factory; about 12 died from malnutrition. They also died from other causes.

Men there were put in solitary confinement for petty theft and other small offences. It was midwinter; we were given one blanket, and there was snow and ice on the ground outside.

Our camp was only about two blocks from the main docks area and was a military objective.

Then I went to Neruo from Feb 15 to May 28. The factory I worked in was Showadenki, a carbon electro factory. Hours of work were from 7 to 11.30, and 1030 to 4.30 and 6. Food was very poor, and I suffered, with other, from malnutrition. We lost weight quickly.

Pros. Ex. No. 24

This is page one of my affidavit
made at L.O.[illegible] on 23RD MAY 1946.

Signature of Deponent A. D. BROWN.

" " J.P. R. DUNBAY, J.P.

~~In May, 1945, I went to Toyama (No 9 of the Nagoya district) camp. We were here until released on 6 September, 1945. The camp was good but the food was insufficient. I suffered from malnutrition; I worked on the docks, loading ships. We had to keep on working amongst ammunition whilst air raids were in progress.~~

At Christmas ~~1943 we~~ got a couple of Red Cross parcels. In 1944 ~~we received three at Christmas; three parcels each; they were American parcels.~~

At all camps men were worked when they were sick, except when they could not walk.

Most of the Jap guards who were guilty of beatings were:-

~~Marita - A Jap Sergeant at Kobe house, there for a long time; he beat me.~~

The Med Doctor - At Kobe House in 1943 and part of 1944. He beat a man on one occasion about the head and face for about three quarters of an hour and nearly killed him. The man's name is Jaynes - 2/26 Bn; he is in this camp - Pte. Jaynes. Frequently at night he came into our sleeping quarters and woke me up and drilled us for hours on end, and in other ways prevented our sleep, when we had to work hard on the following day. He hit people over the head with the scabbard of his sword. I have been hit on the head in this manner.

~~Other Jap Guards were known as Gentleman Jim and Horseface.~~

I swear that the contents of this my affidavit are to the best of my knowledge and belief true in every particular.

Signed and sworn by the withinnamed deponent at INGHAM this 23RD day of MAY 1946	)	.....A..D..BROWN..... Signature.
Before me A Justice of the Peace	)	.....W..F..LLOYD..J.P..... Signature.

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
CAPTAIN, INFANTRY

(CONFIDENTIAL) Classification changed from "CONFIDENTIAL to "RESTRICTED" by order of the Secretary of War by C.A. MUZZY, CWO, USA.

STATE OF ~~CALIFORNIA~~ New Jersey /s/ L.H.L. :
: ss:
~~City and~~ County of ~~San Francisco~~ :
Burlington /s/L.H.L.

LEROY H. LUCAS, M/ Sergeant, ASN 6639307, HHD #2, Belle Vernon, /s/ L.H.L.
Pa.: being first duly sworn, deposes and says:

In July 1943, at Kobe, Japan, I witnessed the beating of twenty-seven men, namely: Commander Harrington, USN; Lt. Colonel Fitzpatrick, 31st Infantry; Major Harding, 31st. Infantry; Major Layton, 31st Infantry; Lt Lowe, USN, Naval Intelligence; Lt. Cotton; Warrant Officer Jr. Grade Shaputnic; Captain Pierce; Captain Howe of the Engineers; Lt. Drewback, 31st Infantry; 2nd. Lt. Mickalic of the Ordance; Captain Kerney, 31st. Infantry; Lt. Kennedy; Captain Allbright; Lt. Jensen; Lt. Holland, 200th. Coast Artillery; Captain LASHER /s/L.H.L. of the Engineers; Mr. Fredericks, a civilian worker for the Engineers at Palawan; Private Lockner 803rd Engineers; T/4 Johnson of the Air Corps. I cannot recall at the present time the names of the other seven men.

There was a Japanese doctor who was a second lieutenant and the junior medical officer in our encampment under 1st. Lt. Mirimoto who was the commandant of the Kobe Prisoner of War Camps. This particular second lieutenant was the executive officer of our camp. It was the custom for this lieutenant to make daily inspections of the camp about 7:00 p.m. every evening. On this particular evening, a cigarette butt was found in a spittoon located in the American officers quarters. This lieutenant asked who was responsible for placing the cigarette butt there. As nobody seemed to know, they were threatened with punishment if the guilty man was not brought forward. When this procedure did not meet with success he had everybody in the quarters brought before the guard room for punishment. The men were stood in a line at attention, whereupon the Japanese second lieutenant, who was the executive officer under Mirimoto, hit each man with his fists and a wooden club. These beatings continued for a period of one hour. After this time, the men who had passed out were revived and forced to stand at attention for four hours. They were also required to take up their station and stand at attention in the courtyard the following day. These officers carried the signs of

CONFIDENTIAL /s/ CAM

Pro. Ex. no. 25

of this beating until August 1, when I last saw them. This is the last I saw of them because they were transferred to San Souci (phonetic).

Other men who witnessed the beating of these officers were: Petty Officer Ernest Burnette, USN, ship "Canopus"; Radioman Griffin, USN; Pfc J.B. Schlosser, 31st. Infantry; Corporal Jud Hayden, 4th Marines; Corporal Fred M. Hoblitt, the interpreter in our camp; Private O. L. Barnett, 7th. Materiel Squadron of the Air Corps; Pfc William A. Sutherland, 803rd Engineers; Pfc Richard Morris, 200th. CA; Pvt Santiago Lucero, 200th CA; Pfc Bohanan, 59th. CA; Private A. H. Shralnes of the Tank Corps. This is all I can recall of this incident at this time.

/s/ Leroy H. Lucas
LEROY H. LUCAS, M/Sergeant
/s/ L.H.L.

Subscribed and sworn to before me this 7th day of January 1946

/s/ William Tomar
Attorney at Law of the State
of New Jersey

Interviewer William W. Board, Agent, SIC.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

C O N F I D E N T I A L

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War by /s/C.A.MYZZY,CWO, USA

STATE OF CALIFORNIA)
) ss
City and County of San Francisco)

PERCY MACDONALD COTTON, being duly sworn, deposes and says:

I am a Lieutenant, United States Naval Reserve, Supply Corps; my serial number is 79465; and my permanent residence is 634 Fifteenth Avenue, San Francisco, California. I was captured by the Japanese in Cebu, Philippine Islands, about 19 April 1942, and was held a prisoner in the Philippines and in Japan until 9 September 1945.

From February 1943 to August 1943, at Kobe sub-camp of OSAKA PW Camp, /s/PC disciplinary conditions in the camp were very severe, and beatings and tortures were common. Most of the abuse of prisoners took place upon enlisted men whose names and identities I do not know. The perpetrators were primarily the medical officer who came into the camp in February and an orderly who was his assistant.

An example of such abuse took place in June 1943, when, at evening muster, a cigarette ash was found in a cuspidor. For this petty error, 25 U. S. Army and Navy /s/PC officers, many of whom did not smoke at all, were forced to stand at strict and rigid attention for a period of four hours, staring at a glaring light. The Japanese standard of "attention" is much more exacting than that of the United States services, and requires extreme tension of muscles. If a man moved as much as an eyelash, he was cuffed and beaten. Many of the officers were beaten in this fashion and some received repeated beatings, although no permanent injuries resulted.

I ~~can give no names of the~~ was one of the /s/PC victims of this incident. The persons responsible for this punishment were: the Camp commandant, Lieutenant Muramoto, nicknamed "Jack Oakie" because of his resemblance to that comedian, who had a high squealing voice, and who subsequently became Assistant to the Director of prison camps in the Osaka area, Colonel Murata; Lieutenant Miyatake, the medical officer aforementioned, a man about 5 feet 3 inches in height, of stocky build, smooth shaven and a very careful dresser, who claimed to have been educated in Germany; and the corporal of the guard, whose name is Shigeru Fukuda and whose address as he gave it ~~to me~~ /s/PC was Aone 152, Higashiawa Kura, Okayama-ken, Aidagun.

Pres. Ex. no. 26

C O N F I D E N T I A L /s/CAM /s/PC

Commander Harrington of the United States Naval Reserve, who was our leader, will have further particulars regarding the identity of the victims of brutality at the Kobe sub-camp. I am presently unaware of his exact address. The foregoing constitutes all of my knowledge of the incident described.

/s/ Percy Macdonald Cotton
PERCY MACDONALD COTTON
Lt., U.S.N.R. 79465

Subscribed and sworn to before me this 12 day of December 1945 at San Francisco, Calif.

/s/ Victor M. Trask
VICTOR M. TRASK
MAJOR INFANTRY
SUMMARY COURT

Interviewed by: William W. O'Connell, Agent, SIC, NSC.

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
CAPT., INF.

My name is Eugene Stedman Hornoy. My permanent home address is 1108 Magnolia Street, Greensboro, North Carolina. I am 30 years of age. I was Captain, 0351529, 6.rd Infantry, Phillipine Army, having been called to active duty from the reserve November 11, 1940. I went overseas on 1 November 1941, and returned to the States 20 October 1945.

I was placed on terminal leave May 26, 1946. I was captured on Panay on May 25, 1942 by a Japanese unit the name of which I do not know. We were taken to the Iloilo prison where we stayed about six weeks, then we were transferred to Ft. San Pedro, Iloilo, where we remained until October 1, 1942. We were then taken to Kobe, Japan, where I remained as a prisoner until August, 1943. I was then transferred to Zontsuji on the Island of Shikoku where I remained until June 1945. I was then transferred to Rokuroshu on the Island of Honshu, and remained there until September 8, 1945, where on that date I was liberated.

At the Kobe Camp, Japan, there was a great deal of slapping, striking in the face and kicking on the shins of American and British prisoners by Japanese guards. There were only about 50 American prisoners in this camp at the time I was there. During March of 1943 a Japanese doctor who was quite a Sadist, knocked a great number of prisoners down and knocked them unconscious with a leather belt with a big buckle on it. I do not know his name. He was short and weighed about 130 pounds and was about four and one-half feet tall. He had no peculiar marks of identification. On one instance I saw him beat a British soldier in the face until he fell over unconscious, then poured water in his face to revive him, stood him up, and beat him again until he again fell. His excuse for doing this was that the British soldier was smoking at a time when he was not supposed to. In one instance some of the prisoners put ashes in the spittoon, when they had instructions not to use the spittoon for ashes. He knocked twenty four of us down, including me, for doing this. ~~We had another a guard as bad as the doctor. He was there about three weeks. He committed offenses similar to those just described as committed by the doctor. He was a Corporal. He was much larger than the doctor; about five feet and ten inches tall and weighed about 140 or 150 pounds. I do not remember his name. We complained about him so much that the Sergeant in charge, whose name I do not remember, got rid of him.~~ JMC

~~The Colonel in charge of the Osaka area was Colonel Murada. This camp was worse than any I was in. We lost twenty five percent of the personnel of this camp from starvation, malnutrition and exposure. There was no heat, and the weather was freezing. Our complaints were made to the camp commander who reported that he had reported them to Colonel Murada.~~ JMC

In many instances we had boys carried to work physically unable to work, and they were carried to work on stretchers by prisoners who were forced to carry them. Many of the prisoners who died at this camp were survivors of the sinking ship Lisbon Maru.

~~Some of the Red Cross food was eaten by the Japanese, though this camp did not get much Red Cross food while I was there.~~ JMC

The prisoners, ~~enlisted men, worked six days a week. Officers were at first put in charge of the prisoners who worked, but later officers were not permitted to go with the enlisted men.~~ JMC

Pros. Ex. No. 27

~~Maniseto was camp commander at camp Kobe. He was either a Captain or a Lieutenant. I never did see him commit any cruelties. It is my belief that the orders came direct from Colonel Murada, and that he was responsible for the cruelties. This belief was shared by the other prisoners.~~

Our clothing was fair, as we got British captured clothing. ~~There was some Japanese made clothing issued, and we were provided materials to mend our clothing.~~

There were few other brutalities at the other camps where I was a prisoner, but they were not as serious as those, with few exceptions, at camp Kobe, but I do not remember the names of any of the people committing the brutalities. At Kobe the enlisted men were treated worse than the officers because they were forced to work when they were not able to work, but at the other camps where I was a prisoner, the officers were subjected to more indignities.

I weighed 155 pounds when I was first taken prisoner, and my last weight while in camp was 110 pounds.

/s/ Earene Stedman Horney

State of North Carolina :
County of Davidson : SS

Subscribed and sworn to before me a Notary Public, this the 20 day of August, 1946.

My Commission Expires April 23, 1947 /s/ Josephine Kellogg
Notary Public in and for
County of Davidson, State
of North Carolina.

SEAL
JOSEPHINE KELLOGG
NOTARY PUBLIC
DAVIDSON COUNTY, N.C.

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
CAPT., INF.

WAR CRIMES.

AFFIDAVIT OF TX 2079 Lieut Brian GORDON.

On the 20th day of March 1946, BRIAN GORDON of 5 Compton avenue, Launceston, Tas. soldier whose regimental number is TX 2079, being duly sworn makes oath and says as follows:-

1. I am TX 2079 Lieut Brian GORDON a former prisoner of war in Japanese hands. I was in Camp known as Kobe House, Kobe, Japan.

This Camp was a brick warehouse, opposite the main Kobe sports oval in the centre of the City. Building now demolished.

I was a group leader in this Camp for nearly two years in charge of 120 australians. I witnessed this evidence with my own eyes. Did not witness early deaths but lived with the survivors. am not concerned with the underlings, the Officers Col. Murata, Lieut Morimoto and Lieut Miataki are the true criminals.

2. CONDUCT OF CAMP.

There were approximately 650 British and australians in this Camp which consisted of two three storey brick buildings. The buildings were filthy with few small windows, the accommodation was so crowded that the men for two years slept touching each other. Except for one or two exceptions the Japanese staff did nothing whatsoever to make life a little more bearable for the Officers and men. The discipline was severe and men were struck for the slightest offence, including Officers.

3. PARADES.

These were held twice daily, during the summer roll call at, morning 0500 hrs, evening 2000 hrs. Winter months 30 minutes later. Again for trivial offences, such as one button undone or not looking correctly to the front in the Japanese way, men were struck. During the winter, men were required to strip to the waist for exercise, this caused the death of some men, because of their low condition of health and the extreme cold. Some men who were too sick to exercise and unable to take off their clothes were knocked down by the sentries with their rifles. One Japanese Officer, Lieut Miataki, a so called Army Doctor, spent often from an hour to an hour and a half on these parades striking and humiliating as many officers and men as possible, also putting on surprise roll calls at midnight and later. One of these resulted in the death of an australian.

4. MESSING.

JP ~~Very crude. Long narrow table running between bed spaces, men sat on their beds. Small bucket of warm water to each~~ about 60 bowls after meal.

5. RECREATION.

~~Japanese allowed one rest day a week which was often of no~~ value because of the parades, searches and their usual bloody mindedness. ~~For the last 18 months this rest day was reduced to~~ two per month. The Japanese ~~would not provide~~ any room for recreation. If they wished, ~~there was~~ an available room which they could have provided. During the week they would not allow cards, chess or any game to be played. ~~Although~~ JP ~~an oval was opposite our building they would not allow us~~ JP

Pros Ex. no. 28

~~to play sport on this, one exception was when we played Baseball for two hours for their Movie Camera Propaganda. Officers were locked up in this building for weeks at a time without getting any exercise whatsoever. At all times they did their utmost to prevent us enjoying any kind of recreation.~~

6. ABLUTIONS AND LATRINES.

~~These were absolutely filthy and disgusting. They were in the form of pits on the ground floor of each building. In one building our ration store was on the same floor. Often the Japanese would make no attempt to empty the latrines so they overflowed through to our ration store. The stink from these filthy latrines permeated the whole building. Time and time again the Japanese were asked to clean them but they always had some paltry excuse.~~

~~We had one hot bath a week where one bath 6 feet by 6 feet was used for 200 men the water changed for the other 200. No hot water for washing during the week only cold showers which were often closed. No hot water for washing our clothes, which, during the winter months washing clothes in cold water in the snow, was what the Japanese liked to see.~~

7. MEDICAL TREATMENT.

This was practically non existent, however we later obtained some American Red Cross supplies. Although we had our own M.O. with us Capt G.Boyce, he was often prevented from giving attention to our sick, this was done by a third class private. Only twelve patients were allowed to be in the hospital, so sick men over the twelve had to attend work, often with a temperature. This was the cause of some of our men dying. Their whole medical set up was a disgrace. One Pte R.Kingsnorth, 8th Division, Malaya, broke his leg while working, through lack of medical attention and no interest whatsoever of the Japanese he has now one leg shorter than the other.

8. ILL TREATMENT.

Col MURATA, in charge of Osaka area which embraced Kobe, and Lieut MORIMOTO, our Camp Commandant, who was later transferred to Osaka Headquarters and promoted to Capt, were directly responsible for all conditions in this camp. Four men, two of whom were Australians were beaten unconscious with a belt and buckle, boots and wood, each individual man was beaten for a long period, becoming unconscious two or three times. This was carried out by Lieut (Dr) MIATAKI. A pay sgt. beat other men unconscious. I was a group leader in charge of 120 men and received a beating from him with two thick sticks, one of which broke and which incapacitated me for some days. There were many incidents of brutality and our Commanding Officer, Major R.A.Campbell of 2/40 Bn could not at any time obtain an interview with either Col. Murata or Lieut Morimoto He was ignored. Hospital patients were kicked while lying on empty rice sacks seriously ill. Others were sometimes visited by a Japanese Doctor and told they would soon die. That was the medical advice. Men were often stood to attention all night when the temperature was below freezing, for a small offence.

9. PERSON WHO COMMITTED CRIME.

~~Col. MURATA, in charge of Osaka Area, was responsible for death of hundreds of allied prisoners of war. In Kobe House camp, Kobe, 120 odd prisoners died there between October 1942 and March 1943 out of a total of 500 odd men. Others died later and this was premeditated murder by the Japanese authorities. Col. Murata was in full knowledge of this state of affairs and very easily could have prevented the deaths. As an Officer in charge of prisoners of war he did nothing to look after their well being. This man is a criminal of the lowest type.~~

10. CAMP COMMANDANT.

~~Lieut MORIMOTO. This man did nothing to relieve the situation but~~

~~[illegible] Col. Murata with our Red Cross food, which, by the way, consisted of about a parcels in two and a half years.~~ Those were often stolen by the Japanese. ~~This Camp Commandant also is guilty of premeditated murder. Had he acted as a human being many lives would have been saved. I have dealt with this man in previous headings.~~

Sworn by the Deponent
on the day and year
first beforementioned
at Launceston.

before me

/s/ A. J. Noraghas. J.P.

/s/ Brian Gordon

TX 2079, Lieut B. Gordon.

A CERTIFIED TRUE COPY

John R. Pritchard

JOHN R. PRITCHARD,
Captain, Infantry

On this first day of October one thousand nine hundred and forty-six, Hylton Collins of 14 Oxford Avenue, Bankstown, in the state of New South Wales, clerk, makes oath and says as follows:-

1. As NX67015 Pte H. Collins of 2/30 Bn, I was taken PW at Singapore on 15 Feb 42. I subsequently arrived at KOBE on 8 Jun 43 and remained there till the 6th Sep 45.

2. Our living quarters were converted storehouses. We slept on mat covered benches, each man had approximately 3' x 8' of living space. The living quarters were very damp and overcrowded, as we slept, ate and lived in our quarters. Latrine accommodation was open drains covered with wooden boards. They were situated next to the cook-house, separated only by a dividing wall.

3. Food consisted of 12 ozs of rice and 3 to 4 ozs of vegetables daily, this was supplemented by a small weekly ration of fruit and approximately 4 ozs of meat per man, per week.

4. Medical supplies consisted of the usual drugs and small quantities of the usual patent medicines. There were two PW doctors, Capt BOYCE, 2/9 Fd Amb and Capt WILSON, RMC, who was later followed by Capt LONGBOTTOM. There was a Japanese medical officer for the first nine months, his name was 1st Lt. MIOMOTTO- on his departure, he was not replaced; medical supplies were in small quantities, but it was very seldom we were unable to get some sort of treatment.

5. ~~Clothing was in reasonably good~~ supply; we were issued with one working uniform, one rest uniform, two sets of underclothing, one pair of socks and 1 pair of boots. A greatcoat was also issued during winter months. As articles became unserviceable, they were replaced. In addition, we were allowed to retain our own personal supplies, and encouraged to make clothing for ourselves.

6. We received 3½ parcels of Red Cross supplies - they were the American Food Parcel; in addition, 1 pair of boots and 1 set of underclothing were received. Other items such as combs, soap, etc. were received in very small quantities, and had to be shared. During the latter period of the war, Red Cross boots were worn by some of the Jap guards. In addition, I saw food parcels consumed by the Jap guards. The commandant, Lt TAKANAKA told us that he intended to use these Red Cross supplies for his own troops.

7. ~~The purpose of the camp was to supply working~~ parties for the KOBE dock areas and railway sidings. We were all either stevedores or wharf labourers. We were rented out to the various stevedoring companies, who were responsible for our treatment from the time we left camp, till we returned. Working conditions were reasonably good. We worked from 7.30 to 4.30 with a 40 minutes break for dinner, in addition we had a ten minutes break morning and afternoon. The main purpose they had in view was to get as much work as possible, the more efficient we became, the better the treatment. We were paid by the Camp Staff for the work. The camp authorities were reimbursed by the stevedoring companies. We received 10 cents a day, with increases for efficiency. Some Privates received 30 cents NCOs received a 50% additional allowance - this money was ~~immediately banked. It was subsequently~~ allotted by us to the American Red Cross.

/s/ K. J. Mitchell, J.P. /s/ H. Collins

Pros. Ex. No. 29

8. The Camp Commandant on our arrival was LT MOTIMOTO - he remained there till approximately May 44, when he was replaced by LT TAKANAKA, who remained till the cessation of hostilities. I recall an incident on 11 Aug 43 when NX2974 Pte W.E. Hall of 2/30 Bn was working with me on a ship at the docks. He slipped and fell in the hold. The ship authorities signalled a German submarine for medical attention, but the guards refused permission for Hall to leave. Hall was subsequently taken back to camp by truck at 4.30, and taken to the RAP. He was left there by the Japanese MO MIOMOTTO, who refused to permit either Capt BOYCE or Capt WILSON to give any treatment. Hall was left there for four days without treatment. I know this, as I visited him in the RAP, and he was still unconscious. Capt BOYCE also told me of the particulars of the incident. On 15 Aug 43 during evening rounds of the Japanese MO, I was in the RAP when he walked in and went up to Hall and spoke to him somewhat as follows:- "Attention - keep quiet, why don't you salute me". Hall had been coughing. The doctor then kicked him in the legs, and hit him about the legs with his sword. I left the RAP. I was subsequently told by CPL HAROLD SHANNON, a medical orderly, that this treatment continued for about ten minutes. Hall subsequently died at 11pm. I am of the opinion that his death was due to the failure of this MO to either give him proper attention, or to permit POW doctors to attend to him. MIOMOTTO was about 5'3", tubby round faced, well educated - he spoke poor English. He claimed to have studied in England. I believe he was a drug addict. He was responsible for the beatings of PTE JEANS and various Englishmen. I cannot now recall particulars of the incidents. This doctor was generally referred to as "THE MAD DOCTOR".

9. I recall an ~~incident in Mar 45~~ when PTE JOHN MASON 8 Div Sigs and GNR ALEC CROFT 2/10 Fd Regt were taken to the cookhouse by "The Pay Sgt", whose name I do not remember, for some alleged offence. I was told by them later that they were forced to kneel, were hit about the head and shoulders with a sword stick. MASON was knocked unconscious three times, and CROFT knocked unconscious once. Their punishment lasted about half an hour. "The Pay Sgt" was about 5'7" - efficient, good looking, smart in his appearance. When KOBE was burnt on 17 Mar, "The Pay Sgt" caught an English Pte looking out of a window - this action was against orders. I saw him beat this man outside the guardhouse. As a result of the beating, he spent 14 days in hospital. He administered many punishments, which were out of all proportion to the offences.

10. Both camp commanders knew of the beatings in the camp - they did not actively participate in them, but allowed them to take place. There were frequent protests made by CAPT BOYCE and MAJ CAMPBELL and LT JOHN FULLER.

11. MORIMOTO was generally known to us as "JACK OKEY" - he was about 5'6½" - solidly built - slightly fat - he waddled in his walk; jutting chin - high forehead. It was generally believed he came from a highly placed family. He was extremely well-educated. TAKANAKA was about 5'6", ~~wizened, sharp featured and~~ unusually dark in complexion -

he ~~usually looked as though~~ he needed a shave. He was ~~quick-tempered, and excitable.~~ He spoke reasonably good English.

SWORN the abovenamed deponent,
Hylton Collins, at Sydney, this
first day of October one thousand
nine hundred and forty-six /s/ H. Collins.

BEFORE ME /s/ K. J. Mitchell
A Justice of the Peace

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

WAR CRIMES

AFFIDAVIT OF TX 2079 Lieut Brian GORDON.

On the Seventh day of August 1946, BRIAN GORDON of 5 Compton Avenue, Launceston, Tas. officer whose regimental number is TX 2079, being duly sworn makes oath and says as follows:-

1. I am TX 2079 Lieut Brian GORDON a former Prisoner of War in Japanese hands. I was in Camp known as Kobe House, Kobe Japan.

2. This statement gives further details to para 3 of sworn statement dated 20 Mar 1946.

3. Lieut MIATAKI, a Japanese Army doctor, held many surprise roll calls often at midnight or in the early hours of the morning. These roll calls lasted from an hour to hour and half and caused great physical and mental strain to men who were already exhausted from their long day's work.
The day following one of these midnight roll calls an Australian private fell from a boat he was working on and died. This was due to his exhausted condition, caused by loss of sleep and mental worry. Major R.A.CAMPBELL 2 i/c 2/40 Bn will verify this and give the name of the Australian.
Lieut. MIATAKI killed many Australian prisoners indirectly. He was an animal.

Sworn by the Deponent on the day and year first beforementioned at Launceston.

before me

/s/ A. M. Hazelwood J.P.

/s/ Brian Gordon
TX 2079 Lieut.
B.Gordon

A CERTIFIED TRUE COPY

JOHN R. PRICHARD
Captain, Infantry

Pros. Ex. no. 30

I, George Henry Clifford TITE, of 15 Canning Street, North Melbourne in the State of Victoria, make oath and say:-

1. Prior to discharge, I was VX56209 Pte. TITE G.H.C., of 2/29 Aust Inf. Bn, and was taken prisoner of war at SINGAPORE on 15 February 1942..

2. About 15 April 1943, I was shifted to KOBE HOUSE Camp JAPAN, and remained there until some time in May 1945. The Camp Commandant at KOBE HOUSE , when I arrived, was Lt. MORIMOTO, and he was later replaced by Lt. TAKAMAKA.

3. Food consisted mainly of cereals, soya beans, and green tops of vegetables, Meat was issued so seldom, that I can not recall how often it was on, but would say, not more than once per month at first, and in the later stages of my stay in KOBE HOUSE Camp, not issued at all.

4. Ration of food was approximately 10 ounces of cereals and about 4 ounces of beans per man, per day. This amount varied, and was later reduced by about one third the quantity. Prisoners who, for any reason, did not work were allowed only two (2) meals per day. Sick prisoners who did not work were given only half ration.

5. Capt. BOYCE, Aust. Army Medical Officer, attended the sick, but appeared to be without sufficient medicines or drugs. A Japanese, known to us as the MAD DOCTOR, also attended the prisoners, but appeared not interested unless a man was almost dead. This man appeared to delight in beating the prisoners and otherwise making life unbearable.

6. Clothing was scarce and consisted mainly of cast off Japanese Army uniforms. No provisions were made for change of clothing, and prisoners working in the graphite factory became particularly dirty. Japanese rubber boots were sometimes issued, but these broke up with hard work, and were not replaced; most prisoners suffered considerable hardships during the winter months, when working and walking in snow. Socks were of the heelless cotton variety, and official issue was two pairs per year. That issue was not always made.

7. Quarters were a three story bond-store with iron barred windows, and steel shutters. During air raids, these shutters were closed. Latrines, cookhouse, and shower room, were all on the ground floor. Latrines were not often emptied and then overflowed onto the floor.

8. Work was performed by the prisoners at TOYA STEEL WORKS YOSHIHAMA OIL WORKS, a graphite factory and the KOBE DOCKS, and Railway goods yards.

9. I worked in the TOYA STEEL WORKS for about ten months during 1944, Conditions consisted of pulling heavy steel hand-carts, loaded with approximately 10 cwts. of pig iron, and/or ingots. Two prisoners pulled and pushed each hand-cart. Hours were from about 0800 hrs. until about 1645 hrs., with a short break for lunch.

10. I worked for approximatly three months in the Graphite factory during the latter part of 1943. Prisoners in the Graphite factory worked in clothes made of material, like hessian, and this rubbed and chaffed the skin. One job within the graphite factory that was performed by

/s/ R. S. Hitch /s/ George H.C. Tite

Pros. Ex. No. 21

10. Cont'd.

prisoners, was to empty the hot ashes from the kilns and wheel them, in mine skips, for 350 yards. The heat from the ashes was intense, and the ashes would blow over the prisoners.

11. Once while in KOBE HOUSE Camp, the MAD DOCTOR lined up eighteen Australian prisoners including myself, and punched each of us a number of times in the face. I cannot remember even the approximate date when this occured.

12. A number of times, I saw the MAD DOCTOR beat the prisoners with his fists or sword, but cannot recall the prisoners' names or times.

~~13. Almost every day prisoners were hit or beaten by the guards.~~

~~14. I was shifted to NOTOGAWA Camp about the middle~~ of May 1945, and remained there until after the cessation of hostilities in 1945.

15. The camp Commandant at NOTAGAWA was Lt. NAKANISHI, Camp Sgt.Major YAMAMOOTO and Mr. HIGHASHI GUCHI, was the interpretor

16. Food at NOTAGAWA Camp was much worse in quantity and quality, than at KOBE HOUSE camp. All prisoners lost weight. Rations were mairly cereals and boiled cucumber. Salt was seldom issued in this camp. Food supply was not sufficient and as a direct result all prisoners suffered greatly, and a great number of prisoners became stretcher cases, from malnutrition.

17. Clothing was not issued until about 23 Aug 45,. Prisoners wrapped a type of sacking and cloth, around their feet in lieu of boots, as boots were not issued.

18. No medicines were available to prisoners in NOTAGAWA Camp. Red Cross parcels were in a store room in the camp, but the Japanese would not issue them to the prisoners. One Red Cross parcel to 15 prisoners was issued. The Japanese ordered that the chocolate and milk in the parcels be handed back to them for use in the hospital. This was done, but to the best of my knowledge was never issued to the prisoners in the sick section.

19. Quarters consisted of a native hut covered with a kind of palm leaf and bark. Rain poured throughthe roof until the bark swelled. Bed space was approximately 6 feet by 1 foot 6 inches. Mosquito nets were provided but had many holes in them and were useless. Latrines were about two yards from sleeping quarters and were not emptied often enough, and as a result, overflowed.

20. Working parties worked on dykes, reclaiming land from the swamps. Conditions were bad, as prisoners were required to work hip deep in mud and slush. Guards often beat prisoners at work, using a short cane or stick.

21. After returning to camp from work, prisoners were given a period of physical training, before being allowed to break off. This physical training consisted of running backwards and forwards along a street, followed by a number of body presses until they became exhausted completely. ~~When they fell to the ground, HIGHASHI would~~ kick the

/s/ R. S. Hitch /s/ George H. C. Tite.

21. Cont'd.

~~prisoners to make them carry on. If prisoners did not lower~~ ~~themselves~~ low enough to suit the Japanese, HIGHASHI or the Camp Sgt-Major, would strike them with a stick.

22. The Camp Sgt-Major, YAMAMOOTO, often beat the prisoners during the P.T. period and at any time within the camp. Prisoners were sometimes ordered by the guards to hold a large bucket of water in their hands and raise and lower it for about half an hour. This form of punishment was ordered mostly by HIGHASHI, or the Camp Sgt-Major.

/s/ George H. C. Tite.

Sworn at Melbourne in the State of Victoria this 7th day of September 1946.

Before me,

/s/ R. S. Hitch

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

A CERTIFIED TRUE COPY

JOHN R. PRICHARD
Captain, Infantry

AUSTRALIAN WAR CRIMES COMMISSION.

I, VERDUN CURNOW of Port Lincoln in the State of South Australia, Welder, MAKE OATH AND STATE as follows:

/s/O.H.7550 /s/ V.C.

1. That I was formerly SX.2568, Private V. Curnow, Ammunition, Subpark, 8th. Australian Division, and I was taken prisoner of war by the Japanese at SINGAPORE on the 15th. day of February 1942.

2. That I remained in SINGAPORE after capture until the 15th. day of May 1943. I was held prisoner at CHANGI CAMP in Singapore.

~~3. At CHANGI I was allowed a radius of seven miles in which I could~~ move about in. The food was scarce, consisting mainly of rice and sweet potatoes, the rice being of poor quality, Thailand rice. The only clothing I received was the clothing with which I completed the campaign. The only medicine I had was what was left after the campaign. The quarters were fairly good being the homes of British officers.

4. That in September 1942 I went to work on the docks at Singapore doing stevedoring work. It was quite common to see men hit with pieces of stick or steel, or tied to trees and bashed.

5. That during this period I saw one man FRANK O'NEILL (who was in the same unit as I was) beaten up. He was working in a garage and was ordered to take a battery out of a car. The Indian guard saw him and stopped him working and reported him to a Japanese corporal. O'NEILL was hit about the face and shoulders and was badly marked and bleeding. This was in November 1942 at RIVER VALLEY CAMP at BUKITIMA ROAD, Singapore. And I saw two Chinese tied up with wire and thrashed with a broom and wooden clogs until they were unconscious and bleeding from head to face.

6. At CHANGI we were put into a compound known as "The Square" because we would not sign a circular on escape. Conditions were terrible. There were 5000 men, English and Australian, in this small area surrounded with machine guns nests and each man had 6 ft. x 3 ft. to do everything in, eat, sleep, etc. Latrines were open culverts, ~~dysentery was prevalent, diptheria broke out. COLONEL CALLAGHAN ordered~~

/s/ V. Curnow
/s/ O. Higgins J.P.
25/9/46

Pros. Ex. No. 32

~~us to sign this document as the lives of all men were threatened by~~ these living conditions.

7. That prior to embarkation for Japan I was a beri-beri case in the Hospital Camp at CHANGI. I had been out of Hospital about three days prior to embarkation. We were paraded, had injections for dysentery and T.A.B. needles. A Japanese Warrant Officer told us that we were not being transported to a work camp, but were going to a Red Cross Camp to make the Red Cross Camp for the whole of the prisoners in Japan. He informed us there was no necessity to take medical supplies as when we arrived at our destination there would be plenty of medical supplies. ~~The result was that very little medical supplies were taken with us.~~

8. That I was transported from Singapore by sea to a point off the Indo-China coast, SAIGON, where we remained six days and from thence we went to TAIWAN, an island south of Japan. But we did not leave the ship. We were there approximately three days. From Taiwan we went to MOJI in Japan. The period of transport was from the 15th. day of May 1943 to the 15th. day of June 1943.

~~9. The conditions on board the ship, which was the NAMALES MARUN, were~~ terrible. I was confined with 300 others to the rear hold of the ship. We had to lie alongside one another in cramped and insanitary conditions. There were over 1000 men aboard and only two lavatories provided for the men in the rear hold. To my knowledge there were no medical supplies aboard other than those carried aboard by our medical officers. The food consisted almost wholly of rice with some bamboo shoots. Dysentery was prevalent. The quality of the rice was good ~~but it was very badly cooked because there were insufficient boilers for the number of men aboard.~~

/s/ V. Curnow
/s/ O. Higgins J.P.
25/9/46

~~10. Between BAIMAN and MOJI we were attacked by American submarines. Every man was locked down in the hold and the Japanese mounted machine guns over the tops of the holds. This happened two days in succession.~~

11. We were disembarked at MOJI in the evening of the 15th. day of June 1943 and they sprayed us with a disinfectant and marched us to the railway station, three miles away, carrying all the equipment we had. The men with dysentery were separated from the men who were fit. I saw the men with dysentery marched away and did not see them again.

12. From MOJI we went to KOBE by rail. A number of the men were in ill health suffering from dysentery and malnutrition, but they managed to do the march to the railway station. The railway journey took thirteen hours. We received food on the train which was good, fish rice and some meat. We were marched from KOBE railway station to an oval about half a mile away and addressed by a Japanese colonel. ~~We arrived at this oval about 10.00 a.m. and remained there till~~ 7.00 p.m. until our men had learned to count up to fifty in Japanese as instructed by our guards. There were a number of bashings that occurred during this time. JACK TRELLEAVEN, in my unit, was beaten round with a stick by a Japanese private because he could not learn to count up to fifty. The Japanese who did this beating was a one-eyed soldier and was known by the nickname of "BOT-EYE". I saw twenty to thirty of these beatings at this oval. They were authorised by a Japanese staff captain, MUROMATO, who did this by indicating to the Japanese privates the men they were to approach and beat. We were supplied with a loaf of bread, which would be equal to a roll which you would purchase in Australia, for dinner. It was good quality. We had with us at the oval our private bags, South African Red Cross supplies of one tin of bully beef and one tin of Margarine (in 7 lb. ~~tins). The Japanese searched us and took all these supplies as well.~~

/s/ V. Curnow
/s/ O. Higgins J.P.
25/9/46

~~We as any valuables such as wristwatches, rings and any jewellery and confiscated them.~~ A Japanese, COLONEL HUROTA, whom I could identify, instructed this to be done. He also had JOHN R. MASON of Victoria, beaten up very badly for smiling while on parade. The Japanese took our Australian hats and practically all our uniforms excepting a few woollen articles like socks and pullovers, and re-equipped us with ~~Japanese military uniforms which were ragged, secondhand and filthy.~~

14. We were then marched to a prison house known as KOBE HOUSE; a pre-war British warehouse of three stories. About 400 Englishmen from the Royal Scots Regiment off the "LISBON MARU" were already in the warehouse. This made about 600 in which building. Only Australians were taken from MOJI to KOBE. We remained in Kobe House until the first bombing raid on Japan on the 17th. day of June 1945, when we were bombed out.

15. The conditions of the camp were awful. There were 600 men in a confined space. We had the same clothing all the time. The food was terrible, rice, digon and beans. We cooked our own food. We were never supplied with any more medical supplies although there were Red Cross supplies in the camp. We worked on the Kobe docks stevedoring and at the graphite mines, shovelling graphite. The result of this was that we got filthy dirty and the weather was exceptionally cold, snowing, and all that was available for washing were cold showers. Later, in December 1943, they provided us with hot baths once a fortnight. It was a concrete bath and one filling with hot water had to accomodate 300 men. The water was filthy.

16. During this period I saw dozens of men beaten up with pieces of steel, sticks and with swords. I saw the following men beaten

KELLY of New South Wales.	JOHN MASON of Victoria.
CURLY FRASER of New South Wales.	LT. FULLER of New South Wales.
A. S. JEYNES of Queensland.	A.R.IWALL of Queensland.
BRIAN D. HEALEY of Melbourne.	LESLIE B.J.KELLY of New South Wales.

/s/ V. Curnow
/s/ O. Higgins J.P.
25/9/46

V. J. TRAPP of Queensland.	R. C. HORNE of New South Wales.
R. DIXON of Melbourne.	S. S. COOK of Sydney.
R. L. WELLS of New South Wales.	T. J. ELLIOTT of New South Wales.
L. SERONG of New South Wales.	R. F. PRYOR of New South Wales.
J. GILMORE of Western Australia.	P. W. CHIRIDES of West. Australia.
A. K. CROFT of Victoria.	RAY BROWN of New South Wales.
K. R. TULLY of New South Wales.	BOB GARDNER of New South Wales.
C. H. CUPPLES of New South Wales.	L. SMITH of New South Wales.

And the Japanese responsible for these beatings were:-

TAKADA, a prison guard.	THE MAD DOCTOR.
BOT-EYE, nickname.	WARRANT OFFICER PAYMASTER
MARITTA GUNSU	MACKADACK, storeman.
HORSEFACE, nickname	COLONEL MUROTA
BETTY BOOP, nickname	CAPTAIN MUROMOTA

and the Camp Commandant - Lieutenant TACKANACK - who succeeded Col. MUROTA. I could identify any of these Japanese.

I have seen men for eight hours with a stick underneath their knees, squatting. This stops the circulation to their extremities. An armed guard insisted on their remaining in this position. I know that this affected the spine of at least one of the victims.

17. During the whole time of my stay at KOBE there was never sufficient food. As time went on the ration was decreased and the rice was substituted by KIBI, a small red seed. This was very inferior to the rice. We received a small quantity of potatoes, a small piece of fish once a month. We had one bun of bread for dinner each day and nothing else for dinner except what we could steal. Soya bean paste was added to the soup made from Digon. The result of this food was that I developed beri-beri again and diahorrea and general debility and malnutrition. The rest of the prisoners were affected in the same way. The living conditions were very bad. We only had three blankets for the whole of the time I was there and a ~~xxxx~~ straw mat over the top of wood was what we slept on. The bugs, lice and fleas were thick. The cook house and lavatories were alongside one another. The lavatories were Asiatic style with no septic system, but the top open and exposed and filthy.

/s/ V. Curnow
/s/ O. Higgins
25/9/46

We were allowed no recreation, the building was a small one and the only exercise that could be taken was to walk up the three flights of stairs. We were not allowed out of the house for exercise. In the winter they changed our uniforms to a slightly heavier type of uniform but no change was made in the sleeping conditions or in the bedding provided. We were also,provided with a YASUMI SUIT, but were only allowed to wear this suit on holidays and then only for two or three hours. Other than that they were folded up on the back of the bed. At first we were allowed to have a holiday every Sunday, then one day per fortnight, and then we were not allowed any holidays at all but had to work every day of the week.

~~18. In September 1944 I was caught in possession of 4 lbs. of Black Tea by MARITTA GUNSU. He bashed me with a kagi, a steel hook of about 15 inches long, across my head and cut both sides of my face open and busted my ear drum. I was carried home by three Scotsmen, DAN LARRIE, EDDIE FRASER, and SANDY LAIRD of the Royal Scots. This occurred three miles from camp at MINATA GAWA railway station. On another occasion in KOBE HOUSE I and two other men were stood to attention for four hours by this WARRANT OFFICER PAYMASTER. He made us stand to attention and then hit us with his fists across the face and knocked us down two or three times. This treatment was suffered by all the prisoners at various times while I was at KOBE HOUSE.~~

19. That the Japanese lieutenant known as THE MAD DOCTOR was in charge of Kobe House, as the medical officer. There was a roll call each day and all the Japanese took it in turn to call this roll. The men dreaded the days on which this MAD DOCTOR would be on duty. He would stand the men to attention for three or four hours at a time and give them Japanese drill and very, very often, would subject the men to bashings. Often when we were in billets in bed, he would make

/s/ V. Curnow
/s/ O. Higgins J.P.
35/9/46

the prisoners sit to attention in bed for half an hour or more until he left the sleeping quarters. Frequently, between 9.00 p.m. or 10.00 p.m. at night he would come into our billets in a dressing gown with a Japanese sword and with dark glasses on. He would then pick out one individual prisoner, go over to him and start bashing him over the head with his sword. He did this a good number of times to BILL TIVER of New South Wales.

30. As the result of the food, living conditions and treatment my normal weight of 12 stone 7 lbs. came down to 7 stone 10 lbs. This MAD DOCTOR was the Japanese medical officer. If a man was feeling ill with a high temperature and went to him, he was just as likely to stand the man to attention for one hour or more and then perhaps punish him. Therefore, the men would not parade before him for illness at all. They were frightened of him. There were a number of deaths in the camp due to malnutrition and failure of medical attention. One man had his leg broken at work and the only medical attention he received was from his fellow workers and they bound his leg and put pieces of wood to hold his leg in position. This man's leg is now short of normal length. We had one medical Australian Officer and one British Medical Officer, but only for a short time. Our own medical officer's opinion was always overruled. He was only allowed to have a certain number of sick men in the camp each day. If the number exceeded that number, the rest would have to go to work. On numerous occasions men went to work yet could not walk, so had to be wheeled or perhaps pushed on a bike. This was done by the MAD DOCTOR's orders. Boots were often short so they were substituted by Japanese boots, "JIBAJABBITS" and a lot of men went without. At this camp, KOBE HOUSE, we were inoculated in the first six months about once every fortnight and thereafter about every six months. What the inoculations were for we were never told. We were vaccinated twice while at

/s/ V. Curnow
/s/ O. Higgins J.P.
25/9/46

Kobe House. The dead were placed in barrels and taken to a crematorium and because of this the men refrained from singing the song "Roll Out the Barrel".

21. That the day started at 6.00 a.m. with physical training, breakfast at 6.30 a.m. and started work at 7.00 a.m. One hour off for lunch at midday and returned to camp at 5.00 p.m. in the daylight in summer, but often we worked overtime and came back in the dark. ~~We worked the same time in winter. Physical training was given in the snow with all our clothes removed except our trousers and boots. Often the sirens went and we had to run back to Kobe House to be locked in, sometimes a three mile run. Japanese were very quick tempered when raids were expected and dealt numerous bashings.~~

~~23. In June 1945 we were bombed. In KOBE HOUSE we were locked inside steel doors and machine guns nests were mounted outside the doors of the House. The first planes came about 8.00 a.m. with incendiary bombs and some 200 or 300 of these incendiaries came through the roof of Kobe House. Half an hour later another raid followed. These planes dropped high explosives oil bombs, two of which made direct hits on Kobe House with 500 lb. bombs. The steel doors were blown in. We then evacuated the building through these blown in doors and proceeded to an oval. Only three Australians were injured and nobody killed. The injuries were due to the incendiaries and were burns. There were eight Japanese casualties and they remained on stretchers outside the building all day and died that night. We marched that night until 3.00 a.m. to a camp in the hills, named KAIISAKI, about 10 miles from Kobe House. During that day from the time of the bombing till we got to the camp we had one meal, a bowl of rice per man.~~

/s/ V. Curnow
/s/ J. Higgins J.P.
25/9/46

~~33. We had the same permanent staff guards at KALISAKI and our quarters~~ were fairly good, but we were rationed to two meals per day, one at 8.00 a.m. a bowl of rice and one at 4.00 p.m. a bowl of rice and a bowl of soup. We had the same three blankets as we had at Kobe House and the clothes that we had on. I carried my Yasumi suit, but a number of the others did not, but we were not allowed to wear it. Two days after our arrival we started work, the same type of work, It was distant some seven or eight miles away and we had to walk over mountainous country and over very steep hills. The men going to work received rice for dinner, thus giving them three meals a day. Only a small per centage of men were employed as most of the factories had been put out of action due to the bombing.

34. While at KALISAKI I saw the worst bashing I ever saw during the whole of the time of my imprisonment. There were two Australians (I do not know their names) who were caught stealing two bowls from the Japanese quarters and all the Australians were paraded to watch the bashing by some six Japanese soldiers and they hit these men until they were black and blue, with sticks, steel and swords, from their heads to their heels, and one man was crying for mercy. The bashing lasted over one hour, The Japanese who authorised this was the WARRANT OFFICER PAYMASTER. The soldiers who did it were MARITTA GUNSU, TAKADA, HORSEFACE and BETTY BOOP. After these men had been belted they were tied by their finger tips to an overhanging branch of a tree and tied in such a way that their weight was left on their toes. Three Australians watching this fainted.

35. That about the 15th. day of July 1945 we were marched approximately ten miles to WAKANIAMI to a two storey building in the middle of the steel works. We went to work about two miles distant doing ~~stevedoring and in graphite work. The living conditions were better~~

/s/ V. Gurnow
/s/ O. Higgins
25/9/46

~~there and the Japanese officers were more sympathetic. When the raids were on while we were in this industrial area, we were locked in the building. On one occasion there was a near miss about 100 yards away by a 1000 lb. bomb, which blew all the windows in our quarters. After this the Japanese became frightened and decided to race us to the hills when an air raid occurred. They were frightened if planes came overhead. On some days when the raids were on we went to the hills and we did not get any meals. We still lived in these quarters with the windows out and under the same conditions of two meals a day unless we worked, and this continued until August 15th, 1945.~~

26. I know the facts deposed to herein of my own knowledge except where otherwise appears.

SWORN at Port Lincoln by the said)
VERDUN CURNOW on the 25th)
day of September 1946, Before me:) /s/.V..Curnow.....

/s/.O..Higgins.....
A Justice of the Peace in and for
the State of South Australia.

AFFIDAVIT of VERNON CURCOW.

- for -

AUSTRALIAN WAR CRIMES COMMISSION

Cecil R. Doudy,
Solicitor,
Lewis Street,
Port Lincoln.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
CWO, USA.

I, William Thomas DUNN, of 3 Jolly Street, West Brunswick, in the State of Victoria, make oath and say:-

1. Prior to discharge, I was VX 2192 Private W.T.DUNN of 2/26 Bn, and was taken prisoner of war in SINGAPORE on 15 Jan. 42.

2. From 7 June 1943 to 15 Feb. 1945, I was in KOBE Camp JAPAN.

3. In this camp was a Japanese medical officer named MIATAKI and nicknamed the MAD DOCTOR.

4. He used to go through the camp continually beating prisoners with his sword belt, hands or anything he could lay hands on, for trivial reasons or no reason at all, and kept the whole of the camp in a state of intimidation.

5. He used to call parades at all hours of the night and keep men standing in the cold for hours, and beat them if they moved in the slightest degree

6. Towards the end of 1943, MIATAKI saw Pte JEATES of 2/26 Bn with a cigarette butt in his hand after roll call. Smoking was prohibited and although Pte. JEATES was not smoking he took him to the guard house and beat him with a sword belt until he was unconscious, and then threw a bucket of cold water on him, to revive him and then beat him again.

7. ~~One of the former guards escorting prisoners, from KOBE to SHOWADENKI BY Cotton works, was MIGUTAMA SAN nicknamed GRUMPY.~~ He took every opportunity to make life unbearable for prisoners in his charge. On every occasion he would strike them with his sword stick picking mostly on men who were too weak to work hard.

8. On one occasion he took the opportunity of leaving Sgt. DANDY from one of AIF Infantry Battalions in the sun holding two bricks above his head, because he alleged Sgt DANDY spoke to a cookie, which he did not.

9. From 15 Feb. to 28 May 1945, I was in No. 8 Camp NAGOYA.

10. The interpreter at this camp was nicknamed DONALD DUCK. His main object was to get as much work out of the men as he could, irrespective of whether they were sick or weak, and he used to slap them and urge them on and offer them more food if they did more work.

11. About 1 July 45, I was paraded before DONALD DUCK for not doing enough work. He slapped me several times and then made me kneel for 30 minutes in the guard room.

12. When we arrived at KOBE Camp in June 45, the Camp Commandant Lieut. MORIMOTO took all personal valuables from the prisoners and kept them. These were never returned. A "Parker" fountain ~~pen and a gold "Evershrp" pencil were taken from me and not returned.~~

Sworn at Melbourne, in the State of Victoria this 8th day of July 1946. /s/ William T. Dunn

Before me, /s/ R S Hatch

A Commissioner of the Supreme Court of Victoria for taking Affidavits.

A CERTIFIED TRUE COPY

John R. Pritchard

JOHN R. PRITCHARD
CAPTAIN, INFANTRY

Pros. Ex. No. 33

Hayden, Otis C. (Name) ASN 287932 (Rank)
after being duly sworn at 29th Replacement Depot, Luzon, P.I.
on 7th September, 1945, testified as follows:

Q. How old are you?

A. 23

Q. Were you captured by the Japanese and made a prisoner of war? If so, when and where?

A. Corregidor, 9 May 1942

Q. At the time of your capture of what unit were you a member?

A. 4th Marines

Q. By what Japanese unit were you captured?

A. Unknown

Q. Do you expect to be repatriated, and if so, to what country?

A. To United States

Q. What will your complete address be after your repatriation?

A. 6555 Ingleside Ave., Chicago, Ill.

Q. Will you state the names and locations of the camps at which you were held a prisoner of war and the dates you were confined at each camp?

	Compound or Camp	Location	Dates
A.	Corregidor	Manila Bay	9-18 May 1942
	Cabauatuan No. 3	Cabauatuan, Luzon	19 May-19 July 1942
	Old Bilibid	Manila	October, 1942
	Kobe	Kobe, Japan	Nov. 1942-27 Aug. 1945

Q. Do you know, or have you reason to believe, that the Imperial Japanese Army failed to treat prisoners of war with humanity or otherwise committed atrocities and war crimes against them?

A. Yes

Pros. Ex. no. 34

Q. Will you state all facts in detail pertaining to atrocities, war crimes, violations of Rules of Land Warfare and human decency at Kobe (camp or other place), the dates thereof, the perpetrators, giving their names, ranks, units and other identifying information.

A. From 27 October 1942 to 27 August 1945, I was at Kobe Camp, Kobe, Japan. There, acouple of men were beaten every day or so. None of them died. It was mostly for stealing food, and no one was ever given a trial. Wewere in an old warehousewhere the windows were boarded up, and with steel shutters outside. They neverallowed any air in there. The food wasso terrible we would have died if we did not steal, so we took food from thewarehouses where we worked. There was no heat at all provided at any time, and it is in a climate ~~where they have~~ snow. There were no medical supplies there until about August, 1944, when the Red Cross sent same.

There was aJapanese doctor their (a lieutenant) during late 1943 and early 1944 who would line up asmany as30 prisoners and beatthem for not seeing and saluting him. We were ordered to salute one star privates and all above. I haveseen the doctorattack an Australian with a saber and almost cut one ear off, for leaving a cigarette on the floor. The only name we knew him by was "the mad doctor". He wasabout 24 years old, fat, weighed 165 pounds, about 5 feet 4 inches, spoke broken English, had bad feet, andusually wore only one boot. Hewould drill us in Japanese and we would have to count off in Japanese, and if we made too many mistakes, he would beat each man with his saber.

We were paid 10 centsa day for work, and could buy afew things at their stores. They had no change, and would give us pencils and notebooks in change. If the doctor found these on us, or at our bunks, he would beat us with his saber. We were given about 10 small bars of soap during the entire period we were there.

/s/ Otis C. Hayden

Subscribed and sworn to before me this 7th day of September, 1945.

/s/ Stanley M. Corbett
Captain JAGD

A CERTIFIED TRUE COPY,

JOHN R. PRICHARD
Captain, Infantry

"On this twenty-third day of August, One thousand nine hundred and forty-six, Lawrence Gordon MOUNTFORD, of 7 Mulga Street, LEETON, in the State of New South Wales, Carpenter, makes oath and says as follows:-

I, NX35482, Pt . MOUNTFORD, Lawrence Gordon, 2/30 Inf. Bn., 8th Division, was taken prisoner on 15th February, 1942 at Signapore and was encamped at Changi, then drafted to River Valley as a Carpenter where I was encamped for approximately 5 months. I returned to Changi in October 1942 and remained here until 15th May, 1943.

On 15th May, 1943 I was moved to Kobe Camp in vicinity of Kobe Harbour. ~~This camp was controlled by a Lt. Col. of Osaka Camp, the name of whom I cannot recall, but to the best of my recollections his name was Moriarti. I was a prisoner at Kobe for approx. 27 months. Lieut. Morimoti was the Camp Commadant of Kobe. Under the circumstances the food was fairly good but scarce. Medical supplies were inadequate. Quarters were much overcrowded and generally unhealthy. Sanitary arrangements were in a shocking state, never being regularly attended to. Working conditions were made difficult with shortage of food and poor condition of footwear. During the entire twenty-seven months I was at Kobe only three parcels were received from the American Red Cross per man. Although I have no definite proof I am quite sure that Red Cross supplies were misappropriated by the Camp Staff, the names of whom I cannot recall.~~

I can remember the Medical Officer who was stationed at Kobe Camp for most of the time I was there. He was known as the Mad Doctor, when the Camp Commandant was absent this Doctor assumed charge of the Camp, and treated the prisoners most cruelly for the least little thing.

On many occasions I have witnessed severe thrashings of prisoners by this Doctor using a buckle ended think leather belt and also a scabbard containing a sword. The thrashings were so severe that a large number of the victims were admitted to hospital very badly knocked and cut about sometimes in an unconscious state.

~~In May 1946 I was transferred to Notagawa Camp. The Camp Commandant was to the best of my knowledge 2nd Lieut. Nakanishi Yoshio. I cannot recall the names of the Camp Staff with the exception of Mr. Highashi Guchi. The entire staff treated the prisoners including myself to all the indignities they possibly could. This included continual cruel beatings. For example after a hard days work, strenuous physical training was imposed on the prisoners under force with staff using long, heavy sticks on the prisoners.~~

~~Mr. Highashi Guchi was known to encourage this ill-treatment. Highashi Guchi approached Col. Prescod who was in charge of our group of 64 prisoners, asking for a present of 100 yen for the Camp Commandant, Lt. Nakanishi and offered in return good treatment. This was put before our boys who all refused to give any kind of bribe. On this refusal Highashi Guchi the interpreter said that we would regret it. Immediately afterwards I noticed the treatment became more severe and cruel.~~ /s/LGM /s/JSP

/s/ J. S. Palmer, J. P. 23/8/46

/s/ L.G. Mountford

Pro. Ex. no. 35

~~The food at Notagawa Camp was of very poor quality and scarce owing to the fact that the Camp Staff misappropriated our rations. During the last month before being released there was no salt in the food and as a result every man in the camp was suffering illness.~~

~~The type of work was of a labourious nature, often working waist deep in water. Medical supplies were inadequate 90% of essential drugs etc. were not available.~~

~~Over the period of three months I was encamped at Notagawa the Camp Commandant Lieut Nakanishi, although having full knowledge of the deplorable condition of the camp and the ill treatment of the prisoners, showed little interest to our welfare at any time and allowed his staff to continue in the manner I have stated above. Whilst at Notagawa Camp two small parcels were received from Red Cross which had to be shared between seven.~~

"SWORN by the abovenamed deponent Lawrence Gordon MOUNTFORD, at LEETON on the twenty-third day of August, One Thousand Nine Hundred and Forty-six) /s/ L.G.Mountford

BEFORE ME: /s/ J. S. Palmer, J.P.

A CERTIFIED TRUE COPY

JOHN R. PRICHARD
Captain, Infantry

AFFIDAVIT

CITY OF TOKYO }
HONSHU, JAPAN } 83

PHILIP E. SANDERS, Chief Boatsman's Mate, U. S. Navy, being first duly sworn, deposes and says:

1. That I was a prisoner of the Japanese Armed Forces from 21 December 1941 to 17 August 1945.

2. In November 1942, I was transferred to Headquarters Prisoner of War Camp, Osaka Area, Honshu, Japan.

3. At Headquarters Camp I was a prisoner and POW camp commander of all Allied Prisoners of War in the camp. As such I functioned as liaison between the Japanese camp personnel and the prisoners, received reports from the prisoners as to all punishment and mistreatment of prisoners and forwarded complaints as to such mistreatment to the Japanese camp commander.

4. At Headquarters Camp there were two Japanese army medical officers. One was Lt. Nosu who can be described as follows: A Japanese about 35 years old, five foot six or seven inches tall, very thin, approximately 125 pounds in weight, sallow complexion, round face and had an odd shaped, peaked head. He was very nervous and excitable in his manner and actions. The second doctor was a Second Lieutenant, later promoted to First Lieutenant in the Japanese Army and was named Miyatake. Lt. Miyatake was about 23 or 24 years old, about five foot four inches in height, of stocky build weighing about 140 or 145 pounds, round plump face, light complexion, rosy cheeks and walked with a pronounced swagger. He spoke English well but usually would not speak English around the enlisted men who were prisoners of war.

5. Lt. Miyatake was notorious throughout the Osaka Area for his brutality toward prisoners of war and beat and mistreated without cause or provocation numerous prisoners of war.

6. In November 1943, Lt. Miyatake beat and abused practically everyone in Group 3 in the British Area of Headquarters Camp. Among those beaten and mistreated on this occasion were British P Ws, Warrant Officer Seabee, Norman Archer and about fifty-eight others. Lt. Miyatake beat these men with his fists, cut many with his sword scabbard and kicked them. W. O. Seaby received the worst beating, being beaten unconscious and receiving numerous severe cuts, one cut on his head being quite serious. Numerous other men in this group received cuts and bruises which required medical attention. This mass beating was inflicted because the groups did not come to attention quickly enough when Lt. Miyatake came in on a surprise roll call. I did not witness this incident but the details were reported to me that same evening by Sgt. Major Matheson. And, that same night I did see the cuts and bruises of the men who had been beaten. It was obvious they had received a severe beating.

Pros. Ex. No. 26

7. On another occasion in about November 1943, Lt. Miyatake was duty officer and was requested to check the physical condition of Thomas Knutson. Thomas Knutson was an American Prisoner of War and had been a merchant marine mate on a Standard Oil Tanker. He was obviously serious ill with pneumonia and we had no medicine with which to treat him. Accompanied by Chief Pharmacist Mate Merret, U.S.N., now a Lieutenant in the U. S. Navy Medical Corps, I and Lt. Miyatake went over to Knutson's bunk. Knutson was on the second tier bunk, approximately five and a half feet from the floor. Lt. Miyatake ordered Knutson to leave his bunk. Knutson did so, and, because of his weakened condition, having been ill in bed for five or six days, tried to support himself by hanging on to the edge of his bunk. Because of this and because Knutson did not immediately stand at attention, Lt. Miyatake hit Knutson a number of hard vicious blows in the face with his fists and kicked Knutson several times. Merrit and I immediately protested and finally convinced Miyatake that Knutson was too sick and weak to stand. Miyatake then left and shortly thereafter an orderly came came in and said Lt. Miyatake had ordered that Knutson be taken to the hospital. We then prepared Knutson for the trip, so that he would be protected from the weather, expecting to carry him ourselves on a litter. After we wrapped him well so that he would be warm during the trip, we carried him to the gate. There the guards told us that Lt. Miyatake had ordered that Knutson be transported to the hospital in an open truck which was then standing near the gate. It was raining and bitter cold so we protested to Lt. Miyatake that Knutsen was too ill to be transported in such a vehicle. Lt. Miyatake over-ruled our protests, ordered Knutson placed in the open truck among some boxes of provisions with one blanket and sent him on his way to the hospital several miles away. About a week later I received a report that Knutson died the night of the day he was taken to the hospital. In my opinion, the beating, but more particularly, the unnecessary exposure to the cold and rain directly caused Knutson's death. This opinion was verified to me several times by Doctor David Hockman, U. S. Army Medical Corps who was acquainted with Knutsen's condition.

8. Lt. Miyatake was also notorious for his surprise roll calls and inspections when he was duty officer. Whenever he was duty officer and usually around midnight he would make an unnecessary visit to the barracks, making the men get up, dress fully and sit at attention. Then if the men did not call out their numbers to suit him, he would make the entire group repeat the roll call, one night making the officers group go through roll call forty-eight times. If the men's clothing was not fully buttoned, or, if Miyatake was not satisfied with the POW's position of attention, he would beat the prisoner with his fists, sword scabbord and kick them. Lt. Miyatake was the only Japanese officer who made a practice of making those surprise roll calls. Those roll calls were especially hard on the prisoners because they were employed at heavy labor in the steel mills and on the docks and because of their undernourished condition, especially needed their sleep.

9. As medical officer Lt. Miyatake continously forced obviously sick men to go to work in the steel mills and on the docks where they were compelled to do work for which they were physically unfit. He just had no sympathy for any prisoner of war. When he held sick call, he usually said every man must go to work without botherin to give any individual examinations. He never gave out medicines nor did he ever give any medical attention.

10. Lt. Miyatake seemed to take pleasure in beating and humiliating prisoners, especially officers. He was continously beating

prisoners with his fists or sword scabbard or kicking them. Those beatings and mistreatment by him were so numerous, however, that I can not now recall specific dates nor can I now recall specific details of such beatings.

11. As I recall it, Lt. Miyatake was on duty at Headquarters Camp from approximately 1 September 1943 to 15 August 1944. During this time Lt. Miyatake used to leave camp for short periods of time for duty at other camps, but, I do not know which camp he went to. Lt. Miyatake returned to Headquarters Camp in May 1945, but stayed only a short time.

Tokyo, Japan, 1 August 1946

/s/ Philip E Sanders
PHILIP E. SANDERS

Subscribed and sworn to before me this 2d day of August 1946.

/s/ Mandoville Mullally, Jr.
Mandoville Mullally, Jr.,
Capt. Inf., Legal Section
Investigating Officer

A CERTIFIED TRUE COPY

John R. Pritchard

JOHN R. PRITCHARD,
CAPT., INF.

AFFIDAVIT

_____
(Place)

_____
(Date)

I Archer, NORMAN, ASN 872437

45 TYNEMOUTH ROAD EAST
HOWDON, NEWCASTLE-ON-TYNE, serving in the grade of GUNNER with the
(Home address)

ROYAL ARTILLERY, BRITISH armed forces at the time
(unit) (Nation)

of my capture on 25-12-41 at HONG KONG do hereby depose and say
(Date) (Place)

1. Japanese prisons, camps or hospitals in which I was confined are as follows:

Name or Location	Date	Japanese Commander
OSAKA P.O.W. NO. 1	OCT 1942	COL. MURATA

2. Conditions in each camp, hospital or prison with respect to food, medical care, clothing, sanitation and required work were as follows:

FOOD - BAD
MEDICAL - BAD
CLOTHING - FAIR
SANITATION - VERY BAD
WORK - HARD

3. I have personal knowledge of killings, tortures, beatings, other cruelties (including starvation) or improper punishments as indicated:

Name of victim	Date	Place	Japanese perpetrator
NORMAN ARCHER AND GROUP	DEC 1943	CHICO	HEATAKI

Pros. Ex. no. 37

Name of victim	Date	Place	Japanese perpetrator

Brief description of each atrocity:

WE WERE IN EVENING MUSTER WHEN THE ACCUSED CAME IN. HE WAS THE ORDERLY OFFICER AND THE REASON HE HIT US ALL WAS BECAUSE WE DID NOT SHOUT LOUD ENOUGH. SO HE HIT ALL OF THE GROUP WITH HIS SWORD SCABBARD.

4. I have heard of and have reason to believe the following atrocities were also committed:

I MYSELF STILL HAVE THE SCAR TO SHOW.

Name of victim	Date	Place	Japanese perpetrator

Brief description of each atrocity:

5. I do have (not have) a diary or other documentary evidence. It is presently located at _____.

/s/ N. Archer
(Signature)

Subscribed and sworn to before me this 20 day of Sept 1945 at Yokohama.

/s/ Ruth D. Whitwell
(Army or Navy officer authorized to take oaths)

1st Lt. Inf. — GHQ
ASF — Organization
Team 46

A CERTIFIED TRUE COPY

JOHN R. PRITCHARD
Captain, Infantry

AFFIDAVIT

YOKOHAMA
(Place)

20th SEPT 1945
(Date)

I W. TAYLOR, ASN 860933, of

70, RIDGILL AVENUE, SKELLO",
NEAR DONCASTER, YORKS"IRE, ENGLAND, serving in the grade of
(Home address)

L/SGT. with the ROYAL ARTILLERY, BRITISH armed
(unit) (Nation)

forces at the time of my capture on 25/12/41 at HONG KONG
(Date) (Place)

do hereby depose and say:

1. Japanese prisons, camps or hospitals in which I was confined are as follows:

Name or Location	Date	Japanese Commander
OSAKA "CHICO"	11/10/42-15/8/45	MURATA

2. Conditions in each camp, hospital or prison with respect to food, medical care, clothing, sanitation and required work were as follows:

Food - Appalling
Medical care - disgraceful. (American Red Cross Medical kit was kept in store and we could not get it)
Clothing - Very Poor
Sanitation - Nil.

3. I have personal knowledge of killings, tortures, beatings, other cruelties (including starvation) or improper punishments as indicated:

Name of victim	Date	Place	Japanese perpetrator
W. TAYLOR	11/10/43	"CHICO"	MEYATAKI 2/ LT

Pros. Ex. No. 38

Name of victim	Date	Place	Japanese perpetrator
W. TAYLOR	11/4/43	"CHICO"	MEYATAKI, 2/LT

Brief description of each atrocity:

One night this Meyataki came in on Roll Call and he first knocked down the Group leader who was W.O. Seaby, then he went round the Group with his sword drawn and hit all the men on the head, he cut about twenty mens heads.

4. I have heard of and have reason to believe the following atrocities were also committed:

Name of victim	Date	Place	Japanese perpetrator

Brief description of each atrocity:

5. I do have (not have) a diary or other documentary evidence. It is presently located at _____.

/s/ W. Taylor L/Sgt.
(Signature)

Subscribed and sworn to before me this 20th day of SEPT., 1945 at _____.

(Army or Navy officer authorized to take oaths)

ASN - Organization

A CERTIFIED TRUE COPY

John R. Prichard

JOHN R. PRICHARD
Captain, Infantry

AFFIDAVIT

YOKAHAMA, JAPAN
(Place)

SEPT. 10, 1945
(Date)

I Dalconcte W. Thompson, ASN 0-89124, of KINDER, LA. (Home address), serving in the grade of 2nd Lieut with the 32nd Inf. (P.A.) (unit), American (Nation) armed forces at the time of my capture on 4/9/43 (Date) at No. 2 Gen. Hosp. Bataan, P.I. (Place) do hereby depose and say

1. Japanese prisons, camps or hospitals in which I was confined are as follows:

Name or location	Date	Japanese Commander
No. 2, GEN. HOSP., BATAAN, P.I.	4/9/42	
No. I. GEN. HOSP., BATAAN, P.I.	5/10/42	
BILIBID PRISON, MANILA, P.I.	8/--/42	
HDQRS. CAMP, OSAKA, JAPAN	11/5/42	COL. MURATA

2. Conditions in each camp, hospital or prison with respect to food, medical care, clothing, sanitation and required work were as follows:

FOOD - VERY POOR AND MOSTLY INADEQUATE
MEDICAL CARE - INSUFFICIENT & VERY LITTLE MEDICATIONS.
CLOTHING - VERY POOR.
SANITATION - PRACTICALLY NONE EXCEPT AS PRACTICED BY THE PRISONERS
WORK - FOUNDRIES, DOCKS, SHIPBUILDING YARDS AND LOADING OF MUNITIONS & MILITARY SUPPLIES.

3. I have personal knowledge of killings, tortures, beatings, other cruelties (including starvation) or improper punishments as indicated:

Name of victim	Date	Place	Japanese perpetrator
SEABY	NOV., '43	HDQRS. CAMP NO. 2, OSAKA	MIATAKE - 2nd Lieut (DOCTOR)

Pros. Ex. No. 39

AFFIDAVIT

Tokyo, Japan)
: SS
ISLAND OF HONSHU)

Walter C. Ryan, Staff Sergeant, U. S. Army, Army Serial Number 6832365, being first sworn, deposes and says:

1. That in 1942 I was a member of the American Armed Forces and was taken prisoner on Corregidor on 6 May 1942. I was then transferred to Cabantuan where I remained until 7 October 1942, at which time I was transferred to Headquarters Prisoner of War Camp, Osaka Area, Honshu, Japan. On or about 20 May 1945, I was transferred to Motogawa Prisoner of War Camp in the Osaka Area, where I remained until 1 September 1945.

2. While at Headquarters Prisoner of War Camp I was well acquainted with Lt. Miyatake, a Japanese Army Medical Officer, who was nicknamed "The Mad Doctor".

3. At that time his description was as follows: He was about 5 feet two inches in height; inclined to be stout, weighing about 140 pounds; had no mustache, and walked with a very pronounced strut or swagger.

4. I well remember him because the first time I saw him in camp was one rest day evening I think a Sunday evening in September 1943, he struck about eight American Prisoners of War with his fist for failing to see him and promptly salute him. The only one of the eight prisoners struck at that time whom I now can name was an American Prisoner of War named Durham. I can not positively name any of the other seven. From that first night on, Lt. Miyatake was notorious throughout the camp for his brutal mistreatment of prisoners of war. He, at one time or another, beat practically every man in camp. I was one of the very few who were not struck by him. This was partly due to the fact that I slept in a top bay where I was not readily observable by him on his inspection tours and was more or less out of his reach. Lt. Miyatake beat so many American Prisoners that I can not now definitely state that on or about any particular date, he beat a particular Prisoner of War.

Pros. Ex. No. 40

5. Lt. Miyatake was notorious for his unnecessary surprise roll calls late at night or during the early hours of the morning. Practically every time he was duty officer he would pull a late hour roll call. If the men did not dress fast enough and assume a sitting position of strict attention, he would beat them with his sword scabbard and kick them. On one of these occasions he cut an American Prisoner of War named Huston quite severely on the head. The roll calls were quite hard on the men, not only because of the physical mistreatment inflicted by Lt. Miyatake, but because it deprived the men of better than two hours needed sleep. All the men were in poor physical condition, most of them were doing hard physical work, and all of them needed as much sleep and rest as they could get.

6. On his periodic check on the sick, he made little attempt to make a serious medical examination. On these periodic checks if a man had a button unbuttoned, he would beat the sick prisoner with his sword scabbard. All in all, Lt. Miyatake was one of the most feared men in the camp. When he came around, I and all the other prisoners used to attempt to get out of sight as fast as possible.

7. I have seen and talked with the Japanese man held in custody at Sugamo Prison under the name of Kunio Miyatake. I definitely recognize him as the Lt. Miyatake I knew at Headquarters Prisoner of War Camp, Osaka Area, Japan, back in 1943. His appearance has changed a great deal in that he has lost a great deal of weight and now wears a mustache. I am positive in my identification, however, because of his features, facial expressions while talking, and his unmistakable walk.

/s/ Walter C Ryan

Subscribed and sworn to before me this 12th day of September 1946 at Tokyo, Japan.

/s/ John R. Pritchard
Captain, Infantry
Summary Court

A CERTIFIED TRUE COPY

John R. Pritchard

JOHN R. PRITCHARD
CAPT., INFT.

CONFIDENTIAL
RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War by /s/C.A. MUZZY, CWO, USA

For The WAR CRIMES OFFICE

Judge Advocate General's Department ---War Department

United States of America

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* *

In the matter of torture by a Japanese Medical Officer of certain American prisoners of war at Osaka Headquarters Prison Camp between March and June 1945.	Perpetuation of Testimony of Charles Allan Combs, Sgt, USMC, #301234.

* *

Taken at: U.S.Navy Hospital, Great Lakes, Ill.

Date: 13 February 1946.

In the Presence of: Charles A. Lewis, Captain, Inf.

Questions by: Charles A. Lewis, Captain, Inf.

Q. State your name, rank, serial number and permanent home address.

A. Charles Allan Combs, Sgt, USMC, #301234, 1709 N. 21st St., Omaha 2, Nebr.

Q. What is the date and place of your birth and of what country are you a citizen?

A. I was born on July 1, 1921 at Denver, Colorado and I am a United States citizen.

Q. What educational institutions have you attended and for how long?

A. I completed two years of high school at Omaha, Nebraska, leaving school in 1936.

Q. At what places were you employed as a civilian and what was the nature of your occupation?

A. I was a truck driver for the Carter Lake Dairy, Omaha, Nebraska, in the period between 1936 and 1938 and a member of the Civilian Conservation Corps in the period between 1938 and 1940.

Q. What is your marital status?

A. I am single.

Q. Have you recently been returned to the United States from overseas?

A. Yes, I arrived in the United States on September 20, 1945.

Q. Were you a prisoner of war?

A. Yes.

Q. At what place were you held and state the approximate dates?

A. Captured on 10 December 1941 on Guam, I remained there until 5 January 1942. Then I was sent to Japan, arriving at Zentsuji Prison Camp,

PROSECUTION EXHIBIT No 41

Shikoku Island, on 10 January 1942. I stayed there until approximately 15 July 1942 when I was transferred to Osaka Headquarters Prison Camp on Honshu Island, arriving 16 July 1942. I stayed there until approximately 10 July 1945; then moved to Nagoya Camp No. 10, Honshu Island, Japan, arriving 20 July 1945. I remained there until liberated 12 September 1945.

Q. What unit were you with when captured?

A. I was with the Insular Police Force, United States Marine Corps, Agana, Guam.

Q. Did you witness any atrocities or mistreatment of American citizens at any time?

A. Yes. I witnessed and was myself the victim of atrocious treatment by a Japanese medical officer.

Q. Please relate the circumstances.

A. This occurred during the period from March through June, 1945 at Osaka Headquarters Prison Camp, and consisted of not just one incident but several that were almost identical in detail. The Japanese medical officer would come into our barracks to wake us up at odd times of the night for no apparent reason and would make us sit at attention, despite the fact that we were dead tired from a day's work and weak from malnutrition. Then he would kick us in the face or hit us with his saber when we did not sit in the proper position.

Q. Please describe a typical incident in more detail.

A. The medical officer, accompanied by two or three guards, would appear at 2:00 or 3:00 o'clock in the morning and call attention. This meant that the prisoners were required to sit on the edge of their bunks, bolt upright, knees at a high angle, feet crossed, elbows sticking out stiffly at the sides and hands clenched in the lap. Many of the men were too exhausted and sleepy to get into this position immediately as required when attention was called and the officer would fly into a rage and start beating up the men nearest him. When he became exhausted, he would go on to the next room and repeat the performance with the men there. I have seen him kicking the men who sat on the lower bunks directly in the face. I have also seen him hit men with the flat side of his open sword and with the sword encased in the scabbard.

Q. Do you know of any serious wounds which he inflicted in this way?

A. No.

Q. Were you yourself ever the victim of his blows?

A. No. I slept on an upper bunk and was pretty well out of his reach during these tantrums.

Q. Did he ever go through with this attention calling and beating more than once in a single night?

A. Yes. Sometimes two or three times.

Q. Did there seem to be any reasonable explanation for his doing what he did?

A. No, none whatsoever. He did not seem to be searching for anything, but merely wishing to torture the men.

Q. Can you say anything further about the physical condition of the men at this time?

A. Yes. They were weak and some of them were sick. In addition, they were already tortured by lack of sleep because of insects and air raids and this made their suffering more acute. The air raids were especially frequent during June and insects such as flies, fleas, mosquitoes, bedugs and lice seemed to be always at work on us. This prevalence of insects was also a reflection on this same officer who happened to be the Senior medical officer of the camp. I am sure that both cloth mosquitoe meeting and insect spray might have been made available to us had he wished provide them. I have seen piles of cloth mosquito netting and many cans of spray that might have been used.

Q. Please name and describile the Japanese medical officer.

A. I do not know his name but his rank was 1st Lirutenant. He was about five feet six inches tall and weighed about 190 pounds. He appeared to be about 23 years old. He walked with a rather outlandish swagger, being a bit bow-legged. I never heard him speak any English.

Q. Do you think he was responsible as an individual for this torture?

A. Yes. I believe he carried out this program for his own amusement, It happened only when he was on duty as officer of the day.

Q. Can you give the names of others who were victims of this mistreatment?

A. Yes. Sgt. Amos Bach and Sgt. George Molloy, both of the Marine Corps, (I do not know the home addresses except that Molloy lives in Kansas).

Q. Do you have anything further to add?

A. No.

/s/ Charles Allan Combs
Charles Allan Combs, Sgt. USMC

State of: Illinois }
County of: Lake } SS

I, Charles Allan Combs, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Charles Allan Combs
Charles Allan Combs, Sgt. USMC

Subscribed and sworn to before me this 26 day of February 1946.

/s/Howard Mauthe Lt. MC-USN
USNH Great Lakes, Ill.
(Notary Public)

My commission expires:

CONFIDENTIAL /a/CAM
RESTRICTED

C E R T I F I C A T E

I, Charles A. Lewis, Captain, Inf., certify that Charles Allen Combs. Sgt., USMC, #301234, personally appeared before me on 13 February 1946 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place Chicago, Ill. /s/ Charles A. Lewis
(signature)

Date 26 February, 1946 Captain. Inf.

4

A Certified True Copy

F. B. Bouch
Capt. WAC

AFFIDAVIT

YOKAHAMA JAPAN
(Place)

20.9.45
(Date)

I ERNEST ROBERTSON, ASN 860033, of

ORMUS COTTAGE, CITADEL LUVERNUS, serving in the grade of
(Home address)

GUNNER with the ROYAL ARTILLERY, ENGLAND armed forces at the
(unit) (Nation)

time of my capture on 25.12.41 at HONG KONG do hereby depose
(Date) (Place)

and say

1. Japanese prisons, camps or hospitals in which I was confined are as follows:

Name or Location	Date	Japanese Commander
1 OSAKA P.O.W. 2.	11th Oct 1942	TANAKA.
2 ICHIOKIO	17th Oct 1942	MORRO
3		
4		

2. Conditions in each camp, hospital or prison with respect to food, medical care, clothing, sanitation and required work were as follows:

1. MEN DYING THROUGH LACK OF MEDICAL TREATMENT. SICK MEN MADE TO GO TO WORK COMING BACK AND DYING.

2. ORDERLIES NOT FIT TO LOOK AFTER SICK
BEATING OF SICK MEN. HITTING THEM WITH SLIPPERS

3. I have personal knowledge of killings, tortures, beatings, other cruelties (including starvation) or improper punishments as indicated:

Name of victim	Date	Place	Japanese perpetrator
~~ROBERTSON~~	~~28.5.43.~~	~~OSAKA P.O.W.1.~~	~~By Corporal~~

Pros. Ex. No. ~~22~~ 42

Name of victim	Date	Place	Japanese perpetrator
GROUP No. 3	YEAR 43.	OSAKA P.O.W. 1	MAD DOCTOR

Brief description of each atrocity:

~~1. I WAS MADE TO KNEEL ON A PIECE OF SHARP IRON. BEAT WITH A BAMBOO STICK UNTIL KNOCKED OUT.~~

2. MADE TO GET UP AT 1 and 2 O'CLOCK IN THE MORNING FOR A ROLL CALL. MADE TO SHOUT OUR NUMBER UNTIL YOU CAN HARDLY TALK. BEAT WITH A SWORD UNTIL HAVE THE GROUP WAS STINKING WITH BLOOD.

~~4. I have heard of and have reason to believe the following atrocities were also committed:~~

~~Name of victim~~	~~Date~~	~~Place~~	~~Japanese perpetrator~~
		~~KOBE,~~	~~PAY SERGEANT.~~

Brief description ~~of each atrocity~~.

~~HEARD ABOUT A CHAP WHO BROKE HIS ARM AS WORK WAS MADE TO WORK WITH IT BROKEN. WHEN HE WENT BACK TO CAMP HE WAS TOLD TO HOLD A BUCKET OF WATER WITH HIS OTHER HAND FOR 2 HOURS.~~

~~5. I do have (not have) a diary or other documentary evidence. It is presently located at~~

/s/ E. Robertson Gn.
(Signature)

Subscribed and sworn to before me this 20th day of September, 1945 at Yokohama, Japan.

/s/ Albert H. Stewart
(Army or Navy officer authorized to take oaths)
1st Lt. Inf. Summary Court

O-1825199 Rec.Pers.Det.
ASN - Organization
Team 44
GHQ. AFPAC

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

Name of victim	Date	Place	Japanese perpetrator
GROUP No. 3	YEAR 43.	OSAKA P.O.W. 1	MAD DOCTOR

Brief description of each atrocity:

~~1. I WAS MADE TO KNEEL ON A PIECE OF SHARP IRON. BEAT WITH A BAMBOO STICK UNTIL KNOCKED OUT.~~

2. MADE TO GET UP AT 1 and 2 O'CLOCK IN THE MORNING FOR A ROLL CALL. MADE TO SHOUT OUR NUMBER UNTIL YOU CAN HARDLY TALK. BEAT WITH A SWORD UNTIL HAVE THE GROUP WAS STINKING WITH BLOOD.

~~4. I have heard~~ of and have ~~reason to believe~~ the ~~following atrocities were also committed~~:

~~Name of victim~~	~~Date~~	~~Place~~	~~Japanese perpetrator~~
		~~KOBE.~~	~~PAY OTROSANT.~~

Brief description ~~of each atrocity~~.

~~HEARD ABOUT A CHAP WHO BROKE HIS ARM AT WORK WAS MADE TO WORK WITH IT BROKEN. WHEN HE WENT BACK TO CAMP HE WAS TOLD TO HOLD A BUCKET OF WATER WITH HIS OTHER HAND FOR 2 HOURS.~~

~~5. I do have (not have) a diary or other documentary evidence. It is presently located at~~

/s/ E. Robertson Gn.
(Signature)

Subscribed and sworn to before me this 20th day of September, 1945 at Yokohama, Japan.

/s/ Albert H. Stewart
(Army or Navy officer authorized to take oaths)
1st Lt. Inf. Summary Court

0-1825199 Rec.Pers.Det.
ASN - Organization
Team 44
GHQ. AFPAC

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

FLINIAU, FRANKLIN M. COL. ASN 0-306 220
(Name) (Rank)
after being duly sworn at 29th REPLACEMENT DEPOT P.I.
on 23 SEPTEMBER, 1945, testified as follows:

Q. How old are you?

A. 36

Q. Were you captured by the Japanese and made a prisoner of war? If so, when and where?

A. YES. 26 MAY 1942 ILOILO, PANAY.

Q. At the time of your capture of what unit were you a member?

A. 61st DIV Hq.

Q. By what Japanese unit were you captured?

A. NOT KNOWN.

Q. Do you expect to be repatriated, and if so, to what country?

A. YES. U.S.A.

Q. What will your complete address be after your repatriation?

A. 6929 VAN NUYS BLVD. VAN NUYS, CAL.

Q. Will you state the names and locations of the camps at which you were held as a prisoner of war and the dates you were confined at each camp?

	Compound or Camp	Location	Dates
A.	ILOILO, PANA	ILOILO, PANAY	26 MAY 42 - 1 SEPT 42
	KOBE HOUSE	KOBE, JAPAN	26 SEPT 42 - 1 APRIL 45
	IKUNO CAMP	IKUNO, JAPAN	1 APRIL 45 - 1 SEPT 45

Q. Do you know, or have you reason to believe, that the Imperial Japanese ARMY. failed to treat prisoners of war with humanity or otherwise committed atrocities and war crimes against them?

A. YES.

/s/ F.M.F.

Q. Will you state all facts in detail pertaining to atrocities, war crimes, violations of Rules of Land Warfare and human decency at KOBE HOUSE (camp or other place), the dates thereof, the perpetrators, giving their names, ranks, units and other identifying information.

A. ON OR ABOUT 12 SEPT 1943 I WITNESSED THE BEATING OF ONE SGT BURBRIDGE OF THE BRITISH ROYAL ENGINEERS. SGT BURBRIDGE WAS MESS SGT FOR THE CAMP. ON THIS DATE ABOUT 2030 HOURS LT MIATAKI A MEDICAL OFFICER ACTING AS DUTY OFFICER FOR THE DAY ENTERED THE KITCHEN AND FOUND SGT BURBRIDGE AND TWO OTHER MEN (NAMES UNKNOWN) EATING. HE ORDERED BURBRIDGE TO GO WITH HIM. HE (LT MIATAKI) STOOD BURBRIDGE IN FRONT OF THE GUARD ROOM FOR ABOUT AN HOUR, AND THEN USING A BROAD HEAVY BELT, HE STARTED BEATING BURBRIDGE ABOUT THE HEAD. WHEN BURBRIDGE FELL MIATAKI KICKED HIM IN THE RIBS AND GROINS.UNTIL HE BECAME UNCONSCIOUS. HE THEN ORDERED A MEMBER OF THE GUARD TO THROW A BUCKET OF WATER ON BURBRIDGE AND STAND HIM UP AGAIN. MIATAKI WOULD THEN PROCEED WITH THE BEATING AGAIN. THIS SAME PROCESS WENT ON FOR ABOUT TWO AND ONE HALF HOURS, AND THEN MIATAKI LEFT HIM ON THE GROUND. I LATER LEARNED THAT BURBRIDGE RECEIVED TWO FRACTURED RIBS AS A RESULT OF THIS BEATING. HE WAS HOSPITALIZED FOR TWO DAYS. I WAS STANDING WITHIN 15 FEET OF BURBRIDGE WHEN THIS ATROCITY OCCURRED.

LT MIATAKI IS ABOUT 26 OR 27 YEARS OF AGE, HEIGHT 5'4", WEIGHT 140 LBS, VERY FINE FEATURES, GOOD TEETH, FULL FACED, BLACK SHORT HAIR, MEDIUM COMPLEXION, VERY NEAT, SPOKE ENGLISH FLUENTLY.

HE WAS THE JAPANESE MEDICAL DOCTOR AT THE CAMP, AND HE WAS THERE UNTIL 15 OCTOBER 43, WHEN HE WAS TRANSFERRED OUT. HE WAS CLEAN SHAVEN, AND VERY GOOD LOOKING FOR A JAP. HE WAS VERY VAIN.

THE CAMP COMMANDER WAS CAPT. MORIMOTO WHO IS NOW UNDER ARREST, HAVING BEEN ARRESTED BY THE U.S. 8th ARMY. A COMPLETE REPORT WAS MADE ON THIS MAN AT OSAKA.

/s/F.M.F.I-HAVE-NOTHING-FURTHER-TO-ADD-TO-THIS-STATEMENT.

ON MANY OCCASIONS AT KOBE HOUSE, USUALLY AFTER THE DEATH OF ONE OF THE PRISONERS CAPT MARIMOTO WOULD HAVE ALL THE PRISONERS FALL OUT AND CAUSE ALL OFFICERS TO RUN FOR CONSIDERABLE DISTANCES THROUGH THE STREETS OF KOBE. ANY OFFICER WHO FELL OUT OF ONE OF THESE FORMATIONS WAS BEATEN BY THE GUARDS IN THE PRESENCE OF CIVIDIANS. I CANNOT GA GIVE ANY SPECIFIC DATE BECAUSE THIS WAS A COMMON OCCURRENCE.

I HAVE NOTHING FURTHER TO ADD TO THIS STATEMENT.

/s/ Franklin M. Fliniau
Colonel

Subscribed and sworn to before me this 23rd day of SEPTEMBER, 1945.

/s/ Leonard E. March
Maj. F.A.
Investigating Officer
War Crimes Investigating Det.

A CERTIFIED TRUE COPY

JOHN R. PRICHARD
Captain, Infantry

Reports Control Symbol MDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number T - 170 Date of Report 8 January 1948

Title of Case U. S. vs Saburo MIZUKOSHI et al.

PART A

1. Names and Nationalities of Accused

Japanese:

Saburo MIZUKOSHI
Shosaburo FUJITA
Kiyoshi YUI
Hasanori TAKAHASHI
Ohuta SASAZAWA
Sadaharu KOBAYASHI
Yoshio NISHIKAWA
Hikari SUZUKI

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to MD Letter (AGAM-PM 000.5 (20 June 46) MDSCA) 21 June 1946

Encl to 2345

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 170 Date of Report 8 January 1948

Title of Case U. S. vs Saburo MIZUKOSHI et al.

PART A

1. Names and Nationalities of Accused

Japanese:

Saburo MIZUKOSHI
Shosaburo FUJITA
Kiyoshi YUI
Hasanori TAKAHASHI
Ohuta SASAZAWA
Sadaharu KOBAYASHI
Yoshio NISHIKAWA
Hikari SHIZUKI

2. Nature, Place and Date of Offense

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4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Saburo MIZUKOSHI - Commanding General Eighth Army - 1 December 1947 - Approved
Kiyoshi YUI - " " " "
Hasanori TAKAHASHI - " " " " "
Chuta SASAKAWA - " " " " "
Hikari SUZUKI - " " " " "
Sadaharu KOBAYASHI - " " " " "
Yoshio NISHIKAWA " " " " "

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

Saburo MIZUKOSHI - 3 February 1947 - Sugamo Prison, Tokyo, Japan - Mitigated to 20 years
10 Months remitted.
Kiyoshi YUI - 3 February 1947 - Sugamo Prison, Tokyo, Japan - Mitigated to 20 years.
8½ months remitted.
Hasanori TAKAHASHI - 3 February 1947 - Sugamo Prison, Tokyo, Japan - Mitigated to ~~XX~~ Two years
3½ months remitted.
Chuta SASAKAWA - 3 February 1947 - Sugamo Prison, Tokyo, Japan - Commuted to Life.
Hikari SUZUKI - 3 February 1947 - Sugamo Prison, Tokyo, Japan - 8½ months confinement remitted
Sadaharu KOBAYASHI - 3 February 1947 - Sugamo Prison, Tokyo, Japan - 10 months confinement remitted
Yoshio NISHIKAWA - 3 Feb. 47 - Sugamo Prison, Tokyo, - 10 months confine. remitted

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, G.S., SCAP (TOKYO)
(Reporting Office)

File Number T - 170 Date of Report 5 February 1946

Title of Case U. S. vs Saburo MIZUKOSHI et al.

PART A

1. Names and Nationalities of Accused

Japanese: Saburo MIZUKOSHI
Shosaburo FUJITA
Kei Kiyoshi YUI
Masanori TAKAHASHI
Chuta SASAZAWA
Sadaharu KOBAYASHI
[illegible]hio NISHIKAWA
[illegible]ri [illegible]

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Shosaburo FUJITA - Commanding General Eighth Army - 1 December 1947

APPROVED 8½ months confinement remitted.

NOTE: Action of Reviewing Authority on other accused forwarded previously.

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

FUJITA - 3 February 1947 - Sugamo Prison, Tokyo, Japan

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA

WAR CRIMES TRIAL STATUS REPORT

[illegible] SECTION, [illegible], SCAP (TOKYO)
(Reporting Office)

2342

File Number [illegible] - 170 Date of Report 5 Feb 47

Title of case U. S. vs MIZUKOSHI, Saburo, et al

PART A

1. Names and Nationalities of Accused

Japanese:

MIZUKOSHI, Saburo
FUJITA, Shosaburo
YUI, Kiyoshi
TAKAMASHI, Masanori
SASAZAWA, Chuta
KOBAYASHI, Sadaharu
NISHIKAWA, Yoshio
SAZUKI, Hi Mari

2. Nature, Place and Date of Offense

Murder, beatings, torture, mistreatments

Sumidagawa POW Camp, Tokyo Area, Honshu, Japan

Feb 1944 - Aug 1945

3. Names and Nationalities of Victims

Americans:
Cecil J. Mocasco
Joel N. Griffin
Jerry A. Craven
Karl A. Willie
Jack R. Compton
Frank L. Carman
Raymond D. Gordon
William L. Jones
Robert E. Jaros
[illegible] Black
[illegible]
Lawrence E. Poulin
Henry R. Hudson
Jerry [illegible]. Young
Richard Findsen
Joseph L. Pasquale
Lee C. Shaw

Canadian:
George Belcourt
Paul Kudlac, Jr.
Donald Chambers
George Leagher
E. J. Hartery
Clarence E. Burgess
G.C.R. Grant
Steve Yormola
Gerald Sunston
Charles Vincent
Benjamin Neufeld (deceased)
Frank O. Wynne

British:
Thomas Balak
John Wilfridi Grindlay

Dutch:
Kornelius De Jong

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 27 Jan 1947

B[illegible]

[illegible]ace and Date of Trial

Yokohama, Honshu, Japan

27 Jan 47 - 3 Feb 47

WD AGO Form R-5392
21 June 1946

(Over)

[illegible]ure 2 to WD Letter (AGAM-PM [illegible] Jun 46) WDSCA) 21 June 1946

Sentence (Relate

[illegible]OSHI, Saburo	-	Guilty,	30 yrs	impri[illegible]	[illegible]t	at	hard labor
[illegible], Kiyoshi	-	"	30 yrs	"	"	"	"
[illegible]ITA, Shosaburo	-	"	10 yrs	"	"	"	"
[illegible]AMASHI, Masanori	-	"	5 yrs	"	"	"	"
[illegible]ARATA, Chuta	-	"	Death				
[illegible]UKI, Mikari	-	"	30 yrs	imprisonment	at	hard	labor
[illegible]AYASHI, Sadaharu	-	"	30 yrs	"	"	"	"
[illegible], Yoshio	-	"	15 yrs	"	"	"	"

C

Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

[illegible]ment and Sentence (Relate

[illegible]OSHI, Saburo	-	Guilty,	30 yrs	impri[illegible]	[illegible]	at hard	labor
[illegible], Kiyoshi	-	"	30 yrs	"	"	"	"
[illegible]ITA, Shonaburo	-	"	10 yrs	"	"	"	"
[illegible]AMASHI, Masanori	-	"	5 yrs	"	"	"	"
[illegible]A, Ohuta	-	"	Death				
[illegible]KI, Mihari	-	"	30 yrs	imprisonment	at	hard	labor
[illegible]AMASHI, Sadaharu	-	"	30 yrs	"	"	"	"
[illegible], Yoshio	-	"	15 yrs	"	"	"	"

C

Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

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C O N F I D E N T I A L

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

GIULIO OLDANI, an Italian National

TRIED AT

FLORENCE, ITALY

31 October - 7 November 1946

C O N F I D E N T I A L

(Original)

J 11

HEADQUARTERS
PENINSULAR BASE SECTION
A. P. O. 782

GENERAL ORDERS
NUMBER 19

24 February 1947

Before a military commission which convened at Florence, Italy, 31 October, 1, 2, 4, 5, 6 and 7 November 1946, pursuant to paragraph 2, Special Orders Number 251, Headquarters Peninsular Base Section, 16 October 1946, as amended by paragraph 22, Special Orders Number 256, Headquarters Peninsular Base Section, 22 October 1946, of which Colonel Waldemar A. Falck was President and Lt. Colonel Clyde W. Wellen Judge Advocate, was arraigned and tried:

GIULIO OLDANI, an Italian National

CHARGE: Violation of the Law of War.

Specification 1: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May, 1943 at or near Palermo, Sicily, wrongfully and in violation of the law of war inflict mass punishment on groups of soldiers of the Army of the United States and Allied Countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani, which said mass punishment consisted of depriving groups of said prisoners of food.

Specification 2: In that Lt Colonel Giulio Odani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, on or about the 28th day of April, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Pvt. Joseph Solon, a soldier of the Army of the United States, and another soldier, whose name is unknown, by causing said prisoners of war to be handcuffed to a flag pole, and while so handcuffed did beat with a blackjack, kick, and spit on them, said prisoners of war at said time being under the custody and control of the said Lt Colonel Giulio Oldani.

Specification 3: In that Lt Colonel Giulio Odani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, on or about the 26th day of January 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Staff Sergeant Edward M. Greenberg, a soldier of the Army of the United States, by causing said Staff Sergeant Edward M Greenberg to be chained to a flag pole for a period of 48 hours on a bread and water diet, and while so chained to said flag pole did strike him with a swagger stick and did permit a junior officer of the Italian Army to kick him, said Staff Sergeant Edward M. Greenberg being then a prisoner of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 4: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 1st of March, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence First Sergeant Manuel Serrano, a soldier of the Army of the United States, by causing said First Sergeant Manuel Serrano to be tied to a flag pole, and while so tied to said flag pole, to be whipped with a leather whip, said First Sergeant Manuel Serrano being then a prisoner of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 5: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 21st day of January 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Mahlon J. Black, Clarence Howard, Hartwell Harris, Ralph Astin, Warren Dicker, and two other whose names are unknown, all soldiers of the Army of the United States, by causing said soldiers to be chained and beaten, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

General Orders No. 19, Hq, PBS, dated 24 February 1947 (Cont'd).

Specification 6: In that Lt Colonel Giulio Oldani, a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 15th day of May, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Alvin D. Cochran, and nine others, whose names are unknown, all soldiers of the Army of the United States and Allied Nations, by causing said soldiers to be beaten with a riding crop, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 7: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 15th day of April 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Alvin D. Cochran, and four others, whose names are unknown, all soldiers of the Army of the United States and Allied Nations, by causing said soldiers to be chained and beaten with a riding crop, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 8: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to lodge soldiers of the Army of the United States and Allied Nations, who were then prisoners of war under his custody and control in quarters containing accomodations and bedding the same as those provided for Italian Army troops at Italian base camps.

Specification 9: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war, neglect and fail to supply adequate food rations, said rations furnished not being equal in quantity and quality to that furnished Italian Army troops at their base camps.

Specification 10: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war employ groups of soldiers of the Army of the United States and Allied Countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani, in work for which they were physically unfit in that said prisoners of war were compelled to do strenuous labor on road building.

Specification 11: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war take personal effects and objects of personal use from soldiers of the Army of the United States and Allied countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani.

PLEAS

To the specifications of the Charge	:	Not Guilty
To the Charge	:	Not Guilty

FINDINGS

Of all the specifications of the Charge and the Charge: Not Guilty.

The military commission therefore acquitted the accused.

General Orders No. 19, Hq, FBS, dated 24 February 1947 (Cont'd).

The acquittal was announced on 7 November 1946.

BY COMMAND OF BRIGADIER GENERAL BLOOD:

[illegible] SELEEN,
Colonel, GSC
Chief of Staff

OFFICIAL:

D. R. PATTERSON
Lt. Col., A.G.D.
Adjutant General

DISTRIBUTION:
"A" & "C"
plus Special

(WRITE NOTHING ABOVE THIS LINE)

[illegible] Italy [illegible]

Name, etc., of accused Giulio [illegible] National.
(Give last name, first name, and middle [illegible] order followed by serial [illegible], grade, company, regiment, [illegible]

or by other appropriate description of accused [illegible] names, [illegible] manner)

Age _____ Pay, $ _____ per month.
(Base pay plus pay for length of [illegible])

Government Insurance deduction, $ _____

Data as to service: Presently a prisoner held in [illegible] located near Pisa, Italy.
(As to each terminated enlistment, give including dates of service and organization in which serving at termination. As to current enlistment, give the initial date and the term thereof. Give similar data as to service not under an enlistment).

Data as to witnesses, etc.: [illegible]
(Give names, addresses, and note if [illegible] note where each item thereof may be found)

MIRANDI, Mario Paolo Levi, Spadafora 29, [illegible], Sicily.

[illegible]

Affidavit	- [illegible], Walter	[illegible]	6	June	1945
"	- [illegible], Reginald	"	26	June	1945
Statement	- [illegible], Walter J.	"	6	July	1945
"	- [illegible], Frank S.	"	21	June	1945
Affidavit	- [illegible]	"	19	May	1945
Statements	- [illegible], Gaither, Jr.	"	15	May	1945
Statement	- [illegible] O.	"	3	October	1945
"	- [illegible], Thomas R.	"	26	September	1945
"	- [illegible]	"	30	August	1945
Statements	- [illegible], Frank D.	"	14	November	1945
Statement	- [illegible]	"	20	June	1945
"	- [illegible]	"	27	June	1945
"	- [illegible]	"	5	September	1945
"	- [illegible], Mahlon J.	"	11	September	1945
[illegible]	- [illegible]	"	9	September	1945
"	- [illegible]	"	11	July	1945
Statement	- [illegible]	"	16	[illegible]	1945
"	- [illegible], Jr.	"	2	[illegible]	1945
"	- [illegible]	"	5	[illegible]	
[illegible]	- [illegible]	"	[illegible]	[illegible]	

Charge: Violation of the Law of War. [redacted]

Specification 1: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war inflict mass punishment on groups of soldiers of the Army of the United States and Allied Countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani, which said mass punishment consisted of depriving groups of said prisoners of food.

Specification 2: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, on or about the 28th day of April, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Pvt. Joseph Solon, a soldier of the Army of the United States, and another soldier, whose name is unknown, by causing said prisoners of war to be handcuffed to a flag pole, and while so handcuffed did beat with a blackjack, kick, and spit on them, said prisoners of war at said time being under the custody and control of the said Lt Colonel Giulio Oldani.

Specification 3: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, on or about the 26th day of January 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Staff Sergeant Edward M. Greenberg, a soldier of the Army of the United States, by causing said Staff Sergeant Edward M. Greenberg to be chained to a flag pole for a period of 48 hours on a bread and water diet, and while so chained to said flag pole did strike him with a swagger stick and did permit a junior officer of the Italian Army to kick him, said Staff Sergeant Edward M. Greenberg being then a prisoner of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 4: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 1st of March, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence First Sergeant Manuel Serrano, a soldier of the Army of the United States, by causing said First Sergeant Manuel Serrano to be tied to a flag pole, and while so tied to said flag pole, to be whipped with a leather whip, said First Sergeant Manuel Serrano being then a prisoner of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 5: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 21st day of January 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Mahlon J. Black, Clarence Howard, Hartwell Harris, Ralph Astin, Warren Dicker, and two others, whose names are unknown, all soldiers of the Army of the United States, by causing said soldiers to be chained and beaten, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 12½ inch paper will be used for additional sheets.)

(WRITE NOTHING BELOW THIS LINE)

CHARGE: Violation of the Law of War. [redacted]

Specification 6: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 15th day of May, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Alvin D. Cochran, and nine others, whose names are unknown, all soldiers of the Army of the United States and Allied Nations, by causing said soldiers to be beaten with a riding crop, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 7: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 15th day of April 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Alvin D. Cochran, and four others, whose names are unknown, all soldiers of the Army of the United States and Allied Nations, by causing said soldiers to be chained and beaten with a riding crop, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 8: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to lodge soldiers of the Army of the United States and Allied Nations, who were then prisoners of war under his custody and control in quarters containing accommodations and bedding the same as those provided for Italian Army troops at Italian base camps.

Specification 9: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war, neglect and fail to supply adequate food rations, said rations furnished not being equal in quantity and quality to that furnished Italian Army troops at their base camps.

Specification 10: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war employ groups of soldiers of the Army of the United States and Allied Countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani, in work for which they were physically unfit in that said prisoners of war were compelled to do strenuous labor on road building.

Specification 11: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war take personal effects and objects of personal use from soldiers of the Army of the United States and Allied countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 12½ inch paper will be used for additional sheets.)

(WRITE NOTHING BELOW THIS LINE)

(WRITE NOTHING ABOVE THIS LINE)

(Signature of accuser) Ivey W. Caseatt

IVEY W. CASEATT,
Captain, CIP, Headquarters P.B.S.
(Grade, organization, or branch)

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 11th day of October, 19 46, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he * [redacted] has investigated the matters set forth in specifications of the Charge and the Charge (Indicate by specification and charge numbers), and that the same are true in fact, to the best of his knowledge and belief

(Indicate by specification and charge numbers)

(Signature) Percy A. Matthews

PERCY A. MATTHEWS,
(Grade and organization)
Major, JAGD, Headquarters P.B.S.
(Official character, as summary court, notary public, etc.)

NOTES.—At (*) strike out words not applicable.

If the accuser has personal knowledge of the facts stated in one or more specifications or parts thereof, and his knowledge as to other specifications or parts thereof is derived from investigation of the facts, the form of the oath will be varied accordingly. In no case will he be permitted to state alternatively, as to any particular charge or specification, that he either has personal knowledge or has investigated.

If the oath is administered by a civil officer having a seal, his official seal should be affixed.

1ST IND.

Headquarters Peninsular Base Section, Leghorn, Italy, (Place) 16 October (Date), 19 46

Referred for trial to Lieutenant Colonel Clyde W. Wellen, Infantry,
(Grade, name, and organization of summary court, or trial judge advocate)

Judge Advocate of Military Commission [redacted] appointed by paragraph 2, Special Orders No. 251,
(Summary) (Trial judge advocate of special or general)

Headquarters Peninsular Base Section, 16 October, 19 46.

By command of Brigadier General Bloods
(Command or order) (Grade and name of commanding officer)

D. R. Patterson, Adjutant.

D. R. PATTERSON,
Lt. Colonel, AGD,
Adjutant General.

I [illegible] copy [illegible] (each of) the above-named accused, this 17th day

[illegible], Trial Judge Advocate.

[illegible] Hq. PBS.

(Grade and organization)

[illegible] THIS [illegible] TRIAL IS BY SUMMARY COURT)

CASE No. [illegible]

[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

Place ....., Date ....., 19 ....

....., Summary Court.

(Signature, grade, and organization)

Headquarters ....., 19 ....

(Place and date)

.....

(Action of reviewing authority)

....., Commanding.

(Signature, grade, and organization)

Entered on service record in cases of conviction .....

(Initials of personnel adjutant)

(4)

(WRITE NOTHING BELOW THIS LINE)

RESTRICTED

DCK/g.m

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

CIRCULAR)
NUMBER 114)

23 September 1945

REGULATIONS FOR THE TRIAL OF WAR CRIMES

1. As used in these regulations the expression "war crime" means a violation of the laws or customs of war.

2. Military commissions appointed by the Theater Commander or by other commanders under authority delegated to them by the Theater Commander, shall have jurisdiction to try all cases referred to them of persons accused of committing war crimes.

3. A military commission shall consist of not less than three officers, the senior present at any trial being president. For each military commission there shall be appointed a judge advocate and a defense counsel with such assistants as may be required, whose duties shall be similar to those of like officers before general courts-martial.

4. The president of a military commission is empowered to appoint court reporters and interpreters who shall be entitled to such compensation as may be authorized by law and regulation.

5. A formal charge and investigation as provided for court-martial procedure is not required for military commissions. The charge may state the offense by its legal name or may describe it in terms of international law. The specification may in non-legal terms set forth the details of the act constituting the offense. It should also include expressions to enable the commission to determine its jurisdiction both in respect of the offense and the accused. The charges should be subscribed by any person subject to military law but need not be under oath.

6. Members of a military commission may be challenged for cause either by the accused or by the judge advocate, but they shall not be subject to removal upon a peremptory challenge.

7. The oaths prescribed by Article of War 19 for courts-martial shall be applied to military commissions, judge advocates, interpreters and witnesses with such modification as to make them appropriate to military commissions.

8. Military commissions may conduct their proceedings as may be deemed necessary for a full and fair trial, having regard for but not being bound by, the rules of procedure prescribed for general courts-martial.

9. The fact that an accused acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the commission determines that justice so requires.

RESTRICTED

10. The technical rules of evidence shall not be applied but any evidence shall be admitted which, in the opinion of the president of the commission, has any probative value to a reasonable man. Without limiting the scope of the above rule the following in particular will apply:

a. If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the president of the commission, unable to attend without undue delay, the commission may receive secondary evidence of statements made by or attributed to such witness.

b. Any document purporting to have been signed or issued officially by any member of any allied or enemy force or by any official or agency of any allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof.

c. Any report by any person when it appears to the president of the commission that the person in making the report was acting within the scope of his duty may be admitted in evidence.

d. Any deposition or record of any military tribunal may be admitted in evidence.

e. Any diary, letter or other document may be received in evidence as to the facts therein stated.

f. If any original document cannot be produced or, in the opinion of the president of the commission, cannot be produced without undue delay, a copy or translated copy of such document or other secondary evidence of its contents may be received in evidence. A translation of any document will be presumed to be a correct translation until the contrary is shown.

g. Photographs, printed and mimeographed matter, and true copies of papers are admissible without proof.

h. Confessions are admissible without proof of circumstances or that they were voluntarily made. The circumstances surrounding the taking of a confession may be shown by the accused and such showing may be considered in respect of the weight to be accorded it, but not in respect of its admissibility.

11. A military commission shall record its proceedings as nearly as practicable as prescribed for a general court-martial.

12. Convictions and sentences shall be determined by the concurrence of at least two-thirds of the members present at the time the vote is taken.

13. Appropriate sentences imposed by a military commission are:

a. Death (by hanging or shooting)

b. Confinement for life or a lesser term

c. Fine

Hq MTOUSA Circular Number 114 (cont'd).

14. No sentence imposed by a military commission shall be carried into execution until it shall have been approved by the appointing authority.

15. No sentence of death shall be carried into execution until it shall have been confirmed by the Theater Commander, but where the military commission that imposed the death sentence was appointed by the Theater Commander and he has acted on the sentence as approving authority, no additional confirmation by him is necessary.

BY COMMAND OF GENERAL ALEXANDER:

OFFICIAL:

L. C. WHITE
Major General, GSC
Acting Chief of Staff

C. W. CHRISTEBERRY
Colonel, AGD
Adjutant General

DISTRIBUTION:
Z

CERTIFICATE

Under the provisions of Paragraph 2 i, AR 35-4120, 30 July 1945, compensation for clerical duties performed for a court will not be paid to a person who is in the pay of the Government. For this reason the undersigned, who is a War Department employee, has not submitted a Reporter's Voucher for reporting the case of United States vs. Giulio Oldani, an Italian national.

Ethel L. Goddard

Ethel L. Goddard
Court Reporter

10 January 1947.

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

GIULIO OLDANI, an Italian national.

FLORENCE, ITALY.

Proceedings in the trial of Giulio Oldani, an Italian national

by the Military Commission appointed by the orders of which a copy is appended.

CONFIDENTIAL

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

GIULIO GUDANI, an Italian national

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TESTIMONY

Name of Witness	Direct	Cross	Redirect	Recross	Commission
For the Prosecution:					
Mario Minardi	8,237	18,246	30,34,38, 39,	35,40	31,39,261
Philip V. Holder	266	271	281	281	283
For the Defense:					
Giulio Perugi	65	73	75,91	81,86	83
Luigi Yengo	92,165	170		173,177	110,171,175
Don Felice Peano	117	135	150	149	144,150
Antonio Bisato	151	155	156,160		156,164
Umberto Nascia	177	190	194		195
Antonio Di Marco	205	212			
Ernesto Bertuccio	216	217			217
Candido Assanelli	218	223	234	232	227
Kenneth F. Lafayette	290				
Leone Armando	297	301			302

EXHIBITS APPENDED

Description	No.	Page where Introduced
Prosecution Exhibits:		
Affidavits of former prisoners of war who were in PG 98.	1-29	41
Two letters from Amerigo Chiarotti re. rations.	30	270
Defense Exhibits:		
Picture of a flagpole near the offices of the camp.	A	27
Letter from Rome lawyer explaining why originals of Exhibits C and D are not presented.	B	112
Letters from English representatives which they presented to camp commander upon leaving the camp.	C D	112 112
Newspaper clipping in Italian re former trial, and translation.	E	115
Letter in French from leader of group of French prisoners who were in the camp, and translation.	F	116
Report by Don Felice Peano, in Italian, and translation.	G	120

Note: Exhibits in Italian are attached to the original only.

CONFIDENTIAL

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

GIULIO OLDANI, an Italian national

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Luigi Yengo	92,165	170		173,177	110,171,175
Don Felice Peano	117	135	150	149	144,150
Antonio Bisato	151	155	156,160		156,164
Umberto Nascia	177	190	194		195
Antonio Di Marco	205	212			
Ernesto Bertuccio	216	217			217
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R E S T R I C T E D

HEADQUARTERS
PENINSULAR BASE SECTION
A. P. O. 782

SPECIAL ORDERS

NUMBER 251 E-X-T-R-A-O-T 16 October 1946

2. A military commission is hereby appointed to meet at Florence, Italy at 0900 hours, on 23 October 1946, or as soon thereafter as practicable for the trial of such persons as may properly be brought before it.

DETAIL FOR THE COMMISSION

COLONEL [illegible] A. FALCK, 0-6750, CAV, Hqtrs. P.B.S.,
LT COLONEL GERALD L. ROBERTSON, 0-19161, FA, G-3 Sect. Hqtrs. MTOUSA.,
LT COLONEL KEITH T. O'BRIEN, 0-30666, ORD, 86 Ordnance Base Depot,
LT COLONEL JOHN B. ALBIN, 0-270862, GSC, G-2 Sect., Hqtrs. MTOUSA.,
LT COLONEL MORRIS J. LUCREZ, 0-33401, CMP, 7103 Disc. Training Co. (Ovhd),
MAJOR DONALD W. WILLIAMS, 0-312100, INF, Hqtrs. P.B.S.,
MAJOR ROBERT D. CORRILL, 0-911384, AGD, AG Section, Hqtrs. MTOUSA,

LT COLONEL CLYDE A. ELLIOTT, 0-153627, INF, Hqtrs. P.B.S.,
Judge Advocate,
1ST LIEUTENANT CLARENCE A. BURNS, 0-2039431, INF, Hqtrs. P.B.S.,
Ass't Judge Advocate,
LT COLONEL KENNETH F. LAFAYETTE, 0-287383, CAV, 61st CM Base Depot,
Defense Counsel,
CAPTAIN ARTHUR A. BURCK, 0-1002767, AUS, Judge Advocate Sect. MTOUSA,
Ass't Defense Counsel.

In the conduct of its proceedings, the commission shall follow the provisions of Circular 114, Headquarters Mediterranean Theater of Operations, 23 September 1945, entitled, "Regulations for the Trial of War Crimes".

BY COMMAND OF BRIGADIER GENERAL BLOOD:

PAUL W. SELTZER
Colonel, GSC
Chief of Staff

OFFICIAL:

O. A. FEHLOW
CWO USA
Asst Adj Gen

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C O N F I D E N T I A L

R-E-S-T-R-I-C-T-E-D

RESTRICTED

HEADQUARTERS
PENINSULAR BASE SECTION
A. P. O. 782

SPECIAL ORDERS

NUMBER 256 E-X-T-R-A-C-T 22 October 1946

22. The following named officer is detailed as a member of the military commission appointed by paragraph 2, Special Orders Number 251, this Headquarters, dated 16 October 1946:

LT COLONEL RICHARD L. FORNDAHL, 0-938260, INF, Hq Cmd, MTOUSA,

and the following named officer is hereby relieved as a member of said commission:

LT COLONEL GERALD L. ROBERTSON, 0-19161, FA, G-3 Section, Headquarters MTOUSA.

BY COMMAND OF BRIGADIER GENERAL BLOOD:

PAUL H. SELFN
Colonel, G.S.C.
Chief of Staff

OFFICIAL:

A. J. NAPOLITANO
Captain, AGD
Asst. Adj. General

DISTRIBUTION:

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RESTRICTED

The Military Commission met, pursuant to the foregoing orders, at Florence, Italy, at 0900 hours, 31 October 1946.

PRESENT

COLONEL WALDEMAR A. FALCK, O-6780, CAV
LT. COLONEL KEITH T. OKEEFE, O-30669, ORD
LT. COLONEL JOHN B. ALBIN, O-270382, QMC
LT. COLONEL RICHARD L. BURNDAHL, O-338260, INF
LT. COLONEL MORRIS J. LUCKEE, O-33401, CMP
MAJOR DONALD W. WILLIAMS, O-312100, INF
MAJOR ROBERT E. GAMBRILL, O-911384, AGD

LT. COLONEL CLYDE W. WELLEN, O-155627, INF
Judge Advocate

LT. COLONEL KENNETH F. LAFAYETTE, O-287588, CAV
Defense Counsel
CAPTAIN ARTHUR A. BURCK, O-1002767, AUS
Assistant Defense Counsel

ABSENT

LT. COLONEL GERALD L. ROBERTSON, O-19161, FA
Excused VOCG, on official business.

1ST LIEUTENANT CLARENCE W. BURKE, O-2039431, INF
Excused VOCG, on official business.

The Military Commission proceeded to the trial of Giulio Oldani, an Italian national.

Prosecution: The accused is present in court represented by the regularly appointed defense counsel and the assistant defense counsel.

Ethel L. Goddard was sworn as reporter.

Eva Modern-Lowbeer was sworn as interpreter.

The judge advocate then announced the names of the members of the Commission present and absent.

Prosecution: At this time I desire to introduce Captain Franklin D. Ashcraft of the War Crimes Commission as assistant judge advocate. Is there any objection by members of the defense?

Defense: There is no objection by members of the defense.

Prosecution: A copy of the charges in this case was served on the accused on the 17th day of October 1946. The general nature of the charges in this case is an alleged violation of the Law of War. The charges were preferred by Ivey W. Cashatt, Captain, Corps of Military Police, Headquarters Peninsular Base Section. The charges were referred for trial to Lieutenant Colonel Clyde W. Wellen, Infantry, judge advocate of the Military Commission appointed by paragraph 2, Special

Order Number 281, Headquarters Peninsular Base Section, by command of Brigadier General Blood, under indorsement dated 16 October 1946, which apparently is in proper form.

Prosecution: The judge advocate does not expect to call any member of the Commission, now present, as a witness in this case, nor is any member an accuser.

Prosecution: The records in this case disclose no grounds for challenge. If any member of the Commission is aware of any facts which he believes to be a ground for challenge by either side against any member, it is requested that he state such facts.

President: There will be none.

Prosecution: The prosecution has no challenge for cause. Does the accused desire to challenge any member of the Commission for cause?

Defense: The accused does not.

The members of the Commission and the personnel of the prosecution and the defense were then sworn.

Prosecution: The accused will now be arraigned. Giulio Oldani I will now read the charge and specifications under which you are about to be tried.

ARRAIGNMENT

The accused Giulio Oldani was then arraigned upon the following charge and specifications:

CHARGE: Violation of the Law of War.

Specification 1: In that Lt Colonel Giulio Oldani, then a member of combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war inflict mass punishment on groups of soldiers of the Army of the United States and Allied Countries, who were then prisoners of war under the custody and control of the said Lt. Colonel Giulio Oldani, which said mass punishment consisted of depriving groups of said prisoners of food.

Specification 2: In that Lt. Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, on or about the 28th day of April, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat

with humanity and did subject to acts of violence Pvt. Joseph Solon, a soldier of the Army of the United States, and another soldier, whose name is unknown, by causing said prisoners of war to be handcuffed to a flag pole, and while so handcuffed did beat with a blackjack, kick, and spit on them, said prisoners of war at said time being under the custody and control of the said Lt Colonel Giulio Oldani.

Specification 3: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, on or about the 26th day of January 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Staff Sergeant Edward M. Greenberg, a soldier of the Army of the United States, by causing said Staff Sergeant Edward M. Greenberg to be chained to a flag pole for a period of 48 hours on a bread and water diet, and while so chained to said flag pole did strike him with a swagger stick and did permit a junior officer of the Italian Army to kick him, said Staff Sergeant Edward M. Greenberg being then a prisoner of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 4: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 1st of March, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence First Sergeant Manuel Serrano, a soldier of the Army of the United States, by causing said First Sergeant Manuel Serrano to be tied to a flag pole, and while so tied to said flag pole, to be whipped with a leather whip, said First Sergeant Manuel Serrano being then a prisoner of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 5: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 21st day of January 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Mahlon J. Black, Clarence Howard, Hartwell Harris, Ralph Astin, Warren Dicker, and two others, whose names are unknown, all soldiers of the

Army of the United States, by causing said soldiers to be chained and beaten, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 6: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 15th day of May, 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Alvin D. Cochran, and nine others, whose names are unknown, all soldiers of the Army of the United States and Allied Nations, by causing said soldiers to be beaten with a riding crop, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 7: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did on or about the 15th day of April 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war fail to treat with humanity and did subject to acts of violence Alvie D. Cochran, and four others, whose names are unknown, all soldiers of the Army of the United States and Allied Nations, by causing said soldiers to be chained and beaten with a riding crop, said soldiers being then prisoners of war under the custody and control of said Lt Colonel Giulio Oldani.

Specification 8: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law pf war fail to lodge soldiers of the Army of the United States and Allied Nations, who were then prisoners of war under his custody and control in quarters containing accommodations and bedding the same as those provided for Italian Army troops at Italian base camps.

Specification 9: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war, neglect and fail to supply adequate

food rations, said rations furnished not being equal in quantity and quality to that furnished Italian Army troops at their base camps.

Specification 10: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did at various times during the months of December 1942, January, February, March, April and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war war employ groups of soldiers of the Army of the United States and Allied Countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani, in work for which they were physically unfit in that said prisoners of war were compelled to do strenuous labor on road building.

Specification 11: In that Lt Colonel Giulio Oldani, then a member of the combatant forces of Italy, a belligerent enemy nation, did, at various times during the months of December 1942, January, February, March, April, and May 1943, at or near Palermo, Sicily, wrongfully and in violation of the law of war take personal effects and objects of personal use from soldiers of the Army of the United States and Allied countries, who were then prisoners of war under the custody and control of the said Lt Colonel Giulio Oldani.

(Signature of accuser) /s/ Ivey W. Cashatt
IVEY W. CASHATT
Captain, CMP, Headquarters PBS

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 11th day of October 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he has investigated the matters set forth in specifications of the Charge and the Charge, and that the same are true in fact, to the best of his knowledge and belief.

(Signature) /s/ Percy A. Matthews
PERCY A. MATTHEWS
Major, JAGD, Headquarters PBS

1st IND.

Headquarters Peninsular Base Section, Leghorn, Italy, 16 October 1946

Referred for trial to Lieutenant Colonel Clyde W. Wellen, Infantry, Judge Advocate of Military Commission appointed by paragraph 2, Special Orders No. 251, Headquarters Peninsular Base Section, 16 October 1946.

By Command of Brigadier General Blood:

(Signature) /s/ D. R. Patterson
D. R. PATTERSON,
Lt. Colonel, AGD,
Adjutant General.

CONFIDENTIAL

The interpreter read the charge and specifications to the accused.

Prosecution: Does the defense have any special pleas or motions to offer?

Defense: The defense does not have any special pleas or motions to offer at this time.

Prosecution: How does the accused Lt Colonel Giulio Oldani plead to the specifications and the charge?

The accused, Lt Colonel Giulio Oldani, then pleaded as follows:

To the specifications of the charge: Not Guilty

To the charge: Not Guilty

Prosecution: May it please the Commission, as the Commission will have observed from the specifications, the accused is being charged with a violation of the rules of the Geneva Convention. This is one of the very few Prisoner of War Camp cases that will be tried in this sector. The evidence on the part of the prosecution will support the specifications alleged and others also that are not alleged. However, the prosecution will be forced to rely upon affidavits made by former members or former soldiers of the Army of the United States and its Allies, who passed through PG 98 located near Palermo, Sicily. That was, more or less, a transient camp and the prisoners were there for a short time only; none of them for any great length of time. The Government has one witness only to present, that is one principal witness, and that was the interpreter for Colonel Oldani at the prison camp. Otherwise, the Government case is based on depositions or affidavits of former prisoners. We made an effort to get some of those former prisoners back here to testify before this Commission, but they have all returned home. They are either in the United States or Great Britain, and it was impossible to get them to appear before this Commission.

TESTIMONY FOR THE PROSECUTION

Prosecution: The prosecution calls as its first witness Mario Minardi.

Mario Minardi, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Mario Minardi.

Q. Where do you live?
A. At Ragusa, Sicily.

Q. What is your occupation?
A. Bookkeeper.

Q. What was your occupation in 1942 and 1943?
A. Interpreter in a prisoner of war camp.

Q. Where was the prisoner of war camp located?
A. About twenty-five miles southwest of Palermo.

Q. Do you know the accused Giulio Oldani?
A. Yes.

Q. Is he in this courtroom?
A. Yes.

Q. Will you point him out?
A. The gentleman sitting at the end of the table.

Prosecution: Let the record show that the witness has identified the accused.

Defense: If it please the Commission, the defense makes a motion at this time to the rights of the accused that the witness now on the stand will speak in Italian so that the accused may listen to him.

Prosecution: May it please the Commission, the accused has an interpreter with him. I feel that it is more important that the Commission can direct the answers of this witness since he is able to speak English.

President: The Commission is only interested that the accused understands what the witness says and in any way that can be done. Is the interpreter for the accused fully conversant with the English language?

Interpreter: Yes, sir.

President: Well, have your questioning conducted fully enough so that there can be a full conversation between the accused and the interpreter and he will continue to answer in English then.

Q. Where were you born?
A. In New York City.

Q. When did you return to Italy?
A. April 1939.

Q. Were you in the Italian Army?
A. Yes.

Q. When were you inducted into the Italian Army?
A. September 1940.

Q. In what branch?
A. The Medical Corps.

President: Let me interrupt. Is this satisfactory to the accused? If the conversation is too rapid please interrupt. Proceed.

Q. Where did you serve?
A. First I served at Palermo, in the hospital of Palermo from September 1940 to January 1942. In January 1942 I was transferred to the prisoner of war camp near Castelvetrano.

Q. Who was in command of that camp?
A. It was another colonel at that time.

Q. Did the accused ever command that camp?
A. Yes.

Q. When?
A. It was about March 1942 when he arrived.

Q. How long was he in command of that camp?
A. Until the invasion.

Q. Was the original camp site moved?
A. Yes.

Q. To what location was it moved?
A. To a location near Palermo, about twenty-five miles southwest.

Defense: If it please the Commission, will the President instruct the witness that he must speak up so we can hear clearly and distinctly.

President: You must make yourself heard to all people in the room, and please speak slowly and give the interpreter ample time to transmit the information to the accused.

Q. You mean twenty-five miles southwest of Palermo?
A. Yes, sir.

Q. Who was in command of the camp at that time?
A. Lieutenant Colonel Giulio Oldani.

Q. How long did he continue in command of the camp?
A. Until the invasion.

Q. What was the nature of the camp? Was it a permanent prisoner of war camp or a camp for transients?
A. It was a transient camp.

Q. What were your duties at PG 98?
A. Interpreter.

Q. For whom?
A. For the Italian Government.

Q. Who was your camp superior?
A. Giulio Cidani.

Q. The accused in this case?
A. Yes.

Q. Approximately how many prisoners were in the camp at any one time?
A. About an average of five hundred.

Q. Were they housed in buildings or tents?
A. In tents.

Q. How large were the tents?
A. About one hundred and fifty yards long and about fifty yards wide.

Q. Do you refer to one particular tent as being one hundred and fifty yards?
A. Yes, sir.

Q. And fifty yards wide?
A. Yes, sir.

Q. How many such tents did they have in the camp?
A. About twelve.

Q. Were they heated?
A. No.

Q. What kind of bedding was furnished the prisoners?
A. They had wooden cots, double deck.

President: Allow me to interrupt again. Is this suitable to the accused? Does he understand everything that is being said?

Interpreter for the accused: Yes, sir, very clearly.

Q. Were mattresses furnished?
A. Yes.

Q. For all bunks?
A. All the bunks.

Q. What kind of covers did they have?
A. Blankets.

Q. How many blankets per man?
A. Two.

Q. Was it very cold?
A. In the winter, yes.

Q. Say from December 1942 through January, February and March 1943?
A. Yes.

President: Slowly please.

Q. Was there any heat of any kind in the tents which you have described?
A. No.

Q. What kind of flooring was in the tents?
A. The earth.

President: The what? I don't understand.

A. The soil, the earth.

Q. How many blankets did the Italian Army have per soldier at that time, if you know?

Defense: Objection. There is no basis - you have shown no basis that he has any knowledge of what the Italians had. He said he was an interpreter for the Government - no basis that he has any knowledge.

Prosecution: He says he was inducted into the Army and was an Italian soldier.

Defense: He may have had a half dozen, but does he know what the rest of the Italian Army had?

President: It would be well to qualify his answer.

Q. Were you at any time ever stationed in an Italian base camp?
A. Yes.

Q. Where?
A. At the hospital of Palermo.

Q. Were you there during the winter months?
A. Yes.

Q. Was the hospital at an Army base camp?
A. Yes.

Q. How many blankets were supplied to the soldiers at the hospital at Palermo?
A. Two blankets.

Q. Did they have heat in their quarters?
A. Yes.

Q. I will get you to state whether or not American and Allied prisoners while located at PG 98 were forced to work?
A. Yes.

Q. Say from December 1942 through January, February and March 1943?
A. Yes.

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A. No.

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Q. Was the hospital at an Army base camp?
A. Yes.

Q. How many blankets were supplied to the soldiers at the hospital at Palermo?
A. Two blankets.

Q. Did they have heat in their quarters?
A. Yes.

Q. I will get you to state whether or not American and Allied prisoners while located at PG 98 were forced to work?
A. Yes.

Q. Were any of the prisoners ill?
A. A lot of them.

Q. State whether or not the prisoners who were sick were also required to work?
A. No.

Q. Do I understand you to say that Allied prisoners who were sick were not required to work?
A. Yes.

Q. None of them were required to work?
A. No.

Q. Is that true of both the British and American prisoners?
A. Yes.

Defense: Objection. You used the word "Allied". That obviously is inclusive of both British and American.

President: Can you frame the question some other way?

Defense: I withdrew the objection. I believe he answered the question.

Q. Was there any work done by any prisoners while in the camp?
A. Yes.

Q. What was the nature of that work?
A. Building paths and roads.

Q. Did any of the prisoners have dysentery while they were in camp?
A. Yes.

Q. British or American?
A. Both.

Q. Were those prisoners required to work?
A. No.

Q. Did you see the food served to the prisoners?
A. Yes.

Q. Can you tell the Commission how much food the prisoners received on an average per day?
A. They received two loaves of bread a day. At noon they'd receive either macaroni or rice with greens. At night either the macaroni or rice or a broth of meat and a piece of meat. In the morning they would receive a cup of barley coffee.

Q. State whether or not they received sugar in their coffee?
A. Yes.

Q. What kind? Was it a substitute?
A. No, sugar.

Q. Did they at any time receive salt instead of sugar in their coffee?
A. Sometimes.

Q. You have stated they received two loaves of bread per day -

President: Slowly, please, slowly. Remember the conversation has to go to the accused through the interpreter.

Q. What was the weight of the loaf of bread received by the Allied prisoners?
A. About four hundred grams.

Q. What was the weight of the loaf of bread received by the Italian soldiers?
A. About five hundred.

Q. Were they the same color?
A. No.

Q. Did the Italian soldiers also receive two loaves of bread per day?
A. No, one.

Q. And the prisoners two?
A. Yes.

Q. Do you know how the prisoners bread was made? What the ingredients were?
A. No, I don't know.

Q. What color was the bread?
A. Dark brown.

Q. What color was the bread furnished to the Italian soldiers?
A. A lighter color.

Q. Was the bread furnished to the prisoners of war edible?
A. At times it was not.

Q. Why, if you know?
A. It was very gummy and could not be chewed.

Q. Could they eat any part of it?
A. The outside part of it.

Q. The crust only?
A. The crust.

President: Let me interrupt. The Commission will have to change the mode of questioning unless the questions are asked more slowly. I am sure the accused cannot understand the conversation. Please be mindful of the accused's rights and ask the questions slowly.

Q. Who made the bread?
A. A local baker.

Q. Did the local baker make the bread for both the Italian soldiers and the prisoners of war?
A. Yes.

Q. Was the bread made under contract between Colonel Oldani and the local baker?
A. Yes.

Q. Did you yourself eat the same food as the Italian soldiers or the prisoners of war?
A. As the Italian soldiers.

Q. Were you fed better or worse than the prisoners of war?
A. A bit better.

Q. Do you recall whether or not at any time any of the prisoners of war burned part of their bed or bedding?
A. Yes.

Q. When was that?
A. About January 1943.

Q. Where did it occur?
A. In one of the tents.

Q. Do you know why they did it?
A. To keep warm.

Q. Who was in command of the prison camp at that time?
A. Colonel Oldani.

Q. Was the bedding burned during the day or in the evening?
A. In the evening.

Q. Did you see the bedding burned?
A. No.

Q. How many people were involved in this incident, if you know?
A. About ten.

Q. State whether or not these people were punished, if you know?
A. Yes.

Q. What punishment did they receive?
A. They were whipped with leather belts.

Q. Was there any unusual occurrence at the camp shortly after Easter?
A. Yes.

Q. Where were you at that time?
A. At Easter I was home on leave.

Q. When did you return?
A. After Easter.

Q. Do you recall approximately how long after Easter?
A. About a week.

Q. Shortly after you returned was there an unusual occurrence at the camp?
A. I had heard that something had happened while I was away.

Q. Did you have a conversation with Colonel Oldani?
A. Yes.

Q. In substance, what was that conversation?
A. I had heard from a Medical Corps Captain and some other lieutenants who were at the camp at that time that two POWs had escaped from the camp and that they had been caught and they had been tied hand-cuffed to the two flagpoles that were at the base of the camp, and they were all angry about it.

Q. Did you talk to Colonel Oldani about that?
A. Yes, I went to complain.

Q. What was the substance of your conversation with Colonel Oldani?
A. I told him that the officers, the American officers, were angry about that incident and he told me that these men had been put there as a sort of example for the other POWs not to escape from the camp.

Q. You stated that the prisoners or that Colonel Oldani said the prisoners were fastened or chained to the flagpole as a punishment.

Defense: Objection. He did not state that Colonel Oldani said that. He merely stated he heard from others. He did not state that Colonel Oldani said it.

President: Are you objecting to the question?

Defense: Yes.

President: Objection sustained.

Q. Did you have a conversation with Colonel Oldani in regard to this incident?
A. Yes.

Q. And what was Colonel Oldani's statement, in substance?
A. As I said before, I told him that the American officers were very angry about the incident because these two POWs had been handcuffed to the flagpole, and he told me they had been put there as an example for other PWs not to escape from the camp.

Q. Now I believe you stated that the soldiers gathered around the fire which they had built in the tent were whipped?
A. Yes.

Q. By whose orders, if you know?
A. I think by the lieutenant, officer of the day. The lieutenant who was in charge of the camp at that time.

Q. And who was the lieutenant responsible, do you know?
A. I don't remember.

Q. Who was in command of the camp?
A. Lt. Colonel Oldani.

Q. Would not the officer of the day be responsible to Colonel Oldani?
A. Yes.

Q. Do you recall an incident involving the colonel and an American soldier that occurred at or near the gate of the camp?
A. Yes.

Q. Where were you at that time?
A. In the medical room.

Q. Where did you go if you remember?
A. Towards the entrance to the camp.

Q. Why?
A. Because some PW had told me that a fight was going on and I ran down to see what it was about.

Q. And what did you find when you got there?
A. I found a crowd of people, PWs, Lt. Colonel Oldani, some other Italian officers and some Italian troops.

Q. What had happened, if you know?
A. I had heard as I was running down that a fight had occurred between Colonel Oldani and an American sergeant.

Q. Did you at that time speak to Colonel Oldani?
A. Yes.

Q. In substance, what was said?
A. I asked him what had happened and he told me that the POW had called him a profane word, a bad word, as if he did not understand English, and he understood it and he had struck him with his riding crop, and the PW had retaliated trying to punch him.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. You stated that you were born in New York City, is that true?
A. Yes.

Q. Then at the time of your birth is it true that you were an American citizen?
A. Yes.

Q. And you came here to Italy in 1939?
A. Yes.

Q. Were you still an American citizen at that time?
A. Yes.

Q. At the time you went in to the Italian Army did you renounce your American citizenship?
A. No.

Q. Have you made application for return to the United States as an American citizen?
A. When do you mean?

Prosecution: I did not hear the question.

Q. Have you made any application for return?
A. I booked a passage on the Rex in May 1940.

Q. I amend this statement. Since the war has ended in this theater, have you made application?
A. Yes.

Prosecution: If the Commission please, we object, unless there is some purpose in this.

Defense: If the Court please, it is a very important element in the testimony of any witness whether or not there are facts which affect his credibility. If a man, an American citizen, has served in another Army, if he has, in fact, fought against the Americans, I think some might construe that as - - well, I won't use the word now, but it definitely affects his credibility.

President: Are you attempting to attack the witness' credibility now?

Defense: I don't know, sir.

President: Would it not be better to limit your examination to whether or not - -

Defense: All right, sir. For the moment I will go ahead with the examination and the facts may come out during the course of the examination and the trial.

CONFIDENTIAL

Q. You have testified that these prisoners, many of these prisoners, were ill. Where did these prisoners come from? Which part of the fighting front at that time?
A. At which time, sir?

Q. From January 1942 until May 1945?
A. Northern Africa.

Q. Do you know whether or not any of these prisoners arrived in a sick condition?
A. Yes.

Q. Do you know whether or not these prisoners arrived with dysentery?
A. Yes.

Q. Do you know whether or not many of these prisoners who were ill were sent to this camp for that reason, because they were ill?
A. It was a sort of a quarantine camp.

Q. Will you explain what you mean by a quarantine camp?
A. They were not supposed to leave the camp until they were perfectly well.

Q. In other words, is it true that an important reason for many of these prisoners being sent here was the fact that they already had some ailment?
A. No, because it was a transient camp.

Q. Why were some individuals selected and sent to this quarantine camp?
A. All of them were sent.

Q. Why?
A. Before they can be entered into a base camp, a regular camp in Northern Italy, they had to pass through one of these transient camps for a fifteen day trial.

Q. What was the maximum period of time a prisoner would normally remain in this camp?
A. If he was not sick fifteen days.

Q. And if he was sick?
A. He would remain until he was well.

Q. Have you any idea as to the number, total number of prisoners passing through this camp during the period it was set up?
A. Yes, about fifteen to twenty thousand.

Q. In how long a period fifteen to twenty thousand? How long a period did that camp - -
A. One and a half years.

Q. Do you know the maximum number of prisoners in this camp at any particular time?
A. Up to one thousand.

Q. So that there was a constant turnover of prisoners coming and going?
A. Yes.

Q. Do you know whether the inmates of this camp were permitted to heat the tents by their own means?
A. No.

Q. Do you know whether they were permitted to bring in wood?
A. No.

President: Is he answering they could not bring in wood or he does not know if - -

A. They could not bring in wood.

Prosecution: I don't understand the answer.

A. They could not bring in wood.

Q. Do you know whether these tents were inflammable?
A. Yes.

Q. Do you know whether the use of open fires was regarded as dangerous?
A. Yes.

Q. Is your answer "Yes?"
A. Yes, it was dangerous.

Q. You have testified that at times the bread was inedible, it was gummy. Was that also true of the bread which the Italian soldiers received?
A. No.

Q. The same baker prepared the bread for the Italian soldiers and the prisoners, is that true?
A. Yes.

Q. Do you recall how many times you personally observed inedible bread served prisoners?
A. The number of times?

Q. Yes.
A. It might have been five or ten times. When anybody complained it came to me.

Q. That's because you speak English, is that true?
A. Yes.

Q. You say five or ten times. Is that during a period of one and a half years?
A. Yes.

Q. You reported this incident about the fire, the burning of bedding, clothes?
A. Blankets.

Q. Did you see this incident?
A. The burning of the blankets, no.

Q. Who told you about it?
A. Some PWs - some prisoners of war.

President: A little louder please.

Witness: Yes, sir.

Q. Did the tent burn down?
A. No.

Q. Precisely what did these prisoners tell you, as you can best recollect?
A. They told me that a number of prisoners of war had been taken to the guard room because they had burned some blankets, and I went towards this guard room to find out about it and when I arrived there, they were already coming out and I asked them what had happened and they told me they had burned some blankets and had been whipped, but they were laughing it off.

Q. They were laughing it off. Why?
A. Because it was not such a great punishment they had received. They admitted they had done something wrong, but it was not such a great punishment they had received.

Q. They burned blankets for the purpose of heating?
A. That is what they told me.

Q. In view of your experience, your background in the Italian Army, can you tell the Commission what would happen to an Italian soldier if he burned blankets for the purpose of heating?

Prosecution: If the Commission please, we object to this question.

President: Can you frame the question some other way possibly?

Defense: Well, if it please the Court, the propriety of many of these acts depends on what would happen in the Italian Army. I have framed this to clarify his experience in the Italian Army in this respect; to know what the general rule was in his experience.

President: The question may be answered.

A. An Italian soldier would be punished.

Q. Do you know how he would be punished?
A. It depends on the officer who would punish him. Maybe ten days in prison on bread and milk and his pay would be taken away.

Q. Do you personally know of any instances when Italian soldiers were whipped for not the same precise incident - do you know of any instances when Italian soldiers were whipped?
A. No.

Q. Did you personally talk to any of these soldiers?
A. Yes.

Q. Who - someone else had told you they were whipped. You were told about this incident by some other soldier who was told about it by the person who had allegedly been whipped?
A. I said that some PW had infor ed me that other PWs had been taken to the guard room for some reason, and I ran down there to find out, and I met these PWs who were coming out of the guard room and I spoke to them there.

Q. Oh, I see, you spoke to the individuals who allegedly had been whipped?
A. Yes.

Q. In addition to what you have testified, "They came out laughing that the punishment was light in relation to what they had done," did they tell you anything else? Did they tell you anything in regard to how many times they had been whipped?
A. No.

Q. Was their clothing torn?
A. No.

Q. Did you see any bruises?
A. No.

President: I do not wish to interrupt the defense counsel's questioning, but are you interested in the accused understanding the questions and answers?

Q. Did any of those soldiers, to your knowledge, make formal complaint?
A. No.

Q. Was it within their rights, do you know, to make a complaint for any grievance to some superior in the camp?
A. Yes.

Q. To whom could they report grievances?
A. To the lieutenant interpreter.

Q. To the lieutenant interpreter. Who is he?
A. Lieutenant Trificcetti.

Q. He was an Italian officer, I presume?
A. Officer.

Q. Do you know whether each of the barracks appointed a leader within the group?
A. Yes.

Q. Do you know whether each of the national groups, that is American and English, had a man designated as a leader?
A. Yes.

Prosecution: May it please the Commission, this is getting far from the direct examination.

President: Try and confine yourself to the scope of the direct examination and other things will be brought out later.

Defense: Sir, if the Commission please, we are covering here, during one and a half years in a camp, a multitude of incidents. If it has not been covered by the direct, then the defense, in such questions, desires to make this man its witness, because we all want to know what the setup was here for receiving grievances, correcting grievances. Now, three years later, grievances are alleged. It is pretty important to know whether some of these individuals, these griping individuals, did their griping at that time through appropriate channels. If this was an American Army camp, it would be very relevant to find out if they complained at the time to appropriate authorities or saved their griping for three years later.

Prosecution: If the Commission please, that can be brought up at the proper time if the defense desires to make this witness its own witness.

Defense: If it please the Court, in the last trial we had the spectacle of one witness coming in five times. I think everything could have been brought out of that witness at one time - to bring him back and forth, back and forth, is what is going to drag this on for weeks.

President: The Commission is interested only in determining the truth of the allegations. If what you are asking will disclose the truth in that particular camp, the questions may be answered. Try and confine yourself to the scope of the examination conducted by the judge advocate please. You can bring the witness in as your own witness later, if you wish.

Q. Do you know whether it would be appropriate for an inmate, a prisoner having a grievance to report the grievance to his barracks or group leader?
A. Yes.

Q. Do you know whether, in connection with this incident just described - the fire incident we will call it - whether the individuals concerned reported it to their group or barracks leader for action?
A. No.

Prosecution: I would like to ask whether or not the witness knows that was a double-barrel question and could be answered two ways?

President: The court will take a five minute recess.

The Commission then recessed at 1050 hours and was reopened at 1045 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The witness, the accused, the interpreter and reporter were also present.

President: It is the desire of the Commission that the defense will limit his questions to the scope of those facts brought out in the direct examination and as to other facts that the witness may have knowledge of bearing on the conditions of the camp, those facts can be brought out later, either through questioning by the judge advocate or by recalling the witness for the Commission or for the defense counsel.

Q. You have testified as to an incident involving the escape and recapture of several prisoners, Did you actually see yourself the facts to which you testified?
A. No.

Q. From whom did you receive this story?
A. A Medical Captain, an American Medical Captain and other lieutenants who were at the camp at that time.

Q. Did they tell you how many prisoners were involved in this attempted escape?
A. Yes.

Q. How many?
A. Two.

Q. Did they tell you whether these prisoners were returned to camp without injury, having been shot at?
A. No, they did not tell me that.

Prosecution: If the Commission please, we object to that question.

President: Can you frame that question some other way please?

Q. Did they tell you about the circumstances of the recapture of these two prisoners?
A. No.

Q. Did they inform you whether these two prisoners were returned to the camp without injury?
A. They did not mention that.

Q. Do you know whether the Italian Government, through superiors of Colonel Oldani, had posted an order that anyone attempting to escape would be shot?
A. I think that was the order.

Prosecution: If the Commission please, this is not within the scope of the direct examination.

Defense: This is so intimately tied up. He is testifying about an escape here and this is tied up with the escape to give the whole picture. They brought out only a part of the picture. We need this for the court to see the whole picture of the incident they brought before the court.

President: The question should be answered.

Q. Do you know whether or not Colonel Oldani did give contrary instructions - instructions contrary to this order to the guards?

Prosecution: If the Commission please, if the former question was answered I did not hear it.

Defense to reporter: Will you read the answer?

The reporter read the answer as requested.

A. I don't remember if he did.

Q. Getting back to these prisoners who were recaptured, did you speak personally to any of the prisoners?
A. No.

Q. This information you have comes from others entirely?
A. Yes.

Q. Did they tell you in which manner the two prisoners were handcuffed to the flagpole?
A. They did not tell me in which manner.

Q. Did they tell you how long the prisoners were handcuffed to the flagpole?
A. No.

Q. They merely reported to you that the prisoners were handcuffed to the flagpole? Is that all?
A. Yes.

Q. They said absolutely nothing else?
A. They were angry about the incident.

Q. Do you know, as a matter of fact, whether they were handcuffed to the flagpole?
A. Yes.

Q. How do you know as a matter of fact?
A. Because I heard it related by other people.

Q. You yourself did not see it?
A. No.

Q. Then how can you know as a matter of fact?
A. According to what I heard.

Q. Anything you know about the incident has come through other parties, is that true?
A. Yes.

Q. Did you ever see anyone handcuffed to the flagpole?
A. No.

Q. Were you around the camp daily?
A. Yes.

Q. Is the flagpole in this camp in a conspicuous location?
A. Yes.

Q. Is it likely that you being in the camp regularly would have seen someone handcuffed to the flagpole, if that had been for a considerable length of time?

Prosecution: I object to that question.

President: Objection sustained.

Q. Do you know whether the two recaptured soldiers made a complaint of grievance?
A. No.

Q. Is your answer that you don't know?
A. I don't know if they did or not.

Q. Had a complaint been made, is it probable it would have reached your attention?

Prosecution: Objection, if the Commission please. This man is an interpreter. You are asking him for his opinion.

Defense: It may be of help to the court, sir. The rules seem to have been kicked out of the window. If the court thinks this might be of help - -

President: The court is interested in knowing the things that the witness himself saw and not in what he thinks. Cannot you frame your questions so you can bring out the elements you wish to bring out without asking for his opinion?

Defense: We will try, sir.

Q. How many flagpoles are there in this camp?
A. Inside the camp there were two.

Q. Two. I show you Defense Exhibit A for identification. Is this a true photograph of one of the flagpoles?
A. Not of the two inside the camp.

Q. Then there is another flagpole outside the camp?
A. Yes, sir.

Q. Is this a picture of the flagpole outside the camp?
A. Yes, sir.

Prosecution: If the Commission please, this witness has not shown that he knows what this is or anything about it, or whether this is a flagpole.

Q. What does this exhibit represent? What is it a picture of?

Prosecution: Does he know?

Q. Do you know?
A. Yes.

Q. What is it?
A. This is a flagpole that is near the offices of the camp which is outside the camp on the hill.

President: Is that acceptable to the judge advocate, the answer?

Prosecution: I do not see the materiality of this. This is a picture of a flagpole somewhere outside the camp. We object to the introduction of it.

Defense: One of the specifications mentioned a flagpole. Likewise, this witness has just testified to news he heard indirectly of hand-cuffing to a flagpole.

Prosecution: If the Commission please, this witness testified on direct examination that the accused told him, as well as others. He went to the accused after the prisoners had told him and the accused confirmed the statements.

Defense: We won't go into that at the moment. I offer this as Defense Exhibit A.

President: There can be no objection to the introduction of this Exhibit A, if the defense wishes to introduce it.

Defense Exhibit A was then admitted into evidence.

Q. On direct examination you said that you conversed with Colonel Oldani about this story which you heard from others. Do you recall the precise words the Colonel used?
A. No.

Q. Did he tell you whether this had been done, if it had been done pursuant to his orders?
A. As I understood, it was from his orders.

Q. Did he tell you, that is the question?
A. I cannot remember the exact words. It was so long ago. I cannot remember if he told me exactly that.

Q. In other words, you are not sure what he told you, is that right?

Prosecution: If the Commission please, the defense counsel is arguing with the witness.

Defense: I am asking if he is sure. He has made a statement.

President: Ask him so he can answer "Yes" or "No."

Q. Is it true that you are not certain as to what Colonel Oldani told you at that time, yes or no?
A. No.

Q. By that do you mean you are certain of what Colonel Oldani told you?
A. Yes.

Q. If you are certain, will you tell the Commission what he told you?

Prosecution: If the Commission please, objection.

President: I am sure the witness is confused and possibly you can give this line of questioning and see exactly what he means to say. I feel that the witness is confused but maybe I am wrong.

Q. Do you remember what Colonel Oldani said at that time?
A. Approximately, yes.

Q. What, approximately, did he say?
A. When he told me about the incident that the captain and the other American officers were angry about, he stated he had put them there to show to the other prisoners as an example to other prisoners of war if they tried to escape.

Q. That he had put them there as an example. Did he tell you how long they were handcuffed?
A. No.

Q. Did you have any information as to whether it was five minutes, five hours, fifty hours?
A. No.

Q. Do you have any idea as to the length of time these people were allegedly handcuffed?
A. No.

Q. From your experience in the Italian Army, do you know whether it is appropriate in a punishment of Italian soldiers to use handcuffs for a limited period of time?
A. Yes.

Q. Is it appropriate to use handcuffs for a limited period of time?
A. They can handcuff them the time they take them from one place to another, then put them in the guard room.

Q. Referring to punishments meted by the Italian Army to its soldiers, do you know whether it is permissible to handcuff for a limited period of time Italian soldiers, yes or no?
A. No.

Q. Have you ever seen it done, handcuffing of Italian soldiers?
A. Yes.

Q. And so is it true that in connection with this incident reported to you, you have no idea of whether this alleged handcuffing was for a few minutes, or a few hours or a few days, or a few weeks?
A. No, I don't.

Q. Going back to another incident which you reported, stated, described, you reported that you had heard about a fight between Colonel Oldani and a soldier?
A. Yes.

Q. Did you see that fight?
A. No.

Q. How did you learn about it?
A. I was working in my office inside the camp and some PW ran up to me and told me that there was a fight going on at the entrance.

Q. Is it true that all of your information about this incident is derived from the words of others?
A. No.

Q. What part of it did you observe?
A. The incident? I ran there when it was over.

Q. Well you observed no part of it with your own eyes, is that true?
A. That's true.

Q. You say that you ran to the scene of this incident, but arrived after it was over, is that true?
A. Yes.

Q. Did you see the soldier who was allegedly involved?
A. I saw his back.

Q. His back. Was he an American?
A. Yes.

Q. Do you know his name?
A. No.

Q. Was he a colored soldier or a white soldier, do you recall?
A. I remember they used to call him Mulatto.

Q. Mulatto. Did anyone tell you what he had called the Colonel? You said he had called the Colonel a bad name. Did anyone tell you what he had called the Colonel?
A. No.

Q. Did you ask anyone?
A. No. I just heard that he had called him a bad name.

Q. But you did not know what this bad name was?
A. No.

Q. Do you recall whether when you arrived on the scene of this incident, whether you saw the camp chaplain, the priest Don Peano?
A. I don't remember if I saw him.

Q. Did you see present at the scene of this incident any of the officials, the other officers of this camp?
A. Yes.

Q. Who, in particular?
A. I don't remember now.

Defense: Your witness.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. I believe you stated on direct examination that when you arrived at the gate where this alleged incident took place, the accused was there?
A. Yes.

Q. Did you or did you not talk to the accused?
A. I asked him what happened.

Defense: Objection. This was not covered on direct examination. It was not covered on cross-examination. It cannot be covered on redirect.

President: That question was not brought out in direct or cross-examination.

Prosecution: I was just leading up to the point of who said the colonel was called a bad name. That was brought out.

President: The question will be answered.

Q. Did you or did you not talk to the accused? Answer yes or no.
A. Yes.

Q. Do you remember who told you that the prisoner called the accused a bad name?
A. The Colonel.

Q. Did anyone else tell you that?
A. Some POW, POWs.

Q. You have also testified that on five or ten occasions you observed - you had complaints from the prisoners regarding bread. I will get you to state whether they always received the same kind of bread?
A. I don't know what you mean by the same kind.

Q. Was the bread always of the same quality as far as you know?
A. It was always made the same.

Q. Do you know whether or not Colonel Oldani was an officer in the Italian Army?
A. Yes.

Q. And he was serving as such as Camp Commander in Sicily?
A. Yes.

Q. Sicily at that time was part of Italian territory?
A. Yes.

Prosecution: That's all. Any questions by the Commission?

President: I think we have some.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. What was your rank in the Italian Army at this particular time when Colonel Oldani was in command of the camp?
A. Soldier of the Medical Corps unit.

Q. Private?
A. Private.

Q. How long had you been in the Italian Army at that time?
A. From when I was called into the Army, from 1940.

Q. Approximately two years?
A. Two years.

Q. In your direct examination you spoke of the average number of prisoners of war in your camp at one time and you said five hundred?
A. Five hundred.

Q. About five hundred. That was the average number?
A. Yes.

Q. You also spoke of the greatest number that was in the camp at one time. What was that do you recall?
A. About one thousand.

Q. In your direct examination you spoke of the type of shelters that was furnished prisoners of war and you stated they were tents one hundred and fifty yards long by fifty yards wide. Will you describe a little more carefully the nature of that tent?
A. How it was built?

Q. Yes.
A. There were wooden beams, two in this direction and one or two this way. Then it was covered by sections of canvas tied together until it covered all these wooden beams, and there were two flaps of canvas for the door.

Q. In your direct examination you were asked questions about the food rations furnished prisoners of war. In what respect were Italian soldiers better fed than prisoners.
A. On the quantity because when I used to take my food outside the camp at the Italian cook-house, I used to bring it into the camp to eat it and the PWs used to joke with me and say, "Look how much you have had compared to us."

Q. Did you ever see anyone beaten - any prisoner of war beaten while you were in that camp?
A. No, sir.

Q. Are you familiar with the responsibilities of a so-called officer of the day?
A. Yes, sir.

Q. What are some of these responsibilities?
A. In the morning he had to count the prisoners; a roll-call would be made and he was in charge of the guards around the camp, and he would be responsible for any incidents that happened in the camp.

Q. Why did you make inquiry as to somebody being whipped?
A. Because I was told that ten prisoners of war were being led to the guard room because they had burned some blankets, and I ran down to find out what would happen - all about the situation.

Q. Was that part of your responsibilities as interpreter for the Camp Commander?
A. If I was on duty that day - there were two interpreters - it would be part of my duty to be on hand if anything happened.

Q. In your cross-examination you mentioned an order that was published by the Camp Commander in regard to the treatment of prisoners of war who attempted to escape and your answer was, "There was an order out that they should be shot."
A. I don't remember if there was an order out. I presume if a prisoner escaped and they tried to stop him and he did not stop running, they would probably shoot him, if he did not stop. I understood that.

Q. Did you ever see such an order?
A. No.

Q. In your cross-examination you say that you saw the back of the soldier who had fought with Colonel Oldani?
A. Yes, sir.

Q. How do you know that was the soldier who had fought with Colonel Oldani?
A. Because he was handcuffed and being led to the guard room outside the camp.

Q. Did you actually see the fight?
A. No, sir.

Q. Is it possible he could have been some other soldier?
A. I don't think it was possible because whoever was being led outside the camp had done an offense and was being put in prison.

Questions by Lt. Colonel O'Keefe:

Q. Was that man's clothing disarranged in any way?
A. Not that I remember.

Q. You stated that many of these prisoners were sick upon their arrival at the camp?
A. Yes.

Q. Where did they come from?
A. Northern Africa.

Q. How were they transported?
A. Boat, some by plane.

President: There appear to be no other questions by any members of the Commission at this time. This witness can be excused but should be retained so that he can be questioned later.

Prosecution: If the Commission please, since there was an attack upon his American citizenship, I would like to ask him a few questions in order to present his side of that picture.

Defense: Objection. I never went on with any attack.

President: I recall that his questions were objected to, but the question of the citizenship did come up and several questions were asked about it. You have no objection to the judge advocate continuing in that line?

Defense: Subject to our continuing in that line, if we wish.

President: Certainly.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. What age were you when you returned to Italy?
A. 21.

Q. With whom did you come back?
A. With my family.

Q. Why?
A. My father had all his money tied up in Italy and he could not receive it from Italy, and he had been out of work three years and I was the only one supporting the family. My efforts were irregular. They said, "We can't live here like this," so they decided to go to Italy and settle down with the money they had. My father was illiterate. He was not able to do his own business, and he asked me to accompany him to help him buy a farm, build a house, invest his money, and that is why I came.

Q. Were you inducted into the Italian Army?
A. Yes.

Q. What action, if any, did you take at that time?
A. When I was called by the Carabinieri, they brought me down to the military district. I had in my possession my American passport and a document issued by the Italian Consul of Palermo, in which the document stated that I was not to be called into the Italian Army for a period of two years. I presented that document to the colonel who interrogated me, with my passport, and he said the document was not valid.

Q. State whether or not you requested to be interned as an American citizen?
A. Yes.

Q. To whom did you make that request?
A. I made many requests to Rome, the Supreme Italian Command.

Q. State whether or not the accused was aware of your feeling and your position?
A. Yes.

Q. What request, if any, did you make to him?
A. Well, he knew that I was writing to be interned.

Q. Did you tell him your nationality?
A. Yes.

RECROSS-EXAMINATION

Questions by the Defense:

Q. Going back to your reason for coming to Italy, first of all do you know General Perugi?
A. I have heard of him.

Q. Is he a General in the Italian Army?
A. Yes.

Q. Did you or did you not make a statement to General Perugi that you came to Italy to fight the Americans?
A. No.

Q. Why did you join the Italian Army?
A. I did not join the Italian Army.

Q. For how long a period did you serve in the Italian Army?
A. Two and a half years nearly.

Q. When were you discharged?
A. I was not discharged.

Q. At what time did you leave the Italian Army?
A. At the invasion.

Q. Invasion of what?
A. Of Sicily.

Q. So, did you serve in the Italian Army from 1940 until the invasion of Sicily, a period of two and a half years, against your will?
A. That's right.

Q. Do you have in your possession any copies of documents registering your protest?
A. To the Italian Government? No, I never made any copies. If I did, I lost them.

Q. How often did you protest?
A. I never received an answer to my letters to Rome, and once in a while I'd send them another letter.

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Q. How many letters did you send to Home?
A. I can't remember how many, but I did receive one answer once, not by letter, by voice.

Q. And what was that answer?
A. A General came down to visit the camp and I spoke to this General, with the permission of Colonel Oldani, telling him my situation and that I wanted to be interned. He said, "You cannot be interned. You are an Italian, the son of an Italian."

Q. Was it General Perugi?
A. General Yengo.

Q. General Yengo. Have you seen General Yengo in the last week?
A. Yes.

Q. Did you ever make statements to prisoners of war to the effect that you had come to Italy to fight the Americans?
A. No, I never made that statement.

Q. Did you ever make statements to prisoners of war that you would see them in New York when the Italians got there?

President: Could I interrupt and ask what is the defense counsel trying to bring out?

Defense: If it please the Commission, these statements are all on record. Either they show that this witness is telling the truth or that these statements that have come from America are wrong. Which side is wrong, I don't know, but it does show the general conclusion which affects not only the credibility of this witness but the credibility of the others, of those various statements.

President: Would it not be better to bring the witness in in the presence of these documents you have, to show the inconsistency?

Defense: It would, sir, indeed, but in the interests of saving time, I have done it this way because I know the prosecution will later introduce these documents, and I am trying to avoid an extra hour. When these documents are introduced then the court can see the complaint on this point.

Q. Were you drafted into the Italian Army?
A. What do you mean by drafted?

Q. Inducted. Did you volunteer?
A. No.

Q. Under what circumstances were you placed in the Italian Army?
A. I was called by two Carabinieri and accompanied to the district.

Q. Was it not within your rights to refuse to participate in the Italian Army?
A. It was useless. I told them I was an American.

Q. Do you mean to say you could keep a bayonet behind you for two and a half years?

President: The accused the questions are in no way related to, what the witness has committed himself on. From what I recall his citizenship and service in the Italian Army came up as a matter of record. Do you intend to go beyond that?

Defense: No. If it please the Commission, he has testified that he was inducted into the Italian Army against his will. We are trying to show that there is no such thing as being inducted against his will.

President: Do you wish to determine how he got into the Italian Army? That is perfectly proper.

Q. When you informed the authorities who were inducting you that you were an American citizen, what was their answer?
A. That I was a son of an Italian and that I was therefore an Italian.

Q. Did you accept their answer?
A. No, I kept protesting. I showed them the document I had from the Italian Consul and my passport.

Q. Did you refuse to serve in the Italian Army?
A. There was no use my refusing. I had to do it. There was no way out of it.

Q. What physical compulsion was exercised by anyone to require you?

Prosecution: Argumentative. We object.

President: The Commission would like the questions to be more to the point and in keeping with the questions that he has already been asked and answered. The witness himself is not on trial. Can you confine your cross-examination to more direct questioning please.

Q. If you had refused to serve in the Italian Army, do you know what the consequences of that refusal would have been?
A. No, sir.

Q. Do you mean that there would have been no consequences?
A. They did not bother about me, they just said, "You are an Italian," and that's all.

President: Repeat the question to the witness. We feel he did not understand the question.

The reporter repeated the question to the witness.

A. No action was taken against me.

Q. If you had refused?
A. I did refuse.

Q. If you had refused to be moved. If you had refused to put on the uniform. If you had refused to follow orders what would the consequences have been?

Prosecution: If the witness knows.

A. I would probably have been tried for treason.

President: You are asking the witness his opinion.

Defense: No, I think it is more than his opinion. He undoubtedly knew the facts, what the alternatives were. I will frame the question this way.

Prosecution: He has answered the question.

President: The witness has testified that he was inducted into the Italian Army under force and was taken to the camp by two Carabinieri, against his wishes. I do not know that further evidence along these lines would be of any material evidence so far as the accused is concerned.

Defense: All right, we will drop the line of questioning. Just one thing before we drop this line of questioning.

Q. Do you state that if you had refused physically or otherwise to go into the Italian Army, you would have been put into a concentration camp?
A. No, I don't think I would have been put in a concentration camp.

Defense: That's all.

Prosecution: His answer was he would probably be charged with treason.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. State whether or not you made any effort to get more food for the American or Allied prisoners?
A. Yes.

Q. What did you do?
A. Every night I used to take into the camp packages which my wife's family would prepare - cigarettes, bread, cookies and bring it into the camp.

Prosecution: No further questions.

President: I'd like to ask one question.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. Regarding the prisoners of war in that particular camp, did you note any ill effects on them through either lack of or poor food?
A. They were all under-nourished.

Q. Were they under-nourished when they arrived in this camp from Northern Africa?
A. The English had suffered a lot in the desert and they came in very terrible condition. The Americans were in a better condition.

Q. Were they still under-nourished, many of them?
A. When they arrived at the camp maybe. During their journey they did not have much to eat. They were not permanently under-nourished. They were well built.

Q. So when they arrived at the camp, a large percentage could be described as under-nourished at that time?
A. Yes.

Q. Do you recall whether the percentage of Americans to English was small or great? Roughly, what was the percentage of Americans to English in this camp?
A. At the time the Americans arrived from December 1942 to April 1943 they were predominantly Americans. Before that there were no Americans in the camp.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. Generally, what was the condition of the Americans when they arrived in camp?
A. Their physical condition?

Q. That's right.
A. Some were sick with diarrhea. I can't think of anything else. No wounds on their body.

Q. Did they appear to be under-nourished at that time?
A. Well, they were all hungry.

Q. Did they appear to be under weight?
A. I don't think so.

Q. What was their condition when they left PG 98 as compared to their condition when they arrived?
A. They would have all their clothes disinfected.

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Q. I refer to their physical condition, as to whether they were more under-nourished when they left than when they arrived"

A. They would always complain continually that the food was not enough. I did not weigh them. I don't know whether they were more under-nourished or not.

Q. How did they look. Can you tell the Commission their appearance?

Defense: Objection. This is calling for an opinion. He is trying to characterise one thousand soldiers. How did they look!

President: Objection sustained. Put the question some other way.

Prosecution: No further questions.

RECROSS-EXAMINATION

Questions by the Defense:

Q. During your two and a half years in the Italian Army, did you hear Italian soldiers complaining about the food?

A. Some did yes.

Prosecution: If the Commission please, we are not trying the Italian Army.

Defense: The prosecution's position is that these people were eating different to the Italian Army, so it is pretty relevant what the Italian Army ate.

President: If the defense wishes to bring up a question in regard to rations, as to the actual calory content or quantity of food for prisoners of war, I think that would be appropriate.

Defense: If the Commission please, we will make every effort in that direction.

Prosecution: Does the Commission have any further questions?

President: Will the witness be available if we wish to question him further, later on in the trial?

Prosecution: I will be very glad to keep the witness as long as the Commission desires, but the witness has been here for some time now and, due to hotel expenses, would like to go home.

President: I think it would be better to retain him in case there are any further questions. The witness is excused.

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There being no further questions, the witness was excused and withdrew.

President: The Commission desires to retain the witnesses named by both the judge advocate and the defense counsel to see that full and complete information, as far as possible, reaches the Commission. The matter of expense in connection with the witnesses should have no bearing.

The Commission then recessed at 1150 hours and was reopened at 1400 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Defense: If the Commission please, the defense, at this time, would like to introduce a civilian counsel for the accused. The accused has expressed a desire to have this civilian attorney work with us on the defense. His name is Carlo Zucca of Monza, near Milan.

President: Are there any more witnesses for the judge advocate? Are you through with your case?

Prosecution: No, sir, I granted the defense permission to make this motion.

Defense: Does the prosecution have any objection?

Prosecution: The prosecution has no objection.

Prosecution: May it please the Commission, the prosecution now offers in evidence twenty-nine affidavits of former prisoners of war who were in PC 98 in Sicily at some time between the 1st December 1942 and the end of May 1945. These prisoners have all returned to their homes, either in England or the United States, and it has been impossible to obtain their presence at this time. Request that the reporter identify them as Prosecution's Exhibits Nos. 1 to 29 inclusive. The defense has had an opportunity to examine the affidavits in question, and I believe copies of the pertinent parts were furnished to the defense approximately two weeks ago.

Defense: May it please the Commission, the defense is compelled to object to the introduction of these twenty-nine affidavits into the evidence on the following grounds. Before I state the objections, I want to express the appreciation of the defense for the cooperation we have received from Colonel Wellen and Captain Ashcraft since we entered the picture. When I mentioned the prosecution in the argument, I do not want the court to infer that the conduct of either of these individuals is in any way challenged. However, I wish to point out that most of these affidavits are dated, bear dates of over a year ago. These affidavits are simply ex parte

statements of alleged events. They are not depositions, that is the point I want to bring out. These are statements made by the individuals to an investigator who, I gather, had the job of digging up possible evidence and possible witnesses for war crimes action. Since only one side has had the opportunity to put questions to these individuals, the result of bringing these before the court is this: the defense will have no opportunity to cross-examine these witnesses. They are one-sided stories, only that. Furthermore, the accused is denied of his Constitutional right to be confronted by the witnesses against him. That is a right guaranteed by Article 6 of the Bill of Rights of the Constitution. I also wish to point out that these statements, under Circular 114, the admission of these statements, would in fact contravene the spirit and, perhaps, the wording of Circular 114. Now if these were depositions - by depositions I mean the military procedure also followed in civilian courts - where the prosecution will submit its interrogatories, interrogatories is the technical word, and then the defense will submit its cross-interrogatories, and then if the statement is taken in the States or anywhere by a competent person, then when it comes back here, it is perfectly good evidence because the defense has had the chance to propound questions and bring out the full side of the story. That has not been done. I can conceive that if these statements had been taken a few weeks ago, there would be an excuse because of the time element for bringing them before this court and, if that were the circumstances, we would not object to them being entered, but that is not the fact. When you check the dates, you will see that the prosecution - whoever has been responsible for this case - has given the defense no opportunity to propound its questions and get the other side of the story. The result is you have a one-sided story that looks as though whoever has been in charge of the prosecution of this for the last year has intentionally attempted to suppress the other side. That is a practical result of bringing them in when we cannot exercise the right to cross-examine. Now I'd like to call the attention of the court to paragraph 10a of Circular 114, which provides that if any witness is dead or is unable to attend or to give evidence, or is, in the opinion of the President of the Commission, unable to attend without undue delay, then these statements can be issued. The implication is very strong there that every effort should be made to get the witnesses here. Well, if the witnesses are in the States, I am willing to accede that this would be impracticable, but it is the intention of Article 114 to get the witnesses here. It is certainly all the more intention of the drafter that depositions at least should be obtained, when there is reasonable opportunity, and a year is reasonable opportunity. The defense also believes that, regardless of whatever construction is placed on Circular 114, in a case such as this where the entire case of the prosecution rests on affidavits, without a witness being called or a deposition being taken, it is the position of the defense that two provisions of the Constitution are violated - the Fifth and Sixth Amendment. First he does not have due process of law, and second, Article 6 which assures

the right of the accused to be faced by the witnesses against him has again been infringed upon. If it were just afew of these statements and there was other evidence before the court, then these statements might properly be admitted, but our basic objection is that this whole picture is given by these one-sided statements. We all know how one-sided statements can be when we have an investigator whose job it is to dig up facts. If you read the questions, you will see that most of them are improper and the story is very brief and no effort has been made to bring out anything for the defense.

Prosecution: I would like to ask if there is a motion before the Commission? Is there a motion before the Commission?

Defense: Yes, the motion is to exclude Exhibits 1 to 29 from the record.

President: Does the judge advocate have any additional statements to make in regard to the motion pertinent to the objection.

Prosecution: Yes, sir.

President: Are you ready to inform the court, the commission?

Prosecution: This is a Military Commission appointed indirectly through the Theater Commander. I would like to read one paragraph of Winthrop's Military Law, page 775, as to the powers of the Theater Commander, particularly as applied to a Military Commission. The Theater Commander, of course, is acting as the representative of the President of the United States. He does not or is not required to have an order. Any action he may take is by the implied authority of the President of the United States. We are technically still at War. The War is not over until a Peace Treaty is signed. On page 775 of Winthrop is found the following statement:

"By the term Law of War is intended that branch of International Law which prescribes the rights and obligations of belligerents, or - more broadly - those principles and usages which, in time of war, define the status and relations not only of enemies - whether or not in arms - but also of persons under military government or martial law and persons simply resident or being upon the theatre of war, and which authorizes their trial and punishment when offenders. Unlike Military Law Proper, the Law of War in this country is not a formal written code, but consists mainly of general rules derived from International Law, supplemented by acts and orders of the military power and a few legislative provisions. In general it is quite independent of the ordinary law. "On the actual theatre of military operations," as is remarked by a learned judge, "the ordinary laws of the land are superseded by the laws of war. The jurisdiction of the civil magistrate is there

suspended, and military authority and force are substituted." Finding indeed its original authority in the war powers of Congress and the Executive, and thus constitutional in its source, the Law of War may, in its exercise, substantially supersede for the time even the Constitution itself as will be hereinafter indicated."

With reference to these statements, as they are read, the Commission will notice that the man who made the affidavits themselves did not even know the name of the Commanding Officer of this particular camp. In other words, there was no personal animosity as against one individual. It was against the man responsible for that particular camp. These statements were gathered in the usual way, when these men passed through camp, or as they went back home through separation centers. They filled out blanks stating the treatment that they had received in various places. From those statements, after they were sent to Washington, investigators were sent out from the places nearest their homes to obtain statements from these men. It just happens in this particular case, all these statements came to this theater and concerned this particular camp, for which we have the accused here today being tried. There was no effort to suppress any information, but it does take time to get all this information together. As a matter of fact, since I started preparing the specifications in this case, I have received two additional affidavits which are in this file, and under Circular 114 which governs this Commission, it is so expressly ordered in the order appointing the Commission, these affidavits are admissible.

Defense: If it please the Commission, there is just one point I'd like to bring out: why somewhere along the line some effort was not made to hear whether there was another side to the story. Nowhere, to my knowledge, has that been done. No-one has ever mentioned depositions. Had it been done a couple of months ago, we could proceed to trial with the story before us instead of distorted one-sided statements.

President: It appears from what information the Commission has at present that the accused may not have the opportunity to confront those who have made accusations against him, as set forth in the affidavits in question. It appears also that it is within the scope of Circular 114, which governs the procedure of the Commission, that under paragraph 10a and b and 10e particularly, which says any diary, letter or other document may be received in evidence as to the facts therein cited. The Commission is not at all cognizant of what facts the questionable affidavits contain. It does appear that under this circular they are qualified to be introduced for what evidence they may contain, and it is believed and understood, of course, by all members of the Commission that the evidence contained in the affidavits will be given what weight they justly deserve. On that ground it is the opinion of the President of the Commission that they may be introduced.

Prosecution: The defense has suggested that instead of having the affidavits interpreted at the end of the reading of each affidavit, that they be read rather slowly and the interpreter for the accused will translate when we go along and, in that manner, save time.

President: Is there not a translated copy there?

Prosecution: They are all in English.

President: Is there an Italian translation for each document, for each one? They will have to be translated after they are read.

Prosecution: The attorney for the accused says the interpreter for the accused will interpret for him as we go along. Having had copies for almost two weeks, they are already almost familiar with the depositions.

President: I presume that is as expedient as anyway. Would it be proper, without objection by the defense, as each affidavit is read, the judge advocate can state, as nearly as he can, to which specification the particular affidavit applies?

Defense: Yes, sir, I think that is a good idea. It would simplify matters. It is very confused.

Prosecution: The first affidavit is by 1st Lieutenant Edward O. Hirt. Although these affidavits, in general, apply to many specifications, this one applies, particularly, to 11, 8 and 1.

President: Are the members of the Commission ready to receive that affidavit? Proceed.

The judge advocate then read Prosecution's Exhibit No. 1.

President: Please give us the date again this affidavit was given.

Prosecution: 3 October 1945.

President: Proceed.

Prosecution: I believe this affidavit is one year off as to dates all the way through.

Defense: If the Commission please, the defense would like to know if, since we have no possibility of cross-examining, we could make brief comments as to inconsistencies which come up in these affidavits. Here is a sample. This can serve as a guide.

Prosecution: If the Commission please, this is apparently an argument that can be taken care of at the end of the trial. That is the normal and proper time.

Defense: I don't intend this as an argument. Here is a sample.

President: I think it would be proper for the defense to have an opportunity now to point out weaknesses, irregularities or inconsistencies in each affidavit as it is read. The witness himself is not present so he should be able to make what statements he himself desires, as they pertain to that argument.

Defense: We intend to keep this brief.

President: If you wish to do that, make your own statements now in connection with that particular affidavit, it will be acceptable to the Commission.

Defense: The statement was made that Colonel Oldani was short - will you rise Colonel - very stout, round face, bald. Also, the Mario who is mentioned in here apparently is prosecution's first witness.

President: Proceed.

Prosecution: The next affidavit is by Alvie D. Cochran and refers specifically to specifications 7, 1 and 6. It will be noted during the reading of these affidavits that many of them refer to more specifications than that.

The judge advocate then read Prosecution's Exhibit No. 2.

Defense: No comments at this time.

President: Does the defense wish to - -

Defense: No comments at this time, sir. We do not intend to make our argument now. It is only on the obvious inconsistencies that we are going to bother the court at this time.

Prosecution: The same soldier made a second affidavit on the 3rd September 1945, relating to another incident. Does the Commission desire that I read the entire affidavit or just that part?

President: You should read it all, if you want to introduce it.

The judge advocate then read Prosecution's Exhibit No. 3.

Prosecution: Under the ruling of the Commission, does the defense note any irregularities?

Defense: If the Commission please, there is only one. The last sentence, "despite his bad reputation". They are referring to the reputation of the witness the prosecution had on the stand this morning.

Prosecution: For the record is this the only irregularity the defense points out?

Defense: At this time.

Prosecution: The next affidavit by Willard Kirk refers to specifications 1, 9 and 11.

The judge advocate then read Prosecution's Exhibit No. 4.

Defense: Can we invite attention to the fact that the Mario mentioned therein is the prosecution's witness Mario Minardi.

Prosecution: For the record is that the only irregularity noted in the affidavit?

Defense: At this time. We have plenty others but not at this time.

President: The Commission would like to be informed on a matter contained in the last affidavit in two places. In there it speaks of German guards as administering this treatment. Is that a misprint or is that the way it reads?

Prosecution: That is the way it reads.

Defense: At a later date we will produce evidence to show that Germans were never in the camp.

Prosecution: I imagine it is a typographical error. The next affidavit by William P. O'Connell, Jr. refers to specifications 2 and 9.

The judge advocate then read Prosecution's Exhibit No. 5.

Prosecution: For the record, does the defense note any irregularities?

Defense: At this moment no, but we have many for a later time.

President: The Commission will take a five minute recess.

The Commission then recessed at 1530 hours and was reopened at 1540 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: The next affidavit by Paul F. Freeman refers to specifications 2, 4, 9 and 10.

The judge advocate then read Prosecution's Exhibit No. 6.

Defense: This particular statement is so crowded with irregularities that we do not have to wait until the evidence is before the court to point that out. First of all, he states that chaining of prisoners for refusing to work was a daily occurrence. The prosecution's witness Mario Minardi has emphatically stated that he never saw anyone chained and that, secondly, no-one was ever punished for refusing to work. This document is introduced in support of specifications 2 and 4, but he clearly states he knew nothing about these incidents but he heard about them from other people. He was not an eye-witness. He describes the accused as being five foot eight inches tall and weighing two hundred and twenty pounds. I doubt whether the accused weighs half of two hundred and twenty pounds, nor is he near to five foot eight inches. Later he states that prisoners were forced to work when they were ill. Sergeant Minardi, the prosecution's witness, emphatically denied that.

Prosecution: Are these all the irregularities noted?

Defense: At this moment.

Prosecution: The next is an affidavit by Edward M. Greenberg and refers to specification No. 3.

The judge advocate then read Prosecution's Exhibit No. 7.

Defense: I would like to bring to the Commission's attention one sentence here by this affiant Greenberg, in which he states, "I also remember the person who ordered me chained to the pole. He was a guard named Mario." Now he refers to Mario that testified this morning. Mario testified that he had never seen anyone chained to the flagpole. In fact, Your Honor, if this goes on any further, I think we will have another war criminal.

President: We will hear the affidavits on their face value and we will give them such consideration as the members think they deserve.

Prosecution: The next is an affidavit by Peter C. Grillo and refers to specification No. 4.

The judge advocate then read Prosecution's Exhibit No. 8.

Defense: Even without cross-examination, the inconsistencies of some of these statements are beginning to crop up. This man states as a reason for Serrano's whipping that Serrano objected to another prisoner of war being unjustly shot. A couple of statements ago the affiant attributed the reason for this beating to, "He was beaten as a result of an argument with Colonel Cidani. He was attempting to get more food for American prisoners of war there and also protesting the chaining of American prisoners of war. Quite a divergence of reasons!

Prosecution: The next affidavit is by Roland Rakow and refers to specification 4.

The judge advocate then read Prosecution's Exhibit No. 9.

Defense: I only wish to bring out that this witness Rakow saw absolutely nothing. Everything he recounted here was what someone else told him, sir.

President: Was there a misunderstanding on the number of the camp that he was a prisoner of war in? I understood you to read it as Camp 59.

Prosecution: That's correct and it is also correct that this is a hearsay statement, reported to him by a man who had been in Camp No. 98.

Defense: He never said he was in 98 only 59, and he describes as the camp commander of 59 a man who could not be this one - six foot tall - this must be an irrelevant statement.

Prosecution: Not at all.

Defense: Having something to do with another camp.

Prosecution: No, he particularly describes the whipping, as told to him, that is the whipping of Serrano, as told to him by another man.

Defense: He says, "While I was in Camp 59 I heard this."

Prosecution: Yes, he describes it as told to him by another man who had been in Camp No. 98.

Prosecution: The next affidavit is by Mahlon J. Black and refers to specifications 5 and 8.

The judge advocate then read Prosecution's Exhibit No. 10.

Defense: This appears to be the same incident - the burning of the tent - to which prosecution's witness Mario testified this morning. The Commission will recall that Mario testified he saw these prisoners of war and they all seemed to be laughing about the punishment they received, which is entirely contrary to the statement of this witness.

Prosecution: For the record, is that the only irregularity that the defense wishes to point out?

Defense: There are others, but this is the only point we wish to bring out at this time.

President: Possibly we could eliminate, if both counsel agree, the reading of the testament and affidavit at the end, unless you find some irregularity in it.

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Prosecution: Very well, sir.

President: The authenticating part, if the defense agrees and is satisfied. I would like to ask too is the defense satisfied with the translations being conveyed to the accused at the present time?

Defense: Yes, sir, I have had no complaints. We are in agreement with shortening this.

Prosecution: The next affidavit by Sergeant Walter Phillips of the British Army refers to specifications 1, 8 and 9.

The judge advocate then read Prosecution's Exhibit No. 11.

Defense: This time nothing.

President: Any remarks on the last affidavit by the defense?

Defense: At this time nothing, sir.

Prosecution: The next affidavit by Reginald Lawson refers to specifications 8 and 9.

The judge advocate then read Prosecution's Exhibit No. 12.

Defense: We have nothing at this time.

President: I think the Commission will recess until tomorrow morning. It is now 5 o'clock - until 0900.

The Commission then at 1500 hours on 31 October 1946 adjourned to meet at 0900 hours on 1 November 1946.

Clyde W. Weller
CLYDE W. WELLER
Lt. Colonel, INF
Judge Advocate

The Military Commission met, pursuant to adjournment, at 0900 hours, 1 November 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused, the interpreter and the reporter were also present.

Prosecution: May it please the Commission, I will continue reading the exhibits tendered yesterday. The affidavit of Walter J. Stockwell refers to specifications 8, 9 and 10.

The judge advocate then read Prosecution's Exhibit No. 13.

Defense: It is obvious that this statement, in countless details, is the product of an imagination. There are so many discrepancies. I will just call attention to some more important ones. When he describes the quarters 30 or 35 feet by 12 feet; the previous witness here, prosecution's own witness, described the tents, as I recall, 100 yards by 50 yards. How anyone could imagine tents of this size when they were, in fact, large tents. This will be proven later by other witnesses. We are mentioning these things as an idea of how the mind can distort things. About the blankets - one blanket three feet by four feet. Well, I don't know how large those blankets were, but I cannot even imagine the Italians making a blanket that size. It is preposterous. "In the winter we stayed in our bunks all day in order to try to keep warm." Well, if they could stay in the bunks all day in this camp, I would say conditions could not have been too rigorous. I mean in a prisoner of war camp work is expected. He calls attention to the toilet. In a statement - a few statements earlier - the witness stated that they had no toilets, merely a slit trench. He describes it twenty yards or so from the tents. This witness says it was in a building, with the customary cement floor with holes in it. That is quite a discrepancy. Either this witness is wrong or the other. He complains about not having Italian toilet paper. Well, I wonder how many Italian establishments had it. But it does indicate his attitude of quibbling about minor details. He mentions diarrhea, well these men all came from North Africa. I think one of the most absurd things he states is the one about the food. During the early part of the statement, he described how cold and miserable it was, rainy and snowing and he arrived here in the middle of winter. Well, when he came to food and was asked if food was available in the region, he says, "Yes, when I was transported to Palermo, I saw the fields of vegetables. This was early in the war and I believe they could have supplied us with food." It is hard for me to envision fields of vegetables at this time of the year. Now about his statements as to these beatings. It is obvious that he did not see anything but is reporting rumour, perhaps imagination, and he represents a beating in the following words. "One was struck in the face with leather gloves. I could see him because the guard house was open." Then he goes on to say: "What did his face look like after this beating? It was red all over and there were lash marks and black and blue spots." It is hard for me to imagine these results ensuing from a leather glove being used in slapping a prisoner. That's all.

Prosecution: For the record is that the only irregularity?

Defense: If the Commission please, to save time, would the Commission please instruct the prosecution counsel not to ask this question? Naturally, it is not the only one. We are just calling attention at this time to some irregularities, and I don't like to take time answering this question.

President: He (the defense counsel) will have ample opportunity later to contradict or say whatever he pleases about them.

Prosecution: The next affidavit by Frank S. Cooper refers to specifications 8 and 9.

The judge advocate then read Prosecution's Exhibit No. 14.

Defense: If the Commission please, this is just another example of the grossly exaggerated one-sided stories that have been brought up before the court. Some of the outstanding points of this witness: He states the house where the Italian Colonel lived was filled with British Red Cross supplies, including food parcels. Further on in his statement he says, "This was reported by some of my buddies. I did not see that myself." Another hearsay upon hearsay story. We all know that it would be impossible for one of these prisoners of war to enter the house of the Colonel, or to get near it. They probably could not get within two miles of it. Now this man states the house of the Colonel was an Italian castle. We will prove conclusively that the house of the Colonel was a small farmhouse, just outside the prison camp. This witness also states that the principal disease was dysentery. Prosecution's witness yesterday morning said that most of the prisoners brought in from North Africa were ill with dysentery. This witness also states, "We had double-decker bunks with straw on them." Now here we see one witness stating that there was straw on the bunks. The previous witness, according to these statements, says that they slept on wooden boards. This one is going a little further and saying "straw." He says the Italians issued a small blanket to each man. Prosecution's witness says that two blankets were issued, and he was at the camp all the time. I'd like to bring to the court's attention that the very last part of prosecution's reading of this statement refers to an incident outside of the camp of which Colonel Oldani was commander. It occurred in Palermo and Colonel Oldani would not be responsible for the occurrence there.

President: I'd like to ask if there is anything in the last affidavit that refers to the age and education of Private Cooper?

Prosecution: No, sir.

Prosecution: The next affidavit by Samuel Rosner refers to specifications 8, 9 and 11.

The judge advocate then read Prosecution's Exhibit No. 15.

Defense: This one, on its face, has a most amazing inconsistency. He reports upon arrival at the camp, "Italian personnel took our money, jewelry, passports and paybooks without giving us any receipt." Then later he is accusing the Italians later on of taking his and other Jewish prisoners, taking them

out and taking away their money, jewelry, wrist watch. Well, if they took them away when they entered the camp, how could they take they away later on? We will prove later on by witnesses that it was standard SOP to take away those things when a prisoner arrived in the camp. Also, later on, he states, "Many of the men sold their personal belongings for a bun of a piece of cheese." He had already said that the personal belongings were taken away on arrival. This man, however, stated that each prisoner was given two thin blankets. It bears out the testimony of prosecution's first witness. This man reports the handcuffing of wrists and ankles. I believe this is the only man who remarks about handcuffing of ankles. He does make mention of the fact that they got five cigarettes a day. We also request that the Commission ask the prosecution why they are not reading the second statement from this same witness? The prosecution stated they had two statements from this witness. We don't know whether we want it read or not, but we are wondering why -

President: I presume he need not introduce it unless he wishes.

Defense: It is the same witness and it may throw further light on the incident he talks about. I don't know - -

Prosecution: I am very glad to read it.

Defense: I am asking for an explanation. We have part of the statement here but not the whole thing.

Prosecution: If the Commission please, we desire to read the whole statement.

President: The defense seem to be interested in having it read.

The judge advocate then read Prosecution's Exhibit No. 16.

President: Any comments by the defense?

Defense: Not at this time.

President: Could I ask whether the first affidavit was sworn to and where it was made out and the date?

Prosecution: The date was the 19th day of May 1945.

President: Is that the first one?

Prosecution: No, sir.

President: Give us the date of the first one.

Prosecution: The first was the 19th day of May 1945.

President: And place?

Prosecution: The place is not given since they were both signed and sworn to before JAG officers, one being Tom M. Barrett. I presume they were both made at Caserta in May 1945 or at least in this theater.

President: Is your presumption that they were both made out at Caserta on the 19th day of May 1945 before Colonel Barrett?

Prosecution: One was sworn to before Colonel Barrett and the other Jack E. High, Lieutenant Colonel, JAGD.

President; There is nothing on the affidavit to indicate the man's age or education?

Prosecution: No, sir. Were there any comments by the defense on the second affidavit?

President: I think for the record it would be well to indicate how those exhibits are numbered.

Prosecution: Now, for the record, yesterday, at the request of defense counsel, the Commission ruled that the defense could point out irregularities in the statements, identified as Government Exhibits 1 to 29, as the exhibits were read and, therefore, in the minds of the Commission. Counsel for the Government wishes that the record show, one, compliance with the request of the defense, two, compliance with the ruling of the Commission.

Prosecution: The next affidavit is by Frank P. LaBella and refers to specifications 8 and 9. The prosecution has two statements of LaBella. We will number them 17 and 18.

The judge advocate then read Prosecution's Exhibit No. 17.

Defense: If the court please, I would just like to make a statement on this first exhibit. We know that these investigators were going out to get information for possible war crimes trials. Here the investigator obtained a statement. The entire statement read has boiled down to this two sentence paragraph in relation to the Colonel slapping a prisoner of war. Now, I am sure, if this incident occurred as it is stated, this investigator would have gotten a more elaborate statement to prove it, but all it is is a very short remark that "we laughed and our faces were beaten by some Colonel commander of the camp." I could repeat it, but it is so short that it is ridiculous.

The judge advocate then read the second statement of Frank P. LaBella - Prosecution's Exhibit No. 18.

Defense: The defense has nothing at this time.

President: Will you give us the date of that please? We did not take it up. The date that affidavit was given?

Prosecution: Yes, sir, it was taken on the 14th November 1945 and was signed and sworn to on the 16th day of November 1945.

President: Any remarks by the defense on the last affidavit?

Defense: Not at this time.

President: The Commission will take a five minute recess.

The Commission then recessed at 1020 hours and was reopened at 1035 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: The next document is the affidavit of Anthony Proto and refers to specifications 4, 8, 9 and 11.

The judge advocate then read Prosecution's Exhibit No. 19.

Defense: The discrepancies that the defense desires to place before the Commission in this particular statement are: he mentions types of bunks with empty mattress covering, blanket. Again on the food, he stated specifically that they had no tobacco or means of getting it and yet this man Rosner stated definitely that they received five cigarettes a day. Now this man also states that the canteen - he states specifically that there was bulk sugar candy there. Again on the latrine, stating a straddle trench, whereas we have had definite statements that they were cement floors. The question on this clothing has been or will be shown - a transient camp and there for a very short period of time. Now particularly, "Any instances of mistreatment of individuals or groups?" is answered, as it seems to indicate here, without hesitation or thought, "No, sir," and that he did not see any mistreatment on the part of camp guard personnel, and then again repeating that he did not see any cases of brutal treatment or punishment, but heard later that First Sergeant Manuel Serrano - he had heard, and the reason that he had heard was that he had cursed the camp commander. Now that makes the third story as to this alleged incident, all of them different. The first one, if you recall, was a soldier being shot. This man Peter Grillo, he had given a reason, "trying to protect another American prisoner of war from being unjustly shot," and Freeman stated that he was beaten "because he was attempting to persuade Oldani to issue more food." Now there are three varied stories. That leaves a very questionable doubt as to whether it actually did happen.

Prosecution: The next affidavit by Melvin F. Yellowcloud refers to specifications 8 and 9.

The judge advocate then read Prosecution's Exhibit No. 20.

Defense: Here again the trouble is there are many obvious half-statements. For example, as to the bill of fare: for the dinner he states, "About 6 o'clock in the evening we got about three ounces of cheese per man." That is the first time anyone made that statement. It is obviously ridiculous they had three ounces of cheese per man. Some of it may be true, but the trouble is never is the full picture given. However, this witness did confirm that there was plenty of water and the trenches met their needs, and that there was no vermin in the camp; that there were two blankets, but he also like many of these others seems confused as to which camp this was. Many of these prisoners went through many camps. The fact that they may have the wrong camp in mind is indicated by the size of the tents. We have already been told that the barracks here were huge, tremendous things one hundred yards by fifty yards. This man has the tents twelve feet by thirty-six feet. That's all.

Prosecution: May it please the Commission, the next affidavit is by Henry G. Perry, Jr., 1st Lieutenant. Lt. Perry made two affidavits and request that they be identified as Prosecution's Exhibits Nos. 21 and 22. The two affidavits refer specifically to specifications No. 9.

The judge advocate then read Prosecution's Exhibit No. 21.

Defense: I'd like to bring to the attention of the Commission that the incident referred to in this affidavit occurred, according to the affiant's statement, fifteen or twenty miles from the camp. The question was in one part, "What was the reaction to this complaint?" The answer, "It was that the military had no jurisdiction over the civilian population at Palermo and they were very sorry it occurred." Another question, "Was there, in your opinion, any direct participation on the part of Colonel Oldani in this incident?" The answer was, "No, sir."

Prosecution: Read the entire question.

Defense: I will bring out the point that if this witness could have been cross-examined, the answer would have remained "No, sir." Here we have the answer, "No, sir, he appeared totally indifferent," which proves to the Commission if we had this witness to question him further, we could get a much more accurate and intelligent answer to bring out the full facts. The answer did not call for more than, "Yes, sir" or "No, sir". I believe that covers the points at this time.

The judge advocate then read Prosecution's Exhibit No. 22.

Defense: With reference to this statement, the defense particularly desires to point out the issue of the British Red Cross parcels - given limes instead of milk. That, possibly, could have been a personal choice or desire, particularly with the British prisoners there. One fact that is interesting is how gossip can become almost fact. As he was questioned here,

"was he directly involved with these facts," referring to Colonel Oldani, "which you report?" The answer, "Yes, sir." This is in reference to Red Cross parcels at his home and he emphatically answered, "Yes, sir." "Did he, to your knowledge, have any parcels at his home?" Then he said, "No, not to my personal knowledge, although men claimed he had parcels in his home. These were American enlisted men." "Do you recall the names of these American enlisted men?" and one of these men was this man Freeman whose statement has been read, in which he did not mention anything about Red Cross parcels being in Colonel Oldani's home. So it emphatically brings out here how gossip, loosely tossed about can injure. The investigator, we believe, here slipped and slipped badly, possibly through intention. "What was the food situation?" "Terrible, most men suffered from malnutrition." Well, the next question would be, "What did you get to eat?" but he stopped right there. "Terrible" can mean a world of things, but no attempt was made to bring out what was terrible about it; whether it was too much or too little or what the actual situation was, and then just at the end in regard to being questioned about the Red Cross, "You made a request that you be permitted to contact the Red Cross?" "Yes," the answer was "Yes, and I was told that I could when a representative was in camp." "Do you recall the approximate date that he was in camp?" The answer was, "About March 12, 1942" and it stops there. Did he get to see the Red Cross or didn't he? The man doing the questioning left it baldly on the opposite side.

Prosecution: The next affidavit is by Thomas E. Corcoran, Captain, Medical Corps. Captain Corcoran made three affidavits identified as Prosecution's Exhibits Nos. 23, 24 and 25.

The judge advocate then read Prosecution's Exhibit No. 23.

Prosecution: If the Commission please, the first affidavit merely shows a general course of conduct. There is not a specification charged on this particular date referred to. Any comments by the defense?

Defense: That does not support any specification. The defense moves it be stricken from the record. It is cluttered up enough already.

Prosecution: If the Commission please, this statement shows a general course of conduct by the accused and such evidence is always admissible.

President: Does the defense feel it is harmful to the accused?

Defense: It is difficult to say at this time, sir. It is just that there are enough specifications, eleven of them. They have drafted them and if they cannot pigeon-hole it, I don't see why it should clutter up the record. It should be relevant. If it does not pertain to a specification, it is

not relevant - irrelevant material should not be admitted into the record.

Prosecution: It really pertains to specifications 2, 3 and 4 and, I believe, 5 also. They all refer to chaining and beating.

President: The Commission feels that though it does not pertain to a particular specification, it refers to several and, therefore, rules that it remain as an exhibit.

Defense: Some parts of it. This man was a Captain. The thing that strikes us, with the indicated knowledge, why could not a full story be brought out. He does state that he saw no beatings. He does state that they suffered no ill-effects. He is a medical man and stated that from whatever chaining, they suffered no ill-effects. The unfortunate thing is that he does not give the circumstances of this chaining, describe it exactly. Also he stated in response to the question, "Who was responsible for chaining these men?", his answer, "Colonel Oldani." How did he know? He did not answer how he knew. He just stated it. Well a little information as to where he heard the orders, or at least heard rumours that the Colonel gave the orders would help, but here again the investigator would prefer not to remark. That's all.

The judge advocate then read Prosecution's Exhibit No. 24.

Defense: Again it amazes us - an American Medical Captain in this camp for one and a half months, could use so many words in saying nothing. The upshot of this is that the Red Cross parcels were abused. What is his information? He does not say. It apparently boils down to this. He, on occasions, saw cigarettes and food being used, which proves nothing. Undoubtedly, there was a lot of bartering going on. You know what goes on in all these camps. When the questioner got to a point when he might have thrown some light on the whole situation, for example, the affiant states that the food was very inadequate, it would be wonderful now for this court, for all of us, if the question had been propounded, "Why?" and this man would have been a good witness to tell precisely what he ate during the one and a half months he was in the camp. It was not done. If we have to draw inferences, we can draw inferences that the investigator was not interested in getting the good side of the story. That's all.

The judge advocate then read Prosecution's Exhibit No. 25.

Prosecution: This refers more particularly to specifications 5 and 6.

Defense: Apparently the only point on this was this instance of throwing in the guard house and manacling, but here again it suffers from half-statement. We do not know what is meant. The sergeants in charge of these groups were thrown

in the cell-houses and their feet and arms manacled. They remained there well over a day. It is essential for this court to get a full picture of the punishment, because was that an appropriate punishment in the Italian Army? He does not say how long they were manacled, whether for five minutes or five hours, merely stated they were manacled. He does say that they were in the guard house all day, but he does not say how long they were manacled, if he knew. The court obviously cannot determine from this half-statement whether this is an adequate punishment. Here again in answer to the question, "Who do you believe was entirely responsible for this manacling?" he states "Colonel Cidani" but there again fails to report whether he heard orders or rumours of orders, just flat assertions which are meaningless without proof. He does confirm, as a medical man, that these prisoners suffered no ill-effects from being manacled. Obviously, reasonable punishment if it were true.

President: How many more affidavits does the prosecution have?

Prosecution: Five more, sir.

President: Five more. The Commission will take a recess until 1400 hours.

The Commission then recessed at 1155 hours and was reopened at 1400 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: May it please the Commission, Prosecution's Exhibit No. 26, affidavit of Leroy Thurman, refers specifically to specifications 8 and 9.

The judge advocate then read Prosecution's Exhibit No. 26.

Defense: Here again we have overly exaggerated statements, distorted. We have heard the statements of previous witnesses. At different times it was alleged, some said "we received meat with food in the evening." Others alleged, "we received vegetables." This affiant states, "While at Camp 98 we received no vegetables or meats." He was one of the prisoners along with the others who testified. While in the last paragraph we have a description of the Colonel Bucci or Bucou, the description: extremely heavy for his size, weighing about 180 to 190 pounds. Now the defendant in this trial, we will bring out later, never weighed more than he does now, and you can see he does not have a ruddy complexion. And in one paragraph here this affiant states, "All of the mistreatment stated above was responsible and apparently sanctioned by the commandant of the camp." Now, ordinarily, a soldier does not use words of this nature. These were evidently put into his mouth when this statement was taken.

Prosecution: May it please the Commission, I do not desire to argue any points of the evidence at this time, but since it has been commented upon by the defense throughout the trial, I desire that the Commission bear in mind that these statements are covering different dates from December 1942 up to May 1945. Prosecution's Exhibit No. 27, affidavit of Russell P. Jobusch, refers specifically to specifications 10 and 4.

The judge advocate then read Prosecution's Exhibit No. 27.

Defense: If it please the Commission, of particular interest to the defense is this question and answer in regard to improper clothing, insufficient food and disregarding sanitary conditions. Why, if they were actually as alleged, did not the investigator go into what these actual conditions were, rather than leave them hanging in the air with a general statement. It is common knowledge that anyone is liable to refer to something that has lousy food there, even in our own particular units. Now of particular interest is this question and answer in regard to this Sergeant Serrano. "What were the circumstances under which he was chained?" His reply to the question, you will recall, was, "He refused to obey orders from a guard regarding the work he had to do." Now that is the fourth rumour, here stated as a fact, and is the reason why it is still clouding the issue. Each one, of course, as you will recall, is different, entirely different and, of course, the defense would like to point out as these statements are read, the particular part that this interpreter Mario has played. It is noticeable, as being outstanding, what alleged actions, using his position, he could have taken, inferring that it was the camp commander, if there was such.

President: Any comment by any member of the Commission?

Prosecution: May it please the Commission, Prosecution's Exhibit No. 28 refers primarily to a march through the city of Palermo, and not to the camp. Unless desired by the defense, the prosecution is willing to withdraw Exhibit No. 28.

President: It is acceptable to the Commission, if it is acceptable to both sides?

Defense: It is acceptable to the defense.

President: Prosecution's Exhibit No. 28 will be withdrawn entirely?

Prosecution: We will remember the two affidavits of Franklin Lamney Prosecution's Exhibits Nos. 28 and 29.

The judge advocate then read Prosecution's Exhibit No. 28.

Prosecution: Any comment by the defense?

Defense: No comment.

The judge advocate then read Prosecution's Exhibit No. 29, the second affidavit of Robert Franklin Lammey.

Defense: No objections.

President: Any comments by the defense?

Defense: No comments.

Prosecution: May it please the Commission, we would like to have a five minute recess at this time to check the evidence.

The Commission then recessed at 1440 hours and was reopened at 1455 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: The prosecution rests. Does the defense desire to make an opening statement?

Defense: Not at this moment because at this time, if it please the Commission, the defense, in compliance with paragraph 71D of the Court-Martial Manual, wishes to make a motion for findings of not guilty on the charge and specifications, on the grounds that the prosecution's case, which is now ended, is legally insufficient to support findings of guilty. It is not the intention of the defense to run down the eleven specifications and argue on the basis of the facts, which procedure would be very time-consuming. It is merely our intention to point out a very extraordinary state of events which has resulted from the prosecution's resting at this point. This Commission finds itself with evidence, information, not a single word of which would normally - before any normal tribunal - be introduceable into the evidence. At this time, I am not rearguing the question of whether it was properly introduced or not. That has been decided upon, but we find ourselves before a more important issue, a fundamental issue; in fact, so fundamental that it is the defense's feeling that this trial may become one of the most important of the thousands of war crimes trials which will result from this war. It sounds like a rash statement, but let us analyse the basis for this. There have been no witnesses who have told what they saw, under the normal rules of procedure, definitely explaining the incidents and being subjected to examination. I think this is the first trial which has come to our attention in which this has been the state of affairs. I personally have been following war crimes trials since they first started in 1945, when I witnessed the first of these trials in North Africa, a French trial. Since that time there have been hundreds of others here in Italy, a large number in Russia, Yugoslavia and other places, and France. I state, without exception, in all of these other trials there has been at least some testimony which would be admissible under the normal rules of evidence. It is stated by the defense that under Circular 114 some of these statements are properly admissible to give the full picture, but it is the position of the

defense that there must be, there must be, some evidence of a competent nature, then the statements could fill in the picture, but when there is no evidence which would normally be construed as competent, it is the position of the defense that this court has nothing before it on which it can render a sentence of guilty on any of the specifications or the charge. In fact, I think there is a good possibility that if conviction should be made on the basis of this evidence, this case would become famous - the first time in American jurisprudence, and I ask the prosecution later to contradict me if they have evidence to the contrary, the first time in American jurisprudence that a man has been convicted under circumstances where there has not been one whit, not one bit of competent evidence. That's something to think about. The life of one man after the holocaust, after these last years, is not too important; the principles are, the principles, especially to us Americans, mean a great deal. As I say, among the civilised countries of this world, I challenge the prosecution to point to a decision of conviction where there has been no competent evidence. Yes, I must admit that if we study the annals of contemporary history, we can find in Germany - recall a little contemporary history. It points out the seriousness of the problem before this court. In 1933 Hitler assumed power. Shortly thereafter, I recall, in 1934 he put in as his Minister of Justice a certain Dr. Karl Frank. Very inconspicuously they made a few changes in the rules pertaining to the courts. On the face, they were not much, harmless, inconspicuous things. Among those changes was the ruling of the Judicial Courts permitting ordinary statements of persons not before the court, persons whose testimony had not been subjected to the normal right of ascertaining fact. But from that point on, 1934, it was permitted, and you can see what happens as a matter of principle when a judicial tribunal has this power. Of course, you can say the power will not be abused. At this moment, we know it won't, but we must think of the future, the importance of precedent. You have seen in the case of Nazi Germany how once these protections are relaxed just a little bit, then it becomes simple to convict by will, and the day comes when human beings under American control can be convicted on statements, simple statements of other people not before the court, where no attempt has been made to ascertain the truth of their statements in advance of the trial. Then, at that time, we Americans face a breakdown in the fundamental principles for which we have just been fighting, and which have guided us now for a century and a half. It is the contention of the defense that Circular 114, while it does permit the use of isolated statements to give the full picture - that is perfectly reasonable - it should not be construed to permit a judgment of guilty where none of the evidence, absolutely none, is competent. Paragraph 8 of Circular 114 stresses the fact that a full and fair trial is required and it is submitted that the exceptions and provisions found in paragraphs 9 and 10 do not impair this fundamental right which every human being has, regardless of of nationality, a full and fair trial. It was not necessary to place this court in the difficult position it now finds itself. It is

true enough the witnesses are far away, but there is prescribed procedure. This court has seen that the most recent of these statements which have been introduced was taken in November 1945. All the others at an earlier date. On the average there has been well over a year, during which efforts could have been made to assure that this trial would be conducted and presented along the lines of fundamental American thought and principle. This has not been done. Consequently, this court finds itself in a very difficult position of proceeding on these, on this so-called evidence. The court may well say, well if we had the full facts before us, maybe we could find this man guilty. That may be true. The fact is that the court, through the fault of those who have been in charge of this matter, does not and cannot have the full facts. The court has been put "on the spot" so to speak. It is perfectly within the provision of the court, in the exercise of its judgment and support of American basic rights, to say to this prosecution and to every prosecution, if you wish to try these people, fine, but give us at least a scrap of credible evidence, competent evidence, at least something, but don't leave us with nothing before us.

Prosecution: May it please the Commission, Circular 114 was issued by the Commanding General of this theater. That is the circular under which we are proceeding in this case. We are proceeding according to the orders of the Commanding General. Orders issued during a period of war, although the actual fighting has stopped, but peace has not been declared. The Constitutional rights are still also in abeyance until the treaty of peace has been signed. The very reason for the issuance of a circular of this kind has been definitely outlined by the counsel for the defense. These crimes are committed behind enemy lines. It is difficult to get information. It is difficult to get definite proof. Witnesses are either dead or far away. That is the reason that the rules are relaxed during the time of the emergency. This does not apply to civil courts back in the States after the war is over. That is another question. The defense counsel also seems to forget very recent history when the Commanding General of the Peninsular Base Section was President of a Commission in this city, within the past two months, when General Maelzer was tried. At that time the prosecution had General Maelzer's interpreter, who identified the General, but testified he, likewise, had been in a German uniform during the war. But otherwise, except for a few pictures and things of that kind, all the prosecution's evidence consisted of affidavits similar to the ones introduced here. In this case Mario Minardi has appeared as a witness for the prosecution. Mario has testified that the Colonel said he struck a prisoner of war; that the Colonel said he chained a man to the flagpole as an example - as an example to the other prisoners in that camp, and he has also stated that the food was not equal to the food given to the Italian troops in base camps. Besides that, every affidavit, every statement made on behalf of the prosecution on a motion of this kind is presumed to be true. Insofar as the motion is

concerned, that is a question for the court to consider, considering all the affidavits as read and the statements as made are true, on a motion to dismiss. And the prosecution has other ample evidence on every specification filed in this case. We feel definitely that the prosecution has made a prima facie case on every specification alleged. The very fact that these depositions were taken from soldiers, men who were there, men who were struck by this man - they have testified to you through depositions. These men were there. They know what happened. These depositions were not all taken at one place. They were not all taken by one agent. They were not taken by men who were thinking of Colonel Oldani as such. They were getting together the information concerning this infamous camp in Sicily. That is the thing that they were trying to do. They were not working against one man. They did not know Colonel Oldani from Adam, but when all the evidence was gathered, it pointed to him and that evidence has been presented to this Commission.

Defense: If it please the Commission, there is just one point which the defense would like to make in rebuttal of this argument: the General Maelzer trial. In that trial, Mr. Hoffman, now with the New York Times, a competent credible journalist gave a long history of General Maelzer's misdeeds. He was on the stand. That was competent evidence. That alone was enough to convict General Maelzer, but I shudder to think that any court could find that Mario Minardi is enough to send this man to prison, or to his death. It is the defense position that Mario Minardi first of all said nothing which could support any of these charges. He heard a few rumours, some hearsay. All the events he told about were pure hearsay. There is no competent evidence before this court which follows the normal rules of procedure, the rules which Military Commissions also have often followed. They are not required, but they certainly point the guide. So the boiled down issue is really this. Can this court, can it convict a man when not even one thread of the prosecution's evidence is of a competent nature. If there is such a finding, as I said before, I think it would be revolutionary. I think that the cables throughout the world would carry a story of this kind, because it has not been done so far.

Prosecution: Just one comment in regard to the Maelzer case. Mr. Hoffman was likewise called a traitor, a liar and a thief and everything else by the defense.

President: The motion is denied. Before we continue it would be well to make it known now that the Commission itself will ask for certain facts with regard to the case - whether they will be introduced now or of the witnesses the defense may wish to introduce. I expect they should be introduced after the defense witnesses, if the defense wishes it that way.

Defense: The defense has ten witnesses to bring before the court, all individuals of high repute, and it is the desire

of the defense that the court question these witnesses as freely as they desire so that the truth may be found. The first witness for the defense to be called will be General Perugi.

TESTIMONY FOR THE DEFENSE

Giulio Perugi, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Perugi, Giulio.

Q. What is your organization?
A. I am a General of the Reserve. I was asked to retire, to go as a reserve officer in February of this year.

Q. What is your station at this time - location?
A. At Viterbo where I live.

Questions by the Defense:

Q. How old are you, General?
A. 59.

Q. When did you enter the military service, the Italian military service?
A. 1905.

Q. Are you a graduate of the Italian Military Academy?
A. Yes, Military Academy, School of War, Staff Officer.

Q. Did you see service in World War I?
A. Yes, in the war in Libya, the first World War.

Q. Were you ever a prisoner?
A. Yes twenty-five months in this War, in Germany, in Poland and in Russia.

Q. When were you ordered to Sicily?
A. 1st July 1942.

Q. Did you arrive in Sicily on that date, or were you ordered at that time - is that the date that you arrived in Sicily?
A. That was when I took over the command of Palermo and the whole of Sicily.

Q. What did your command consist of?
A. My command included training of the troops stationed there, anti-aircraft defenses and civilians, all prisoner of war camps, of which there was only one.

Q. What was the number of this prisoner of war camp?
A. I don't remember the number; I only remember the locality or the section.

Q. Was the number 98?
A. Yes, 98.

Q. Now, General, will you tell, in your own words, give your story, as you know it, of the inspections, conduct, operations of this PW camp, if you please? Do it slowly and distinctly so that the Commission and the accused may hear you.

Prosecution: If the Commission please, the time should be fixed. These offenses are alleged to have been committed by the accused between 1st December 1942 and May 1943. This man goes back to July 1942. It is not necessary to cover the whole - -

Defense: If it please the Commission, we are attempting to show, as much as possible, the complete story and the defense feels that possibly a few statements in the beginning may not have a direct relationship, but will be part of the picture as a whole.

President: Objection overruled. Continue with the question.

A. When I arrived in Sicily on 1st July 1942, I was informed about all that concerned my functions, and I understood that there was a camp of Anglo-American prisoners in the locality of Boturro. The prisoners came there from North Africa, and they stayed there for forty days before proceeding to Italy, to the Continent, for hygienic reasons. I understood from my headquarters that that camp of Boturro was unhealthy, unhygienic, because there was malaria and, in fact, four or five days after I had assumed command, I received a letter from Colonel Oldani asking me to transfer the camp elsewhere because the zone of Boturro was not hygienic. As it was my duty to convince myself, as I did not know the camp, I went to Boturro five or six days after I had arrived in Sicily, where I found Colonel Oldani, and the camp which had not yet been finished, as far as the set-up was concerned. I found the prisoners, among them one or two Englishmen, some of the Anglo-American soldiers. Although there was little water in Boturro, Colonel Oldani had water fetched specially for drinking and bathing purposes. I spoke to the soldiers and the officers who were present in camp. I also offered them some cigarettes, a thing which was not done in Germany and Russia. I asked them about the food directly and I had excellent information, good news about the food and the treatment. I noticed that near the camp there was a spring of sulphur water which gave a bad smell. I noticed that the camp was in a valley. Colonel Oldani pointed out to me all the inconveniences that this camp presented, which had not been

chosen by him. He told me that he had also written to the Ministry at Rome in order to have it changed. I convinced myself that the camp was not suitable because there was no water, because it was also submitted to drafts and I convinced myself that it was necessary to change it. I noticed that Colonel Oldani was much concerned that the camp was hygienic, as far as the kitchens, the dormitories and the latrines were concerned. I visited the kitchens, the food was prepared in an excellent way. I myself ate it. It was abundant. I spoke again to the prisoners. Nobody had any complaints because I spoke to the prisoners even when Colonel Oldani was not present, only the interpreter was there. All of them professed themselves to be satisfied. Having returned to Palermo, I wrote a letter to Rome, to the General Staff Headquarters, confirming what Colonel Oldani had already written, and I confirmed the absolute necessity that this camp be changed. And I gave the reasons for the necessity of the change that the camp had no water, and the position of this camp which was unpleasant and at the bottom of a valley, it was like being in prison. These impressions which I had brought back from my visit as regards Colonel Oldani were excellent, on the grounds that he was informed about everything and that he was always interested in the welfare of the prisoners, whom he treated with humanity and kindness. I, myself, had had the misfortune of having been a prisoner for twenty-five months and cannot even compare the treatment with which Colonel Oldani meted out to these Anglo-American prisoners with the treatment received from the Germans and the Russians. Two or three weeks after I had written that letter, I received orders from the Ministry at Headquarters to change the camp. I found a place at San Giuseppe Jato a place about 600 meters above water level, with a beautiful panorama, very rich in water, not far from Palermo. In this locality, it was necessary for the military engineers to effect many changes. In fact, I went round with the commandant of the engineers to show him the work that had to be done so as to be able to effect the transfer from Boturro in the least possible time. At the same time a broad road of access was started. The ground was prepared so as to have tents put up and huts, barracks for the kitchens, stores, and after about a month, I believe it was in October, I don't remember exactly, the camp was transferred from Boturro to San Giuseppe Jato. Choice of the tents was given to the prisoners, because they were housed in large tents seventy or eighty to a tent, whereas our own soldiers remained in the tents used in combat. The prisoners had straw mattresses. As a matter of fact, they had all the conveniences that were prescribed by the Geneva Convention. At the same time as the arrival of the prisoners, the work in order to complete the arrangements of the camp was intensified. Both because it was my duty to control the camp, as well as because I wanted to see whether the engineers were -

how the engineers were progressing with the work in connection with the set-up of this camp, I often went three times a week to San Giuseppe, and I had daily telephonic contact with Colonel Oldani, in order to be informed as to how the welfare and the health of the prisoners was. Each time that I went to the camp, and I always went there without previous advice, nobody knew about it, I encountered prisoners of all ranks, even when the Colonel was not there because he was sometimes absent. I called them aside one by one. Jokingly, I asked them how life was, how the food was, how they were in general, no complaint of any kind. They were all satisfied and content. You could even see by their eyes that they smiled. As a matter of fact I heard from officers, not from Colonel Oldani himself, that those prisoners that had left wrote letters to the Colonel from Italy, thanking him. The stores where the Red Cross parcels for the prisoners arrived was reorganized. They were put into the store where there were two different keys. One key was kept by the commandant of the camp and the other key by the man in the confidence of the prisoners - the prisoners' representative, so that not one of them could open the stores without the other. They had to be both present. I examined the book into which each parcel that arrived was entered. Everything was perfectly regular. The parcels were handed over directly by the representative - the prisoners' representative - to the prisoners. I examined the kitchens of the prisoners, the quantity and quality of the food. Excellent conditions. All, everything they had to have they had. I repeat as I went there two or three times a week, I always interrogated the prisoners of all ranks and there never was any complaint. I held these interrogatories through the interpreter. I know that there were three interpreters at the camp. One must have been a 2nd Lieutenant, one was an American who had come to Italy as a volunteer for the war. The other one was an Italian who knew English because he had studied and practised it. Once only a prisoner who was due to leave on the following day complained to me about a small ring that was missing and which was worth perhaps one lire, because when the prisoners arrived they had to hand in their valuables, for which they got a receipt. This is easy to explain because many of these valuables that were handed in, it was possible that one ring was missing, but this was the only complaint that I ever had. I have never had any complaints from Lt. Colonel Oldani about the discipline of the prisoners. I have never known any prisoners being punished, whereas I found that Italian soldiers had been punished because they did some barter with the prisoners, and we did not want that any barter trade was done between prisoners and the soldiers - things like cigarettes and matches, etc. - because if we had allowed it, the soldiers would have taken away some of the materials and it would have been impossible to determine the responsibilities.

Concluding, I, who was a very strict commandant, and who insisted on the utmost respect towards prisoners of war, have noticed in Colonel Oldani interest, humanity and love for the prisoners of war, no abuse of any kind, which I would not have permitted and which, if it had occurred, I would have known about. I was always satisfied with the actions of Colonel Oldani. I am a soldier, therefore, a man of honor and if I had anything to complain about, so far as Colonel Oldani is concerned, I would have punished him and I would have said it today. I have to tell the truth.

Q. General, were the military engineers responsible for the construction and maintenance of this camp?
A. Exactly.

Q. In the course of your inspections, did you as a matter of course inspect the medical parts of the stockade - prisoner of war camp?
A. We had one infirmary which the Colonel, together with the medical doctor, held in perfect order. As a matter of fact, that was the first establishment. The infirmary was first set up before the prisoners arrived; the infirmary and the dormitories. There was the room where there were the medical agents and the room where they were cured. The doctor was always present. He was never away and, together with the doctor, there was also a Catholic chaplain for the religious services of the Catholic prisoners. The chaplain was the friend of all of them whether they were Catholics or non-Catholics.

Q. General, will you explain to the Commission how the food was issued to the prisoners?
A. I think the prisoners had three meals a day: breakfast in the morning, coffee, then a second breakfast at midday and a dinner in the evening. The food, so far as the food was concerned, the Colonel had it brought from the stores in Palermo, and he always had a store full - ten days or two weeks foods like spaghetti, rice, lard, etc. and he put them into a store for which an officer, an administrative officer was responsible. Daily, so much food as to weight was taken out as there were prisoners. The prisoners weighed the food which they received because they knew of how much they were entitled. So that had they received even one kilo too little, they would not have accepted it. I am an officer who has done many years of service and we old officers here, such an officer can judge by the amount of cooked food in a container, how much that amount is in raw state. Furthermore, if Colonel Oldani received a thousand rations, he had to account for a thousand rations if he had distributed only eight hundredd. First of all the prisoners would have complained and, secondly, where did this remaining two hundred rations go, because there was also a kind of espionage service on the part of the Carabinieri, to whom nothing escaped. He pointed out that our own

Italian soldiers sometimes had to go with half rations because the prisoners of war always had to have their full rations. From what the prisoners looked like, of course, one can immediately notice whether the prisoners are hungry or not. It could be judged they were well fed, rosy and fat.

Defense to interpreter: He did not use the word "rosy." They looked well, in good shape.

A. They were colored, they were rosy, they were not pale.

Prosecution: If the Commission please, our interpreter says "rosy."

President: What is the exact meaning?

Prosecution: Our interpreter says "rosy."

A. Colonel Oldani telephoned me several times a day, at times, so as to see that we sent cloth in order to manufacture their clothes. So he looked after all details, even elegance.

Defense: Tell the General, if he will, to confine his remarks only to what he saw and heard rather than to these superfluous expressions.

A. I have always found them in good shape, well dressed, well fed, and the only complaint I have ever had in that whole year was the one about the small ring which had no value anyway.

Q. General, once the food actually reached the camp, how and to whom was it distributed for the actual preparation and issue of the food itself?

A. I explain.

Q. No, it is actually at the camp now and what was the administrative setup? Did the prisoners take it? Was it issued directly to the prisoners in groups under the senior prisoner - cooked and served, the food, or was it Italian personnel who cooked and served the food?

A. Supposing in one corner there was the food stores, the prisoners went there and collected the amount allocated to them, say twenty kilos meat, say two hundred rations of bread, conserves, all that was part of their food. They took it from there and they took it to the kitchen. In the kitchen they themselves cooked it. No Italian laid a hand on it. As soon as it was cooked, the prisoners themselves, with their tins, went to the kitchen and collected their food, so that from the moment of collection of the food up to the moment of its being eaten, it passed through no other hands, intermediaries' hands, so there could be no subtraction.

Q. Who fixed the ration for the prisoners of war? The basic ration.
A. The basic ration was fixed by the State and they had the same food as the members of the garrison, as prescribed by the Geneva Convention.

Q. Where was this ration fixed?
A. The Geneva Convention prescribes that the prisoners of war must have the same food as the troops in that section.

Q. No, I don't believe the General has understood the question. Who and where in the Italian Army did the basic ration for prisoners of war - who said it was to be done?
A. The Ministry of War.

Q. That was at Rome?
A. In Rome. As far as the quality of food was concerned, this was by arrangement between the commandant and the prisoners because it was done so as to please the prisoners most.

Q. By quality what do you mean? The manner in which it was prepared, or what?
A. Exactly, the way it was cooked. For example, instead of making minestrone with potatoes, etc. we had meat, spaghetti and meat, that sort of thing. As a matter of fact, the prisoners, when asked whether they liked the way of cooking at the camp expressed themselves very satisfied and among the prisoners there were South Africans, Americans, Englishmen, Indians. There were all kinds.

Q. Was there any setup in this compound for prisoners of war to voice their complaints through actual official channels?
A. There was a register where the prisoners could register their complaints. I have seen the register, but there was no complaints registered, and I would like to stress well to this court, I did not speak to the prisoners in the presence of Colonel Oldani, I spoke to them privately, with the request that I wanted to ask how they were. I then asked for more details about the food and the treatment, etc. so they would have told me, but they never made any complaint at all.

Q. Was it part of your responsibility and duty in the command that you held to know of any unusual or severe punishment within this stockade, such as depriving of food, beatings or whippings, or anything of that nature?

Prosecution: If the Commission please, that is a very leading question?

Defense: No, sir, it is purely establishing action. If it was part of his duties and responsibilities to know and to have reported to him any unusual punkshments within that stockade.

President: Leave out the word "punishment" and put "irregularities." Does that specify your question?

Defense: Substitute the word "irregularities."

President: Does that satisfy the judge advocate?

Prosecution: No, sir, the exact question is misleading.

President: I understand he is trying to find out - -

Defense: That is part of his responsibility - if he was actually to be reported to through any verbal or written authorities, part of his command or responsibility.

Prosecution: Break it down to a single question.

President: I think we would get along better and faster if you broke it down to short questions instead of a long involved question. The question will be answered.

Q. Do you know, or was there reported to you, any unusual punishments in Camp No. 98?

A. I remember every fortnight the commardant of the camp, and there was only one commandant in Sicily, as in all military units, had to send a report. I never had any information as to prisoners having been punished. On the contrary, I forgot to say that when the camp was still at Boturro, three English prisoners had escaped from the camp. After a few days, they were recaptured by the Carabinieri and brought back to the camp. They had no corporal punishment. I do not remember whether they had three, four or five days in prison, in the same way as Italian prisoners would have got that did something wrong. And each time that I went to the camp, I found some Italian prisoners being punished, but never any prisoners of war.

Q. What were the regulations in the Italian Army in regard to handcuffing Italian military personnel, and under what circumstances was any handcuffing permitted in the Italian Army?

A. In the Italian Army near prisoner of war camps there were irons - -

Defense: If you will answer my question please.

Prosecution: We would like to have the entire answer please.

A. They were chains of that length, about half a yard long probably. Punishment in the Italian Army was simple prison, hard labor. Simple prison meant that the soldier convicted to simple prison instead of sleeping in his tent or in his hut had to sleep at the guard post. He did duty during the day and in the evening he went to sleep under the tent. A prisoner convicted to strict prison had to stay all day

long in the tent with the exception of two or three hours a day when he went out to get some fresh air. When they had committed some very serious offense, or else had repeated serious offenses which they had already committed once, in addition to severe prison they got two hours of irons per day, which means that for two hours, a soldier remained manacled like this under the tent. I have not heard of any prisoner of war to whom such punishment has ever been meted out. I have never heard of any such punishment although I went very often to the camp.

Q. Did you see or hear of any mass punishment of prisoners at Camp 98 by depriving them of food as a punishment, yes or no?
A. Absolutely never.

Q. Did you see or hear of any prisoners being beaten?
A. Absolutely never. That would be a violation which no man of honor would commit against a military man.

Defense: Your witness.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. What is your rank, General?
A. General of a Division.

Q. How long have you known Colonel Oldani?
A. I met him when I went to Sicily. I had never known him before, met him before. Whenever I had to punish Colonel Oldani, I punished him for other reasons, never for treatment meted out to prisoners.

Q. Have you testified for him in a court of law since the Armistice was signed?
A. No, never. I was taken prisoner on the 15th September, so I could not.

Q. Which Armistice?
A. The Italian Armistice.

Q. What was the extent of your command in Sicily?
A. Training of the troops in those detachments, which were those troops which afterwards had to be transferred to the mobilized troops, the troops under arms,

President: I'd like to ask if he means training of troops for combat? Is that correct?

Defense: Our interpreter says that is what he means.

President: Is that acceptable to the prosecution?

Prosecution: Yes, sir.

A. anti-aircraft defenses and then that one prisoner of war camp that there was.

Q. Did you have command of all Army installations or military installations on the island of Sicily?
Q. No, there was a command of the Sixth Army over me.

Q. Your duties then were to train troops, command airports or air installations and prisoner of war camps, is that correct?
A. Yes.

Q. How many prisoners did you personally talk to?
A. Each time I went there, I spoke to about ten or twenty-five. All those that I found in their huts, without any distinction, aristocratic or authoritative.

Q. How often did you go to Camp 98 during the month of December 1942?
A. I cannot now say exactly whether I went twice, or ten times or twenty. I must point out the following: that whereas, I had full confidence in the commandant of the camp, I had no confidence in the military engineers who worked extremely slowly and I wanted to reassure myself that all the hygienic installations that were needed were provided, such as, roads, latrines, kitchens, stores, etc. and I, therefore, went extremely often because I did not trust what I was told. My nightmare were the military engineers not the commandant of the prisoner of war camp.

Q. Well, when did you visit this camp extremely often?
A. From the month of October onwards. I diminished my visits perhaps about April 1943 because, at that time, the camp was already properly set up and organized.

Q. Then, during the months of December, January, February, March, up until April, you were visiting the camp many times each month, is that correct?
A. I went very often.

Q. Were you constructing any airfields at that time?
A. Where, at the camp? The camp was like this. It was absurd. I could not construct any aerodrome on that. It was stony.

Q. The question was whether or not he was constructing any airfields at that time?
A. Oh, yes, but not at the camp. At Castelvetrano, Sciacca, other localities fifty or one hundred kilometers from the camp, but Italian soldiers and laborers did that, never any prisoners. The prisoners never left the camp.

Q. Where was your headquarters?
A. At Palermo.

Q. Where were your troops training at, the location?
A. All over Sicily, Palermo, Catania, Trapani, Messina, Syracuse.

Q. Any place else?
A. I also had the command of the anti-parachutists detachments which were all over Sicily. They were in about seventy localities.

Q. How often did you inspect your various installations where you were training troops and parachutists?
A. I was never in my headquarters. I was always travelling around. I only came back in the evenings.

Prosecution to interpreter: Repeat the question.

A. Aerodromes were not under my command. Once or twice a month I visited those anti-parachutists detachments, for instance to Messina I went about once a month; Catania I went about once or twice a month, because I had two Generals under me, one at Palermo and one at Catania, and, furthermore, I had another General of Inspection whom I sent around occasionally.

Q. But you did visit all your parachute troops at least once a month?
A. To some of them I may have gone ten times to a month, to others I may not have gone at all. My visits were prompted only by utmost urgency. I only went somewhere if I had to go for some reason. I went very often to San Giuseppe because the military engineers proceeded extremely slow for several reasons, not all their own fault, cement had not arrived or the people had to furnish material that did not work properly.

Q. How many Generals did you have under you?
A. I had one at Catania for the whole eastern part of the island; one at Palermo for the western part of the island; then one commandant of artillery; one commandant of the engineers and one medical colonel with the duties of a general.

Q. Was the General located at Palermo responsible for the PW camp also?
A. No, the prisoner camp depended directly from the commandant of the defense. I do not remember now exactly. I may be mistaken as to the matter of the name but I believe I sent to San Giuseppe after I had been there a General from Palermo. I think it was Cimino.

Prosecution: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:

Q. Did Colonel Oldani have any connection with the Italian engineers?
A. No, it was the duty of Colonel Oldani to keep me informed by telephone, if I was not there, what the progress was and this he did on my orders.

Q. Well then Colonel Oldani was not responsible for the construction and maintenance of that camp?

Prosecution: If the Commission please, that's a leading question.

President: Ask it another way.

Q. Did Colonel Oldani have any responsibility for the construction and maintenance of Camp 98?
A. Of the maintenance, yes, of the construction, no, because the construction was the responsibility of the military engineers.

Defense: Does the Commission have any questions?

President: Yes.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. Approximately what was the date on which the prisoner of war camp 98 was moved from its first location to its final location?
A. About September 1942.

Q. Was the improvement being continued of the camp facilities at its final location during the months of January, February, March, April and May 1943?
A. All perfections, everything, the provision of water and the setup of stores and small shops where the prisoners could buy fruit and tomatoes, etc.

Q. Approximately on what date was the camp considered completed for all practical purposes?
A. As far as the living quarters and the food provisions for the prisoners was concerned, it could be considered finished in October. At that time they were already well set up.

Q. By 1942?
A. 1942. Then the streets were paved so as to avoid mud. The run-off of the water, rain water was completed.

Q. What type of cooking, what was the cooking arrangement, what type of equipment existed for the preparation of food for the prisoners of war?
A. There were ovens to cook the pasta. Then there were iron casseroles to cook the meat and the gravies, the roast beef and then mixers, forks, knives, aprons for the cooks, sieves for draining the pasta.

Q. What type of latrine did the enlisted men, did the prisoners of war, were furnished the prisoners of war?
A. They were camp latrines of cement, where each morning they went through with disinfectants so as to avoid both smell and disease. They were perfect.

Q. Were there rules in existence, either oral or written, controlling the treatment of prisoners of war?
A. They knew there were charts where all their rights were shown. There were also canteens where the prices of the items sold to the prisoners were shown, like, for instance, one orange five cms., altogether the same system as was used for Italian troops.

Q. What type of troops comprised the guard companies stationed at PW Camp 98?
A. There was a company of soldiers unfit for combat.

Q. How many officers in the company?
A. I don't remember. Three, four or five.

Q. The General has stated in answer to previous questions that he was familiar with the rules of the Geneva Convention. What is the rule, I ask you to repeat his answer, what is the rule in connection with the feeding of prisoners?
A. The prisoners must have the same treatment as the troops at the deposit, so that soldiers at Palermo had the same treatment as the prisoners and vice versa .

Defense: If it please the Commission, the interpreter used the word "deposit." I think the term is base camp.

Q. The witness has said that he visited this Camp 98 very frequently. Did those frequent visits occur through the months of January, February, March, April and May 1943?
A. No, October, November, December, January, February, March, all those months.

Q. The witness has stated that there were two keys to the canteen supply room, Red Cross stockroom?
A. Yes.

Q. Who kept these keys?
A. One was in the possession of the commandant of the camp. The other one in the possession of the representative of the prisoners who was usually the one of highest rank.

Q. What is the most severe punishment that can be given to an Italian soldier for a minor infraction?
A. A minor one. Three days of confined to barracks.

Q. What type of offense would be suitably treated by chains for twenty-four hours?
A. Two hours.

Q. Is the maximum allowed?

Defense: Sir, I believe she interpreted the question wrong, two hours.

Q. I will put the question in another way. Is there any offense for which a commanding officer can punish one of his soldiers by putting irons or chains on him for a period of twelve hours?
A. No, that has never happened in the Italian Army. That has never been in any situation, not even black troops.

Q. Is it forbidden by the Italian Army regulations?
A. Absolutely.

Q. It is forbidden?
A. Whoever would do it would commit a crime and would be punished by the military command.

Q. What is the maximum punishment that can be given a prisoner of war?
A. I don't remember exactly, but I believe it is the same as would be given to the soldiers, not the officers. Ten days of severe prison and twenty days of simple prison, and severe prison may be made more severe with two hours chains per day, but usually to be given such punishment, a soldier must have committed a crime and he would not then be punished but he would be denounced to the military tribunal.

Q. Did the witness ever see Red Cross parcels issued to prisoners of war?
A. Yes, the parcels were stored and then every two days, I believe, ten or twenty parcels, according to the number of prisoners in the camp, were distributed among the prisoners, so that they would never have too much stuff which they might exchange on the outside, so that they could always consume what they were given in these two days, inside the camp. I would like to stress that nothing was ever given to anyone but to the prisoners. They had everything they were entitled to.

Q. I am not clear as to the General's answer to the original question. Did he himself see Red Cross parcels issued to the prisoners of war in Camp 98?
A. I think twice or three times I assisted in such distribution by coincidence, at about 9 or 10 o'clock in the morning.

Q. In Camp 98 who supervised the issue of food to prisoners of war?
A. The officer on duty that day. There was always one officer on duty who had to supervise all the organization inside the camp, both regarding the prisoners and the Italian troops.

Q. Does the witness know, of his own knowledge, that during the months of January, February and March of 1943, the Italian ration was up to its normal standard - whether or not it was?

A. I cannot frankly say anything absolutely because I do not know, but I remember that in the beginning of 1943, the non-combatant troops of the Italian Army had a reduction in their ration of pasta and bread.

Questions by Lt. Colonel O'Keefe:

Q. When the General interviewed the prisoners who was the interpreter?

A. There were three interpreters. It was nearly always the officer because there was one Second Lieutenant and one whose rank I don't remember, and one American, one who was born in America.

Q. Does he know the name of the man that was born in America?

A. No, I heard about him at the camp. We told him, "We have here an American who came to Italy for the war."

Q. At the time the camp commander kept one key to the Red Cross storeroom and the prisoners' representative kept one key to the Red Cross storeroom, how many people did the General command?

A. I don't understand what you mean.

Q. Well, at the time how many people did he have in his total command? The strength?

A. In Sicily?

Q. All over as part of his command?

A. All over Sicily, in Sicily eighty or ninety thousand.

Q. Who told him about this arrangement of keeping the keys in the Red Cross storeroom?

A. When I assisted at the distribution of the Red Cross parcels, I noticed that they opened the store with two different keys, one of the representative of the prisoners, and one of the commandant, and it was explained to me that they were kept in such a way, which I fully approved.

Defense: I believe he said two separate locks.

Questions by Lt. Colonel Lucree:

Q. Will you ask the General if he was ever present at the camp when new prisoners arrived?

A. I don't think so. I was present when the preparations were made for their departure. It was on that occasion that that missing ring was reported to me.

Q. All right, ask him this. Ask him if he knows of anyone in the camp talking to or orienting new prisoners as they came into that camp - giving them the rules and regulations of the camp?

A. Usually the prisoners remained about fifteen days to two months at the camp, but there were a few who remained there permanently and were already familiar with the arrangements inside the camp and they were there to orient the new arrivals.

Q. He has not answered the question. Was there somebody in the camp who talked to new arrivals as they came in?
A. Yes, there were those old ones, those who had volunteered to remain. They were not forced to do so. They volunteered because they were content. It was their duty to orient the new arrivals, partly because they knew the language; sometimes they knew the people themselves. It was their duty.

Defense: If it please the Commission, this witness has been here for quite some time and is under pressure to return to his normal duty station, and has requested that as soon as the Commission was through, he could return. So, if there is no objection by the prosecution and the Commission is through, the defense would like to request that this witness be excused?

President: Does any member of the Commission expect to interrogate the present witness any further?

Questions by Major Cambrill:

Q. I have one question to ask him. Will you ask the General please if this interpreter whom he used on various occasions, whom he states came from America, if he ever talked to him as to why he came, in detail, of any other way as to why he was there. Did he voluntarily make the remark or did he ask the question?
A. No, I only heard about it. As a matter of fact, I think I never asked him. He came to go to war.

Q. How does he know that?
A. I heard that at the camp. The parson will know more than I because he knew him personally.

Defense: The chaplain.

Questions by Lt. Colonel Borndahl:

Q. You state that every fortnight reports had to be sent to you on any punishments given. What was the normal punishment for a POW attempting to escape?
A. I think in August or September I heard three prisoners had escaped and they got five days of simple prison - a very light sentence and little adequate as compared to the sentences given in other camps outside Italy. The Germans gave two months' imprisonment.

Q. Was this normal?
A. What?

Q. This five days. My question was what was the normal?
A. That was according to the mentality of the commandant of the camp. There was no fixed punishment. Usually they changed camp. If they repeated it a second time, they had much more severe punishment.

Questions by Major Williams:

Q. In the Italian Army is it permissible to administer whipping as a form of punishment?
A. Never. Negroes they whip but never white men - Colonials.

Questions by Lt. Colonel OKeefe:

Q. The General said it is not permitted to whip soldiers in the Italian Army but has he, as an officer, seen it done?
A. Never in forty years of service. I have never seen it, not even a corporal ever hit a soldier. An officer, a man of honor, never does such a thing. He would not even think of it.

Prosecution: May it please the Commission, I would like to ask the witness a couple of questions.

RECROSS-EXAMINATION

Questions by the Prosecution:

Q. Who baked the bread for the prisoners of war in Camp No. 98?
A. The military baker in Palermo, for all of them, for the Italian troops and for the prisoners. The bread was the same. There was no difference between the bread for the soldiers and the bread for the prisoners.

Q. What do you mean by military baker?
A. An establishment where Italian soldiers, bakers, made the breads from the flour. They put it into the oven and they baked it.

Q. It was not made by civilians under contract with the Army or with Camp No. 98?
A. No, it was the military baking establishment where the bread was baked for the Italian troops and the prisoners. There was absolutely no difference. There were perhaps fifty thousand breads a day which were distributed all over Palermo. The bread was baked in Palermo, Messina, Catania, Syracuse.

Q. You have stated that a canteen was maintained at PG 98 for the prisoners of war. Did they make any profit?
A. Everything went towards the improvement of the food and a small percentage of the profit, I don't remember how much, went towards a small fee to those who ran this canteen, with which they could buy cigarettes or other small things that they might wish.

Prosecution: No further questions.

Defense: Will the prosecution object to this witness being excused?

Prosecution: I think the witness should be held until tomorrow morning, at least, for further cross-examination if necessary.

Defense: Will the interpreter explain that he has to stay until tomorrow?

President: Tell him that he will have to remain until tomorrow. Are there any further questions from the prosecution or the defense or members of the court?

Prosecution: Not at this time, sir.

President: Then the witness is excused for today.

Interpreter: The General asks me to explain that he came here --

President: The judge advocate wishes to interrogate the witness further. He apparently wishes to prepare questions, so I cannot accede. He will have to be here tomorrow. I am sorry. The Commission will adjourn until tomorrow morning at 9 o'clock.

The Commission then at 1730 hours on 1 November 1946, adjourned to meet at 0900 hours on 2 November 1946.

Clyde W. Weller
CLYDE W. WELLER
Lt. Colonel, INF
Judge Advocate

The Military Commission met pursuant to adjournment, at 0900 hours, 2 November 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused, the interpreter and the reporter were also present.

Defense: May we have just a minute, our interpreter is not here? Does the Commission desire General Perugi in here?

President: Not unless the defense does.

Defense: The defense does not. The prosecution does not desire him this morning?

President: Are you through with him? He can be released then. Has he been so informed?

Defense: No, sir. The decision was to be made today.

President: Does any member of the Commission wish to recall the last witness? Apparently not. He is excused.

Defense: He will be excused then? All right, sir.

General Giulio Perugi, a witness for the defense, was recalled in order to verify a proper name for the reporter, reminded he was still under oath, and testified as follows:

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. The witness mentioned yesterday that the accused, that he believed the accused, had received letters from former prisoners of war thanking him for his treatment while they were in that camp. Are there any such records, such letters on file, or could one be obtained to show to the court?

A. That I don't know. I only remember that once or twice the Colonel let me see such letters from prisoners, thanking him for the treatment received. I also knew that many prisoners who had to leave for the Continent were very sorry.

Q. Did the witness actually see such letters?

A. It seems to me that I have seen one or two. I would also like to add that if you looked at the people, you could see from the expression in their faces that they were not embittered. They were gay and expansive.

Q. How long has the witness known the accused?

A. I did not know him at all. I met him when I went to Boturro, the 5th or 6th July 1942. I also punished him once because he took a little truck without my permission in order to go to Messina.

Q. The witness stated that Camp 98 was a transient camp for prisoners of war and that prisoners of war remained there, in his opinion, for a period of about forty days, is that correct?

A. That's correct. I wish to clarify these circumstances. The prisoners who came from Africa partly went straight into Italy. Some of them came to Sicily, a few of them came to Sicily, and they remained in these camps, so-called quarantine camps for forty or fifty days, so as to see whether they were carriers of infectious disease, so that no infectious diseases should be brought into the Continent, so that Camp No. 98 should be regarded as a quarantine camp.

Q. Did the witness himself ever see or was he ever present upon the arrival of any group of PWs into Camp 98?

A. I don't remember because one must say this. Usually the prisoners disembarked at Palermo and they were transported to the quarantine camp in trucks. I have seen them arrive at Palermo and leave in the trucks, but I have not seen them arrive at the quarantine camp. When they arrived at the camp, they were searched; they took a bath; they changed their clothes; they were frequently examined by a doctor and right from the beginning they were asked whether they had some pain or some illness to declare. Yesterday, I forgot to mention one detail regarding the food, so, if you allow, I will clarify that. I declared yesterday and I confirm it now that the prisoners had the same food as the Italian soldiers, but at a certain moment, I don't now remember in which month, there was an order from the Ministry that those prisoners who worked had this treatment and those who did not work should get smaller food rations. With great sense of humanity, the Colonel asked me that I should regard the prisoners as working, even though they did not do anything and so that they were always regarded as working prisoners and thus had the same rations as the troops in that station.

Q. Is the witness familiar with food rations, as expressed in calories?

A. To tell you the truth, I don't remember. I do, however, remember the weight of the food. For example, bread for those prisoners who did not work was, I believe, 300 grams per day. For those who did work it was 400. Pasta and rice for those who did not work was about 80 grams. For those who did work it was 150, I believe. Then there was lard, meat, cheese. However, the prisoners at San Giuseppe Jato, even if they did not work, all had the ration of the working prisoners. I would also like to clarify another detail which I forgot yesterday. I said yesterday and confirm it now that the bread was collected at the military bakery in Palermo, but, during the months of October, November 1942, on a suggestion of Colonel Oldani, in order to give the prisoners fresh bread, it was authorized by the commissary that the bread may be made and collected at a local baker of San Giuseppe Jato, which village was about four or five kilometers from the camp, so that the prisoners had the advantage of having bread which was even fresher than that which came from Palermo.

Q. Did the witness serve in the campaign in North Africa in the year 1942?

A. No, in North Africa I was in 1912, 1913 and 1914 and 1925, 4, 5 and 26.

Q. Where was the witness in the year - spring and summer and fall of 1942?

A. I commanded the Division Assietta at Caltanesatta in the center of Sicily.

CONFIDENTIAL

Q. Did the witness have occasion to see and observe many soldiers that came from - many soldiers of the Italian Army and the Allied Army that came from North Africa?
A. A few, the Italians mostly by air. Three or four times I saw hospital ships which brought the wounded and sick men to the hospital in Palermo.

Q. Was dysentery a common disease among people coming from North Africa?
A. Very usual but still - it is called amebic dysentery - many even now, there are very many people in Italy who are sick with amebic dysentery.

Q. To his knowledge, did the disease of dysentery exist among the inmates of Camp 98?
A. Speaking to the doctor, I learned that some of them had this illness and they had special treatment, both medical and dietetic treatment.

Q. Of his own knowledge, was Camp 98 equipped to provide prisoners of war with heated billets?
A. In Italy there never existed any heating for soldiers so we could not give it to the prisoners. On the other hand, Sicily is the hottest part of Italy, so much so that in peace time both Italians and foreigners went to Sicily in order to spend the winter there without heating.

Q. Does the witness recall any period in the spring of 1945 in which it rained for nineteen straight days?
A. In Sicily it has never rained uninterruptedly for nineteen days. Usually spring is the period of rain in Sicily, as everywhere, and this period has rainfalls two or three times a day at least, perhaps for forty minutes, not more. On the other hand, at that time the camp was already so well organized that the water falling on the roofs of the tents ran straight off and was disposed of. It was already perfectly organized.

Q. Does the witness recall any occasion in the spring of 1945 in which it snowed?
A. There may have been hail, it never snowed. During December 1941 and January 1942 it snowed in Sicily. I was then at Caltanesatta with the division.

Q. Is the falling of snow in the vicinity of the western part of Sicily a common occurrence?
A. No, an exception and then even if it does fall, it would last an hour or two and then it would disappear.

President: Any questions by any members of the Commission?

Questions by Lt. Colonel Borndahl:

Q. How long was this camp in operation?
A. I arrived in Sicily to command the defense on 1st July 1942 and the camp of Boturro had then been in existence for a short time. Before Colonel Oldani, when I was not at Palermo, the camp was commanded by a Cavalry Colonel, by name Matracia, and he was removed because prisoners had escaped and he was declared responsible by my predecessor, but I was not there. When I arrived in Sicily, on the 1st July 1942, Colonel Oldani had been there for a short while. Then I left Sicily during the first days of July 1943 and Colonel Oldani still remained for some time. I was transferred to Udine.

Questions by Lt. Colonel OKeefe:

Q. When the General was taken prisoner, where was he taken and by whom?
A. By the 45rd Austrian Division, General Mayer.

Q. When was that?
A. 13th September 1943.

President: Any other questions by members of the Commission?

RECROSS-EXAMINATION

Questions by the Prosecution:

Q. Who was responsible for the prisoners upon their arrival at Palermo?
A. There was a guard furnished by the Presidio who received them from the escort on the boat and transported them by truck to San Giuseppe Jato where they were handed over to the commandant of Camp 98.

Q. Who was in command of that organization?
A. Which organization?

Q. That received the prisoners on their arrival at Palermo?
A. I was also a commandant of the Presidio of Palermo. I gave orders to one of the deposits to send a certain number of soldiers and officers in order to receive the prisoners. Orders were given to provide a sufficient number of trucks in order to transport them to San Giuseppe Jato.

Q. Were orders also given to march the prisoners through Palermo?

Defense: Objection. Irrelevant. This man has not, the prosecution has not in any way tied up this incident with Colonel Oldani. The commander of the Presidio is not on trial here. If that were an event, an incident which might result in prosecution, it certainly does not pertain to this trial until it is tied up. This man has already testified it was the responsibility of the Commander of the Presidio.

President: Are you objecting to answering the question on the grounds that the witness may incriminate himself?

Defense: That is one possible objection. The second objection is that it is irrelevant to the issue before this court in the trial of Oldani because it was not Oldani's responsibility.

Prosecution: May it please the Commission, it seems to be poor criticism to say that it is irrelevant, to say that. This man testified for one and a half hours yesterday about moving a camp, trouble with engineers and everything else except the case.

Defense: Here is a suggestion. Cannot he ask a few more questions to tie up the transportation of prisoners with Colonel Oldani, so that the court can first know whether Colonel Oldani might have had any supervision or any responsibility. If he did then I agree this is a legitimate question.

President: Can you approach the question in a different manner so that it may be more acceptable to the defense?

Questions by the Prosecution:

Q. Did you yourself witness the arrival of any Allied prisoners from Africa?
A. Yes

Q. Did you witness Allied prisoners being marched through the streets of Palermo?
A. No, absolutely not. As soon as the prisoners arrived at the port they were immediately loaded into trucks and transported directly to San Giuseppe Jato. We have never given such a spectacle. We in Italy who are civilized people have never done anything of this kind to any prisoners, white or black.

Q. You were responsible for the care and treatment of the prisoners as they arrived from Africa, were you not?
A. I had orders. We all know the hierarchy in Italy; it was seen that these orders were obeyed. I have never heard that prisoners have ever been ill-treated in any way.

Q. How did you see that these orders were obeyed?
A. I went to check. As I said yesterday, I went very often to Palermo, exercising such control as is exercised in all armies of the world. When one gives orders, one sees to it that they are respected.

Q. How many shipments did you personally inspect?
A. No, that was not part of my duties to control that. I went there once or twice merely as a sort of contribution

but not because I had the order to inspect that. In the same way I sometimes went to the station so as to watch them leave for the Continent, but I was under no obligation to be present at the arrival or departure of prisoners. Because the superior has to give orders and see to it that they are being obeyed, I simply went there sometimes in order to reassure myself that everything went well.

Q. Were you reassured?
A. I give one example. Once when I watched prisoners arrive from North Africa, I saw that they were in bad condition. They were dirty and their clothes were torn and I myself said to the officer in charge of the escort to San Giuseppe Jato that he should see to it that as soon as they arrived they should get new clothes.

Prosecution: The answer is not responsive to the question. Please repeat the question.

The reporter repeated the question.

A. As I already said yesterday, I have never had any complaint apart from the one regarding the ring and I have spoken to hundreds of prisoners. If any prisoner had had any complaint, he could have and ought to have made it, because I spoke to them without the presence of Colonel Oldani. On the other hand, I who have had the misfortune of having been a prisoner for twenty-five months have seen that the organization of the Germand and the Russians was very greatly inferior to the one set up by us in Italy.

Prosecution: The witness has not answered the question. I would like to have the question answered.

The reporter repeated the question.

Prosecution: It can be answered "Yes" or "No."

A. Yes, I was sure of it because I have never had any complaint and I have never observed any irregularity personally.

Q. Did you witness the arrival of any troops in January, that is any Allied prisoners, in January 1943?
A. I cannot remember that. What I don't remember, I don't confirm.

Q. You were responsible for the safe passage and treatment of prisoners - Allied prisoners of war received at Palermo through Sicily, were you not?
A. No, I was not responsible in any way. I was a General of a division and in Italy, as in all the hierarchies of the world, one gives orders and if something goes wrong, it is just too bad for the one in charge, because he will be punished. For instance, if a soldier had shot ten prisoners, I was not responsible. Responsible was the soldier who would have gone to prison.

Q. In other words, the Commanding General has no responsibility except to give orders, is that your understanding?
A. No, to give orders and to see to it that they are carried out and to control their execution.

Q. Were you not fully responsible for any war crimes that may have been committed at PG 98?

Defense: Objection. This calls for a conclusion of the witness and, beyond that, I think it is the duty of the court to point out to him his Constitutional rights, not to respond to a question which might involve criminal action. It is not my duty, but I think the court should inform him.

President: The witness should be informed that he need not answer any question which might incriminate him.

Witness: I have no motive.

President: Might I ask what the purpose of the question was?

Prosecution: This is a cross-examination. This witness has said that he was a Commanding General. That this camp was directly under his command. As such, Commanding General, in all the Armies that I have ever heard of, the Commanding General is responsible for what takes place within his command, so far as carrying out orders and so forth is concerned.

President: I think that the witness has explained very satisfactorily his connection with anything that went on within his command. That he was responsible, gave orders to control it, and gave orders to see that it was carried out. That is a fairly uniform system of control throughout all the Armies of the world, and he has explained the responsibility he felt towards anything that happened in Camp 98.

Questions by the Prosecution:

Q. Was the authority given to Colonel Oldani to purchase bread at a local baker in October or November 1942 ever rescinded?
A. I don't remember. That is a function of the Commissariat. I mean to say that contracts with private people were made by the commandant of the camp, in agreement with the Commissariat directly. I was extraneous to this question. I had nothing to do with it. In other words, it was an administrative question.

Q. I believe in your statement this morning, you made a statement that you commanded the defense of Sicily, is that correct?
A. The defense of Palermo. One must explain what this means. I was in charge of the training of the troops, of the prisoner of war camps and the anti-aircraft defense. I had nothing to do with coastal defenses.

Q. Did you inspect the training of your troops and, if so, how often?

A. I had Generals at my disposal, one Artillery General for the training of the Artillery troops; one of the Engineers for the training of the Engineer troops; one commandant for the zone of Catania, in order to supervise all the troops of the east part of Sicily; one at Palermo for the troops in Palermo and west of Sicily; and one General of Inspection at my disposal. I also had under me the Military Tribunal of Palermo.

President: Could I interrupt. This is in the record now. It was answered "Yes."

Prosecution: This is not in answer to my question at all, if the Commission please. All I asked was how often he inspected his troops, or words to that effect.

President: The Commission sees that the answer cannot be a simple "yes" or "no" because the inspections, I understand from his answer, must have been made through subordinates and not from his personal inspection, so I presume it would be very difficult for him to answer "yes" or "no", how often, every day or every week or every month. He is explaining that he has - -

Prosecution: I merely wish to know whether - he had seventy parachute units to inspect; he had apparently many infantry units to inspect; he had coast defenses; city of Palermo; in other words this witness has stated that he was at Camp PC 98 quite frequently, many times a month. He had eighty or ninety thousand men under his command. What I would like to know is whether he ever visited any other units other than the camp?

President: Your question framed such as this, "How often did you personally make an inspection of your various commands?" Would that be satisfactory?

Prosecution: Yes, sir.

President: Could you put it that way?

Defense: If it please the Commission, I don't believe the witness testified that he had eighty or ninety thousand men under his command.

A. I went about once a month, once in forty days, and then I had frequent telephonic contact. I must then also add that as there was in Sicily the Army command, a command which had the Sixth Army, a command which was responsible for the defense, disembarkment, attacks, etc., I had over me the Commandant of the Army Command who supervised everything, discipline, training, everything, so that I was not isolated. I had an organization over me too.

President: What new or unexplored matter is there that remains to be brought out as far as the witness is concerned?

Defense: We have one question.

President: You will recall that this morning we agreed that we did not have any further use for the witness.

Prosecution: If the Commission please - -

President: I rather think we are repeating ourselves. Please try to keep away from the field we have already covered.

Questions by the Prosecution:

Q. Do you accept full responsibility for the acts of Colonel Oldani as Commander of PG Camp 98?
A. If Colonel Oldani had committed acts which would have been brought to my notice, or which I would have noted, I would not have - -

Prosecution: If the Commission please, this question can be answered "yes" or "No." That's all the answer I want.

A. You must understand, I cannot be responsible for what somebody else does, because everybody is responsible for his own actions. If it had been brought to my notice that Colonel Oldani had done something which was incorrect, I would not have hesitated, as I have done several times in my life. -

Q. Ask the witness if he is through with his answer either "Yes" or "No." That is all I want.

A. - - to denounce it to the Military Tribunal.

President: May I interrupt? That is a question of interpretation. To what extent is a regimental commander responsible for the acts of one of his soldiers? For the act should the regimental commander be punished for the soldier going AWOL, or should the company commander be punished, or should the man be punished. It is how far the individual responsibility extends up the chain of command.

Prosecution: The prosecution has no further questions.

REDIRECT EXAMINATION

Questions by the Defense:

Q. When did the new prisoners come under the jurisdiction of Colonel Oldani? At Palermo or Camp 98?

Prosecution: If he knows.

Q. If he knows, yes.
A. From the moment they arrived at the camp.

Q. Was Colonel Oldani responsible for the transportation of prisoners from Palermo to Camp 98?
A. No. The commandant of the escort guard was responsible for that.

Defense: Do you have any further questions?

Prosecution: No further questions.

Defense: Does the Commission have any further questions?

President: Does any other member of the Commission have any further questions? The witness is excused, if the judge advocate agrees. Do you wish to recall this witness?

Prosecution: No, sir. The judge advocate does not desire to recall this witness.

President: Then the witness is excused.

There being no further questions, the witness was excused and withdrew.

Defense: If it please the Commission, the defense would like to ask for a five minute recess.

President: That is agreeable. The Commission will take a five minute recess.

The Commission then recessed at 1015 hours and was reopened at 1035 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

President: The Commission is cognizant of the difficulty in answering simple questions through an interpreter, such as questions that could ordinarily be answered with a "Yes" or "No." Presumably we should all be cautious that we do not dwell too much on repetitious matter. Continue.

Defense: The defense has a question at this time. Is the Commission intending to sit this afternoon? The reason we ask is this. If we are we may prepare the witness for it.

President: The answer is, we will not sit this afternoon unless the circumstances indicate we should. Can you produce one more witness this morning?

Defense: Yes, sir. The next witness is General Yengo.

Luigi Yengo, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Yengo, Luigi.

Q. What is your rank?
A. Brigadier General.

Q. What is your organization?
A. What do you mean by organization?

Q. Do you belong to any Army unit at this time?
A. No, I am in reserve.

Q. Where is your residence?
A. Viareggio.

Questions by the Defense:

Q. Did you serve in the Italian Army?
A. For many, many years.

Q. For how many years?
A. Forty-seven including the campaigns.

Q. Were you an officer during this period of forty-seven years?
A. Always.

Q. When did you go into retirement as an officer? Are you on a retired status at this time?
A. In retirement because the Italian Army is being reduced in numbers.

Q. On what date did you leave active service?
A. On the 8th September 1943. That is to say the moment the Armistice was declared.

Q. Does he refer to the Armistice between Italy and the Allies?
A. Exactly.

Q. At that time did he voluntarily chose to retire from the Italian forces?
A. I was on an inspection journey from Rome on the way to Trieste. When stopping at Florence I heard that an Armistice had been declared. I remained at Florence because I did not want to proceed as I did not want to fall into the hands of the Germans. Part of my duties in Florence were to liberate British Generals who were interned at a castle near Florence by the name of Vincigliata.

Q. Was this liberation effected on the day of the Armistice or shortly thereafter?
A. Two days afterwards when - -

President: I would like to interrupt a moment. Could you guide the witness so that he will bring out the points that we wish to bring out and the Commission will be interested?

Defense: If it please the Commission, I am bringing in this one incident because I think it definitely affects the credibility of the witness, as he is relating his assistance in the escape of a number of English Generals, and has never assisted the Germans after the Armistice. I think that affects his credibility.

President: The Commission has no objection to any points you wish to bring out. We just wish the questions to be confined to the answers.

Prosecution: As this man is a General, we can stipulate a lot of that and possibly save a lot of testimony here.

Defense: Will you stipulate to the fact that he, after the Italian Armistice, aided and effected the escape of eleven British Generals who were prisoners of war in Florence?

Prosecution: If that's true, yes. If that is the fact, it is perfectly all right with us.

President: Do you agree to that stipulation?

Prosecution: Yes, sir.

President: Make it clear to the witness what you have done.

Defense: The prosecution has stipulated to the effect that you aided and effected the escape of eleven British Generals who were confined in Florence as prisoners of war.

Prosecution: Is there anything else in the preliminaries we could stipulate to and get it out of the road?

Questions by the Defense:

Q. In 1942 and 1943 what rank in the Italian Army did you hold?
A. Brigadier General.

Q. At that time what was your official position?
A. General Inspector of Prisoner of War Camps in Italy.

Q. Will you state, as briefly as possible and yet fully, the nature of your duties as inspector of prison camps?
A. It was my task to observe and bring to the notice of the commandants of the camps all the dispositions as prescribed by the Geneva Convention regarding prisoners of war.

A. During my inspections, I had no control over the guard institutes of the camp because it was my task only to supervise what happened to the prisoners inside the camp. In other words, I was the protector of the prisoners, inasmuch as it was my duty to see to it that the Geneva Conventions were observed to their advantage, so that I saw, looked after their dormitories, their food, correspondence which they received or sent out and everything else that concerned their life inside the camp - spiritual, material and moral life.

Q. In the course of your duties, did you make inspections of the camps - of the Italian prisoner of war camps?
A. All camps.

Q. Do you know Lt. Colonel Oldani?
A. Yes.

Q. How many years have you known Colonel Oldani?
A. I met him on the occasion of my visit to a camp in Sicily, a camp which he commanded.

Q. Had you ever known Colonel Oldani before you visited him in Sicily?
A. No.

Q. When did you first visit him in Sicily?
A. I cannot give the exact date, but it was certainly in 1942.

Q. What were the circumstances which prompted your first visit to the camp of Colonel Oldani?
A. I received orders from headquarters in Rome, to which I belonged. I had never been in Sicily before, because the camp depended on the military camp under arms in Sicily and, out of regard for the military organizations in Sicily, I had not made an inspection of that camp. I was informed by the headquarters in Rome that an officer in the Office of the Prisoners of War in Rome had received letters from Colonel Oldani, private letters, in which a visit to the camp of Boturro was asked for because, in his opinion, the provisions of that camp were not adequate for its purpose and he addressed privately a colleague in the headquarters, so as to avoid or jump hierarchy Generals, because, in spite of his complaints, the command in Palermo had not listened to them. On the basis of these letters, headquarters asked me to go to Sicily and to verify the facts as they were. When I arrived in Sicily, I could note that what Colonel Oldani - whom I met then for the first time - had written responded to the truth.

Q. What was it, what condition was it that he had complained about?
A. Above all, deficiency of water. Lack of water, climate not perfectly healthy because malaria and, in general, lack of everything.

Q. Did Colonel Oldani have some program for a change to present to you?
A. He thought of a locality where the camp could be transferred to and newly set up.

Q. Do you know the name of the locality which he recommended?
A. He suggested various names and he said that he had submitted them to headquarters, so that headquarters may choose.

Q. Do you know whether he had - Colonel Oldani had - made a request to his superiors in Sicily for a change in the camp before your arrival?
A. He told me that he had spoken to the commandant at Palermo, who was General Tirvolino.

Q. Does he know whether General Perugi was in command in Sicily at this time?
A. No, General Perugi substituted General Tirvolino.

Q. In other words, General Tirvolino was the predecessor of General Perugi?
A. Yes.

Q. Do you know what action was taken by General Tirvolino in connection with this request of Colonel Oldani's for a change in camp?
A. None, because after my visit to the camp I went to General Tirvolino and suggested to him the necessity of transferring that camp to another locality where one could at least have sufficient water. The General suggested several difficulties to me and I understood that he would not have done anything.

Q. In writing these informal letters to the headquarters in Rome, was Colonel Oldani going over the head of his immediate superior?

Prosecution: If the Commission please, the evidence does not indicate that this should be a conclusion of the witness. I do not know that it is material.

Defense: It is quite material because if a man is willing to go over the head of his superior officer to get conditions rectified, it bears quite vitally on whether these charges could be true, and this man having been an Inspector General of the Italian Army knows whether it is proper to by-pass Generals.

President: Does that put the question in a different light to the judge advocate?

Prosecution: No, sir. We do not know to whom the letters were written. They may have been written to friends in Rome.

Defense: If they want more details, I hoped to avoid the detail.

CONFIDENTIAL

Prosecution: The letters themselves would be the best evidence in any event.

Defense: How about the statements then?

President: In view of the latitude that is allowed in the Circular governing procedure of Military Commissions, it would seem that this particular question is not out of order.

Prosecution: The Commission might like to know if those letters are available. Certainly you would like to see the letters. It has not been explained that they are not available. We do not know to whom they are addressed.

President: The question may be answered.

A. Yes, but as it was a private letter, it was not as we say a disciplinary omission, because he wrote a private letter to a colleague of his.

Q. Do you know whether, as a result of these negotiations in which you played a part, the camp was changed to a new location?

A. After my visit to Sicily, I returned to Rome and in the same way as I did for all the camps which I visited, I submitted a detailed report of my completed inspection. The same I did for my tour in Sicily, in which I suggested the necessity of transferring the camp to another locality. The headquarters, therefore, gave orders to the command in Sicily to find another locality to which to transfer the camp. I, therefore, allege that the camp was transferred to San Giuseppe Jato as a consequence of this report of this matter.

Q. Do you know the approximate date of the transfer of the camp to San Giuseppe Jato?

Prosecution: May it please the Commission, just for our information we would like to know to what specification this testimony applies?

Defense: This, as I pointed out to the court before, is the essential background from which the court may be in an advantageous point to judge whether this man worked in behalf of the prisoners, whether he sought to remedy conditions inside the camp and it makes it much easier to weigh the individual allegations. As you will recall, the prosecution brought in a number of documents which did not relate to any specifications to give background. This has much more relevance than that.

President: Is the judge advocate objecting to the question?

Prosecution: We are consuming a lot of time here and I am unable to see where this evidence is relevant.

President: The evidence that the defense says that he is pointing towards is the general background of the camp itself, which would seem to be appropriate and pertinent to the case. Therefore, if you have an objection, it is overruled.

A. I think September or October 1942. I can't say exactly.

Q. Did you have occasion to visit this new camp at San Giuseppe Jato?
A. As soon as the transfer to this new locality at San Giuseppe Jato became known, I again went to Sicily in order to see whether, in fact, this camp responded to all the requirements.

Q. On what approximate date did he visit the camp?
A. For the first time when the camp was right at the beginning of its construction and I went there with an officer of the engineers and a sanitary officer, a doctor.

Q. Does he recall the approximate date of this visit?
A. It was certainly some time in September or October, I do not remember precisely, but the camp had been transferred there only a short while previously.

Q. On the occasion of that visit, were prisoners already housed in this camp?
A. I cannot say for certain. I visited too many camps all over Italy to be able to - now after such a long time - say anything precisely about this point.

Q. Do you recall what you observed about the progress of this camp in connection with its construction and its sanitary facilities?
A. My impressions were good; in fact, I reported to Rome that the camp responded to the requirements.

Q. Do you have any recollections as to whether the sanitary facilities met with your approval?
A. Yes, they were good. They were good, those of San Giuseppe.

Q. Do you recall whether the water was adequate or inadequate?
A. Yes, it was sufficient; in fact, they even constructed baths.

Q. Does he recall whether the previous camp had baths?
A. The setup was there but it was very much as best you could, and it was very rudimentary, certainly not adequate.

Q. That is a conclusion as to the previous camp, is that true?
A. Yes, the camp at Boturro, the previous one.

Q. Did you feel that the new camp had corrected all of the objections of the previous camp?

Prosecution: If the Commission please, we object to this man's feelings.

Defense: I will change the question but, after all, he is the Inspector General. He had a duty to know.

Q. Did you report whether or not this new camp corrected the objections which you had found in the previous camp?
A. Yes.

Q. Did you have occasion to make any other visits or visit to this camp?
A. Yes, in April 1943, the beginning of April, the Spring of 1943.

Q. Can you tell the Commission, in a few brief words, of your standard operating procedure in arriving at a camp. How you operated in inspecting?
A. First of all I asked the commandant to inform me about all possible news at the camp. I then proceeded to inspect the camp, inspecting everything, such as dormitories, kitchens, latrines, in fact, everything that concerned the life of the prisoners. I then called to the commandant the person or persons in the confidence of the prisoners.

Q. Representative of the prisoners?
A. Representative.

Q. Excuse me one moment. Who were those representatives of the prisoners?
A. They were either those highest in rank or else the oldest who enjoyed the confidence of the prisoners themselves.

Q. Did the prisoners select their representative?
A. If there was one of a rank of some importance then this one became automatically the representative, otherwise the prisoners themselves expressed the desire that one of their people should be at the head.

Q. What were the duties of the representative of the prisoners?
A. One could call them links, connecting links between the prisoners and the common command.

Q. Will you explain in more detail what you mean by that statement?

President: It is obvious.

Q. All right. Was it a duty of the representative to receive and record complaints among the prisoners?
A. He suggested to the command the wishes and the complaints.

Q. Do you know whether these representatives maintained documents in which the complaints were listed?
A. I visited many camps. Sometimes they already presented me with a list of wishes and complaints which they wished to make, to express.

Q. When a representative submitted to you a certain complaint what action, what would you do in connection with that complaint?

A. First of all I received the representative, not in the presence of the commandant of the camp, and I had let the prisoners know that as I came to visit the camp straight from Rome and would return to Rome, probable complaints or wishes would be passed straight to Rome without passing the hierarchy channels, so that I asked them to be frank and sincere and tell me the truth. On the basis of what was suggested to me by the representatives, I then had an interview with the commandant of the camp; if the probable complaints or wishes could be solved by the commandant himself on the spot perhaps with the help of my authorization as the person responsible, the question was solved. If, on the other hand, the complaint or the wish could not be solved by the commandant for reasons independent of his wishes, then I in Rome saw to it that the various problems were solved, as, for instance, complaints regarding the correspondence and so many other small things regarding the usual needs of a soldier in prison.

Q. If, for example, this is hypothetical, if a representative stated to you that a certain prisoner had been beaten badly would you first conduct an investigation to determine the facts?

Prosecution: If the Commission please, we object to this question. I feel that what the Commission really desires are questions about PG 98.

President: Are you trying to find out if the witness made an investigation if he found someone was mistreated?

Defense: The purpose is to know how he acted in the procedure. What would he do?

President: Has he not explained that he investigated any complaints made by PWs. He took the complaints to Rome, if they were beyond the commandant's command.

Defense: I will withdraw the question. I guess his testimony has been broad enough.

Q. If in a camp there were several nationalities present, would you question the representative of each nationality?

A. In all camps in Italy they were all sub-divided by nationality, but in the camp in Sicily, there were both Americans and English because it was a transient camp and, in that case, I questioned both the English and the American representative.

Q. Do you recall whether, in connection with your visits to this camp, the representatives presented complaints to you?

Prosecution: If the Commission please, we want to know when this man visited the camp. There has been no date fixed.

President: The statement has been made that he visited the camp after its completion, during the Spring of 1943. The question is does he recall receiving complaints from the representatives of the prisoners of war in that camp at that time?

A. Yes.

Q. To the best of your memory, can you tell the Commission what was told you at that time by these representatives?

A. The complaints consisted of complaints regarding correspondence and complaints regarding the food, not so far as its quality was concerned but regarding its quantity.

President: May I interrupt. Are we sure of our ground here? Is he speaking of his visit in 1943 or in some period in 1942?

Q. I said on the occasion of your visit in the Spring of 1943, do you remember whether any complaints were presented to you?

Prosecution: I believe the interpreter is supposed to repeat the question propounded and give us the answer so that it will go in the record.

Q. In your visit in the Spring of 1943, will you state what complaints, if any, were made to you?

Prosecution: We object. That is a leading question.

Defense: I will withdraw it.

Q. In the Spring of 1943 when you visited this camp - -

Prosecution: It is still leading.

Defense: He testified already he visited this camp.

Q. You have previously testified you visited this camp in the Spring of 1943. At the time of that visit did you question the representatives of the prisoners?

Prosecution: If the Commission please, we would like the time fixed more specifically.

Q. At what time in the Spring of 1943, according to the best of your memory, did you visit this camp?

A. In April, probably in April.

Prosecution: Probably.

Defense: Will you please hold your question.

President: Just a moment please. The answer was as near as he could remember it was in the month of April 1945.

Prosecution: He said that probably in the month of April. It seems to me a man in this position making official inspections would have a record of some kind and he should be able to state definitely when he was there and who he talked to.

President: In view of the latitude shown in the introduction of previous evidence in which affiants have said and specified exact dates for events occurring over periods of two years, it would seem proper to allow an approximate date, as given by this witness, to be admitted. Objection overruled. The question may be answered.

Q. At the time of your visit, which you recall was probably in April 1945, did you speak to the representatives of the prisoners?
A. Always.

Q. Does he recall what the representatives of the camp told him at that time?

Prosecution: If the Commission please, we would like to know the various nationalities represented. How many of them reported to him, etc.

Defense: We will get to that.

President: In the answer to the previous question, the answer was "always". Could we get a better meaning for that expression? Did he mean "Yes" or "No?"

Q. In answer to my question, "Did you speak to the representative of the prisoners?" do you mean yes or no?
A. Yes.

Q. Do you recall what nationality of representatives were there at that time?
A. No, not exactly.

Q. Can you recall whether you spoke to the representatives - representative - of one nationality or more than one nationality.
A. I am under the impression that there were representatives of at least two nationalities, because I remember that in the interrogations in Sicily, I always spoke with two representatives.

Q. Can you recall the nationality of these two representatives?
A. No.

Q. When you spoke to these representatives, as you have related, did they present any complaints to you?
A. Mainly regarding the correspondence.

Q. Anything else?
A. And also that they had some appetite. I mean that they would have wished for a little more to eat.

Q. Going back to the first of the subjects of complaint, you have mentioned correspondence, what do you mean by that?
A. When I received these complaints about the correspondence, I explained to the representatives the causes for the delay, independent or not dependent from the commandant.

Q. One moment, will you have him state what was the nature of the complaint about the correspondence? It is not quite clear?
A. Delay. They did not receive letters, not all of them.

Q. Did you investigate this situation?
A. I explained to the representatives the grounds for the delay or for the lack of correspondence. All the prisoners that came to San Giuseppe came from North Africa. Consequently, the correspondence addressed to the prisoners went to Africa. From Africa it was sent back to Italy, because the prisoners had already left. The correspondence went to Rome and it was then sorted out according to the camps to which the prisoners had been assigned, so that the camp in Sicily, which was a transient camp had naturally experienced some delay in the coming and going of the correspondence.

Defense: That is enough about this question.

President: Try and hold the witness to some simple questions.

Defense: We feel that this complete story now that it has come out will be helpful because it does show the process with which the complaints were investigated.

President: We do not wish to cramp your developments in the field but we would like you to ask simple questions and get simple answers.

Q. You stated that there were complaints about the food - it is hard to make this one simple - will you state the nature of these complaints, why they were complaining about the food?

Defense: It is very hard, otherwise you put words in his mouth.

President: We do not want you to lead him of course. The complaint about insufficiency of food and about mail, it is in the record.

Defense: I thought the food was in the sentence which was stricken out previously but as long as it is in the record fine.

Q. Did you check, investigate conditions in the camp to determine whether there was any merit for this complaint about insufficiency of food?

A. I made an inspection of the stores, of the register regarding the loading and unloading of food. I noticed that in the kitchen of the prisoners there was a list giving the food to which they are entitled. I interrogated the head cook of the prisoners who reassured me that he regularly received the food according to that list and according to the number of prisoners. I then recalled the representative and I made him understand that the small amount of food did not depend on the commandant but on the amount of food established by the general direction in Rome. I also interrogated the commandant of the camp and I could reassure myself that the commandant himself considered all the prisoners as workmen, as workers, so that with this qualification the food was augmented. As a matter of fact, I remember that I told the commandant to seek other work so that the prisoners may be employed and thus justify the increase in the amount of food before the territorial authorities.

Q. Who determined the basic food ration to be distributed to prisoners of war, which authority?

Prosecution: If the Commission please, this man has not shown he is an expert on food rations or who determined the amount of rations.

Defense: I am seeking to avoid prolonged answers, but I will go through it all. Obviously, the Inspector General knows all of this.

President: It has been brought up that the present witness was in control of all prison camps in Italy. It would seem that he would logically know who provided the food allowance or the food rations for prisoners of war. He has already answered the question.

Defense: He answered it partially. We want to establish precisely the agency. I think it is well if we can have many of these witnesses state the facts so that there can be no question. If the prosecution is willing to stipulate to the fact that food rations for prisoners were fixed by the headquarters of the War Ministry in Rome, then we will discontinue this line of questioning.

Prosecution: The food ration was fixed by the Geneva Convention. I see we can get nowhere, sir.

President: If you try to determine or ascertain that the ration for prisoners of war was fixed by higher authority, I think that is proper.

Defense: One of the specifications is that the prisoners received different rations, different food than the Italian base troops. Now obviously, if we go into all details of this food situation, we can spend much time. It is our desire to shorten it as much as possible and, if we can stipulate or enter some agreement as to how we can shorten it, it would help.

President: If you can make a stipulation with the judge advocate in connection with that question, it would be very much acceptable to the Commission.

Prosecution: These prisoners were supposed to receive the same food allowance as was received by Italian troops in base camps according to the Geneva Convention. That is all we have got to fix on that.

President: Would you object to a simple question along that line?

Prosecution: No, if this witness knows about that.

Defense: That is why I asked this question specifically, because I intended to find out if he can make any comparison and if there is a difference, find out whose fault it is.

President: May I have him answer that last question, "by whose authority?"

The question was repeated by the reporter.

A. The General Direction, Sanitary Direction management in Rome.

Q. Who establishes, do you know who established the food ration for Italian soldiers?
A. The Direction, the General Direction of Sanitary Direction in Rome who determined the basic ration for the soldiers in that base camp and, therefore, automatically also for the prisoners.

Q. Do you know what the authorized ration for prisoners was?
A. More or less, I will try to be precise.

Defense: Have him wait.

Q. Do you know what was the authorized ration for Italian soldiers in base camps?
A. It is the same as the one for the prisoners.

Q. In connection with your inspections of prisoner of war camps, did you receive many complaints about the food?

Prosecution: If the Commission please, I do not believe we are interested in other camps.

President: It is difficult to see what bearing the answer to this question will have on the immediate case. The witness has testified that the ration allowed for prisoners is the same as that allowed for Italian soldiers. If the counsel, by questioning, could determine whether or not this was the condition that existed in Camp 98 at the time of his visit, it would be quite appropriate.

Defense: Sir, here is the idea behind this. As this man will tell you - any man in the Italian Army at that time - the food was pretty horrible for everyone in every prison camp and in other Army establishments. You cannot compare it with our American standards and I think that is a very important thing. The prisoners everywhere were complaining about food, not only in this camp.

President: Do you wish to have that stipulation made between yourself and the judge advocate-generally food throughout prison camps was not acceptable to the inmates?

Prosecution: No, counsel has already testified before this Commission that we would not agree to a stipulation of that kind.

Defense: I think a few questions, a couple of questions would help.

President: Proceed, but the Commission would be interested to know to what extent the mentioned allowance of rations to Italian soldiers differed in Camp 98 to that allowed to prisoners of war at the time of that particular visit, if you care to bring that out. You need not if you don't wish to.

Q. From your observation, during your visit in April 1945 can you state the rations enjoyed by the prisoners was the same as Italian soldiers in base camps at that time?

Prosecution: If he could give a "yes" or "no" answer to that question, but it has not been shown how long he was at Camp 98, what opportunity he had to observe the food and whether he knew what Italians were receiving in Italian base camps.

Defense: It is true, it is a very difficult question.

President: You need not ask it unless you wish.

Defense: I prefer not to ask it, because it implies a lot of knowledge of that camp as to how Italian soldiers ate. I withdraw the question.

Q. Do you know whether early in 1945 there was a reduction in the rations authorized military personnel, including prisoners?

A. Yes there was, but one suffered hunger in the whole of Italy and, therefore, since the ration for the population had been reduced, it was reduced also for the military.

Q. At the time of your inspection, did you check the facilities for the distribution of Red Cross packages?
A. The distribution of Red Cross parcels was one of my main worries.

Q. Did he at this camp check on the distribution, make a check of the distribution of Red Cross parcels?
A. In all camps and also in this one.

Q. Did you find everything in proper order in connection with the distribution of Red Cross parcels?
A. Everything was in order, because, in consequence of my inspections in the various camps, on the basis of my proposals, the headquarters had given precise and general orders as, for instance, that in the storeroom of the parcels it was required that two enter, that is to say one representative of the prisoners and one Italian representative, and the entrance had two keys, each one held by one of the two people. The register of the number of the parcels was inside the store and the movement of the distribution was signed in the register by the representative of the prisoners. As a matter of fact, one had reached a point on the Continent that at the railway station when a railway truck arrived containing parcels, in addition to the Italian officer, the representative of the prisoners went there as well in order to control the sealing of the railway trucks so that one could not think that any parcels had disappeared on the road.

Defense: I think that's enough on the subject.

Q. Did anyone make any complaint about beatings in this camp?

President: Will you specify what camp you refer to now?

Q. At the time of your visit in April 1943, did you receive any complaint about beatings within this camp?

Prosecution: The witness said he may have been there in April, maybe. He has not said he was there in April.

President: Have the question reframed, "At the time of your visit."

Q. At the time of your visit in the Spring of 1943, were any complaints made to you about beatings of prisoners?
A. Never.

Q. If there had, in fact, been beatings, is it not probable that this would have been reported to you in connection with your duties?

President: That can be put in other ways.

Q. Was it customary, in the event that there were infractions in the nature of beatings, for the representatives who knew of it, in general, to report these events to you in your inspections?

Prosecution: We object.

President: The witness stated that during his visit to Camp 98 sometime in the Spring of 1945, he gave the prisoners of war a chance to register all complaints with him. Is that acceptable? If the witness received any other complaints than those already brought out, it would be a proper question I think, but as to a specific complaint, I would say that such a question is poorly framed.

Defense: The last question was stating general procedure. Very well, I will withdraw it.

President: He has received compplaints so far in regard to mail and food, which he has thoroughly explained. Now are there any others?

Q. Did you receive any other complaints?

Prosecution: I think the last question and answer covers that. He said "No."

President: I don't recall it at the present moment. It is a little confused. Do you wish to repeat the last question?

Defense: I think it would be better.

Q. At the time of this visit, did you receive any complaints other than those to which you have testified, that is, mail and food?

A. No, on the contrary, the representative showed himself content with the transfer. He said he was glad about the transfer - change of camp.

Q. You have testified that on three occasions you have visited camps under the supervision of Colonel Oldani. Did you in any of these visits ever receive complaints about beatings.

Prosecution: If the Commission please, we object to that question. He has answered it. Specifically, sometime in the Spring of 1945 he visited the camp. There is no evidence of a previous visit, as far as I recall, and the question of beatings has been answered.

Defense: He has testified of two previous visits to camps under the supervision of Colonel Oldani.

President: The Commission presumes from the questions the witness has answered so far that, as far as he is concerned, there

was no irregularity in the camp except the complaint in regard to mail and that in regard to what he says not enough to eat, and there were no other complaints or irregularities in that camp.

Q. At the time of that visit - this question is meant to include all three visits - he made to camps under the supervision of Colonel Oldani, in other words, visits to other camps which although not directly involved in these specifications, his previous conduct - -

President: What camp do you have in mind?

Defense: Earlier he testified he visited the camp in Boturro and in September or October he visited this new campp

President: Shortly after its construction.

Defense: Yes, sir. I am asking for a simple conclusion as to whether he observed any of these things in those two visits.

President: Let's have the exact visits in your question.

Q. In your visit to the camp at Boturro in the Summer of 1942 and in your visit to San Giuseppe, when it was newly constructed in September, October 1942, on those occasions did you ever receive any complaints?

Prosecution: If it please the Commission, we object to the time alleged in these specifications of December 1942 to May 1943. If these apply, if the answer could apply to any specifications in the charge that's different.

President: If the answer that the witness gives will in any sense inform the Commission on the general background that existed within this particular camp, that is Camp 98, it would seem to be a proper question. However, on a previous question as to his inspections of September and October 1942 he states that he does not remember prisoners of war in camp at that time. Now are you referring back to one of those visits? I think that is the answer he made. Possibly, we better review the question.

Defense: We will try to phrase that question again to avoid the necessity of looking up the testimony.

Q. You have testified that in the summer of 1942 you visited the prisoner of war camp at Boturro. At that time did anyone make complaints about beatings?

Prosecution: Objection.

President: Could you simply ask the question, "Did anyone register any complaints?" The first part of the sentence.

Q. Did anyone register any complaints?

Prosecution: We still object unless it is connected up with this case.

President: The Commission believes it connects up with the case in that it shows the general background.

Prosecution: 98 did not even exist at that time.

President: It is under the garrison and under the same commander.

A. No.

Q. When you made these specific visits to this camp, did you notify Colonel Oldani in advance that you were coming?
A. I never notified anyone of my visits.

Defense: We think we are through with this witness, but since a recess is inevitable anyway for lunch, it is suggested that if we have further questions to ask him when we next adjourn, that we give him that opportunity.

President: Could you finish with your witness - do you contemplate finishing with him today?

Defense: We will finish with him now. We are through. Your witness.

Prosecution: No cross-examination.

President: No cross-examination by the judge advocate? Are there any questions by members of the Commission.

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel OKeefe:

Q. Will you ask the General how old he is please?
A. 62.

Q. How long was he Inspector General of Prison Camps in Italy?
A. From August 1941 up to 8 September 1943.

Q. In rating all his camps, based on his inspections, would he rate Camp 98 as an average camp or at below or above?
A. It was on the average because there were very beautiful camps in Northern Italy for geographical reasons.

Q. Approximately, how many camps did he have under his control?
A. Fifty-two large camps. In addition there were those working camps, that is to say - -

Q. Excuse me, he had over fifty camps total, is that correct?
A. That is to say - -

Q. I got my answer thank you. The PW representative in Camp 98 was it his duty to orient and instruct new PWs on arrival in the camp?

A. Actually there was no rule in this respect, but naturally new arrivals of prisoners contacted old ones.

Defense: May the witness be excused if there are no further questions?

President: There are no further questions from the judge advocate, none from the defense and none from members of the Commission. There appear to be none. The witness is excused.

Defense: He will be available. Will you want to recall him back again?

President: We have no further questions at the present time. If you wish to recall him, you may.

Prosecution: At the present time I do not think that we will want this witness again but there may be some questions come up later in the trial. This man was Inspector General and he may be able to answer them.

President: Will he be available?

Defense: He can be available, yes sir.

President: Then he is excused, subject to recall.

There being no further questions, the witness was excused and withdrew.

President: Now the Commission will adjourn until 0900 Monday morning.

The Commission then at 1235 hours on 2 November 1946, adjourned to meet at 0900 hours on 4 November 1946.

Clyde W. Wellen
CLYDE W. WELLEN
Lt. Colonel, INF
Judge Advocate

The Military Commission met pursuant to adjournment, at 0900 hours, 4 November 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused, the interpreter and the reporter were also present.

Defense: If it please the Commission, our next witness is on the way over here. We have no excuse for not having him here. While waiting, we can introduce some formal documents for the record. The defense offers into evidence Defense Exhibit B for identification, C for identification and D for identification. . This document B for identification is an explanation from a Rome lawyer of why the originals of the following two exhibits are not presented. Defense Exhibits C and D are letters from representatives, English representatives, which they presented to the camp commander upon leaving the camp. The originals of these two letters are in the files of the Court of Cassazione in Rome. An effort was made by us to extract them from the record. The Court of Cassazione refused on the ground that they could not release documents which were a part of a file of a case. In Exhibit B, a civilian lawyer who is in the employ of the Office of the Theater Judge Advocate, Claims Office, certifies as follows:

The defense counsel then read Exhibit B.

Prosecution: If it please the Commission, we object to the introduction of these letters. The gentleman who prepared and sent for the letters is certainly available as a witness. He could have appeared before this Commission. He is in Rome. He is in Captain Burck's office. He could come over here and testify under oath that these are extracted copies of any letters that he found. In general, the signatures to these letters are illegible. We don't know who they were originally made by. In other words, there is just no way to identify these two purported letters that the defense is attempting to introduce here and there are no specifications pointed out to which these particular documents apply.

Defense: As far as bringing the advocate here is concerned, if the Court please, we can have him brought up at Government cost, but since this man is in the employ of the Office of the Theater Judge Advocate, his credibility can hardly be challenged, and it seems rather an unnecessary gesture and expense for the Government to bring him from Rome simply to state, as he already has in his sworn affidavit, that these are true copies of these letters he saw in the file.

President: The request for his presence in front of the Commission would be to testify to the authenticity of the documents as he has done in this affidavit. Paragraph 10f. of Circular 114 states "If any original document cannot be produced, a copy of such document or secondary evidence of its contents may be received in evidence," from which point it appears they may be admitted.

Prosecution: If the Commission please, there is no way to determine from these documents whether these men were prisoners in this camp. The name is illegible. There is nothing here to tie it up with the case and as far as I can see there are no

specifications covered by these two letters. One of them particularly is dated 2 December 1942, prior to any specification, I believe, covered in the charges against the accused.

Defense: The specifications start on December 1942.

President: What do you propose to show in these documents?

Defense: These are letters which camp representatives, that is, representatives of English prisoners of war groups, left with the camp commandant Oldani upon departure from the camp, thanking him and telling of their experiences in brief in the camp. I say that everything he says about these applies to every bit of evidence he has introduced.

President: If they tend to show a background of the camp --

Defense: They do and, if they don't, the court will permit him I know to have them stricken from the record.

President: If they tend to show the conditions in the camp at the time December 1942, they are acceptable to the Commission and will be introduced.

Prosecution: May it please the Commission, I find nothing in these documents to show that the two purported letter-writers were representatives of any group of prisoners. If they were, I do not know it.

Defense: To make sure, we have to have them here. We have not had time to bring them.

Prosecution: Counsel has made that statement - that they were representatives.

Defense: They stated in these - -

President: The documents, as they have been described to the Commission, appear to have some relevancy to the case in hand and there is no objection on the part of the Commission to their introduction.

The defense counsel then read Exhibit C. and Exhibit D.

Prosecution: How is the name spelled?

Defense: R e l k b y n .

President: What is the heading of the two letters, the letter head?

Defense: There is - there appears to be no letterhead. They are simply written to the commandant of the camp on simple sheets.

President: Could the Commission see those documents a moment?

Defense: These are originals, these are copies. The originals are in English. This is a translated copy in Italian and certifying that the original from which the true copy is made is in the files. The defense offers into evidence, if there is no objection, these three - -

Prosecution: Just one comment on these three documents, sir, I would like to make. There is nothing there to show when these purported letter-writers were there, the length of time they were there, and no specifications are referred to. It does not cover any action or any alleged offense at any time covered by the specifications.

Defense: If it please the court, we have another document written in French - -

Lt. Colonel OKeefe: I'd like to ask you one question. This letter from Mario Beltrano. It says in there that correct copies of the originals are two letters on file in the Court of Cassazione, placed in evidence in a judicial proceeding before that court relating to Giulio Oldani. What was that proceeding?

Defense: Advocate Zucca, who is not here this morning, if the court wishes further details can tell you about this. In May 1945, after the liberation of North Italy, Colonel Oldani was placed under arrest by the Partisan Forces and put in prison. The Italian courts tried Colonel Oldani on charges of having acted against the Allies and in favor of the Germans. So far as I can see, because we have all the documents on that case here, he was tried by an Extraordinary Special Italian Court, which was then trying people on similar charges for aiding the Germans or being too actively Fascist. Colonel Oldani was acquitted of this offense and freed but then the Americans took him. If the court desires further details on this trial, tomorrow, when Advocate Zucca returns, we can put him on the stand and know precisely what were the issues. I have a short newspaper clipping telling of the results of this trial, if the court would like to see it.

President: If you wish to introduce it now or if you think there would be a more appropriate time, whatever you wish. The Commission would like to make another inquiry into the two letters introduced. Was the fact that the defense was going to make use of these two letters made known to those who prepared the case, prior to the beginning of the trial?

Defense: I think it was because when Colonel Oldani was interviewed by an investigating officer, he told that investigating officer that he had many such letters.

President: Can the Commission be given information of any sort, from any source, as to why some effort was not made to obtain affidavits from those who signed those two letters?

Defense: Why we didn't do it? It came to my attention when the case was assigned to me for trial, as assistant defense counsel, on, I believe, the 18th October, at which time I had no conceivable way of doing this, because this case was originally scheduled for trial on the 26th or thereabouts - no conceivable way of reaching these individuals and obtaining affidavits. It would have required contacts with the British Army in London to locate the individuals and then, undoubtedly, several months of waiting.

President: Can the judge advocate inform the Commission why some effort was not made, or perhaps it has been - has there been any effort made by those who prepared this particular case to obtain sworn affidavits by the two individuals who signed these documents just introduced?

Prosecution: That, sir, I don't know. The case was given to me for trial. I have nothing to do with the preparation of the case, except to take it as it is delivered to me. Colonel Holder will be on the witness stand later during the trial and he is in charge of preparing the evidence secured for this side.

President: That is very good.

Defense: The defense introduces Defense Exhibit E. into the record and asks now that it be translated from Italian into English.

Prosecution: The only objection the prosecution has to this particular document is there is no date shown as to when this trial took place, or the newspaper from which this clipping is made, but as far as I can see, it has no influence one way or the other.

President: Does the judge advocate object to its introduction?

Prosecution: No, sir.

The interpreter read Exhibit E in Italian and English.

Defense: That is another trial. If the court please, now that we are introducing these letters from former prisoners, we have another - -

President: Let us finish with this one first. As the Commission sees it, this newspaper clipping is not identified in any way as coming from any particular publication, and it has no date. It is undated, the name of the paper is not given. It does relate to the accused.

Defense: Right. The defense has another letter from the representative of a French group which, apparently, passed through this camp. The interpreter is on the last few lines. I think it might be well if this were introduced at this time as well.

Prosecution: I'd like to see the letter first and the translation also. I'd like to read it and know what it is all about.

Defense: Our interpreter has been somewhat under a burden. Our man was up 'till 6 o'clock this morning translating documents. That explains why some of these things, which have been recently received by us, are still in the original form. Rather than hold up the court, perhaps we can go ahead with the next witness and bring this in later.

President: The Commission is under no pressure to hurry the case. If you think this is the proper time to introduce it, we can wait. How long will it take to introduce it?

Defense: Two minutes. The defense at this time asks for a recess for five minutes, during which time we will try to have the prosecution read this letter as well.

President: The court will take a five minute recess.

The Commission then recessed at 0945 hours and was reopened at 1000 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: May it please the Commission, I have read the translation of the exhibit offered by the defense. I see nothing in there that pertains to any specifications charged against the accused. I do not know by whom this letter is written or to whom. It seems to me we are simply encumbering the record.

President: What is the purpose of the document?

Defense: This is a letter similar to the others from the commanding officer of a group of two hundred and twenty French prisoners who spent a month in the camp during the months of this period under scrutiny, February and March. It is true it does not give his address, or serial number. His signature is blurred, but, as the Colonel has said, at the time he received this, he did not think of putting down addresses, serial numbers and such information, because there was never any thought that these would be ever used except as souvenirs.

Prosecution: If it please the Commission, this letter is dated 20 February 1942. The date on the right-hand side of

the letter says 1942. There is a period of three weeks mentioned during 1943, however, in the letter. I don't know what it means.

Defense: I think that if the letter was read itself, the court can better decide on whether it should be included.

President: If the object of the exhibit is to indicate in any way the general condition which existed in Camp 98 --

Defense: This letter does.

President: It is acceptable in that light to the Commission and can be introduced if you wish to introduce it. Will you describe it briefly before it is read?

Defense: A letter in the French language from one who purports to be the leader of a group of French prisoners. This letter reports to the commandant on the conditions observed in the camp during the stay of this group of French prisoners.

The defense counsel then read Exhibit F.

President: Is there anything further the Commission would like to inquire into in regard to this exhibit? Are you ready with the next witness?

Defense: If the Commission please, the defense offers as its next witness Don Peano, Felice.

Don Peano, Felice, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Peano, Don Felice.

Q. Your residence?
A. Villafalletta.

Q. State your occupation?
A. Vice Parish priest - curate.

Questions by the Defense:

Q. Father, were you ever in the military service in Italy, in the Italian Army?
A. Yes, from November 1942 to July 1943.

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Q. In what capacity did you serve?
A. During that whole time, with the exception of one month, I was chaplain at the quarantine prisoner of war camp No. 98 at San Giuseppe Jato.

Q. When did you arrive as chaplain at San Giuseppe Jato?
A. 3rd November 1942.

Q. You have stated that for a month you left this camp. At what time was that, if you recall?
A. An order arrived from Rome for me to leave the camp on the 10th November 1942 and I left on the 11th.

Q. When did he return to the camp?
A. I returned I think on the 12th or 13th January 1943.

Q. From the 12th or 13th January, did you serve without interruption in that camp until the month of July?
A. Yes, with the exception of two or three days when I went elsewhere to preach.

Q. As chaplain of this camp, what were your duties in relation to the prisoner of war inmates of the camp?
A. Moral and religious assistance.

Q. During your period in this camp, did you spend your days circulating about the camp among the prisoners?
A. During the whole day, morning and afternoon, I went about visiting the prisoners in the camp until in the evenings I went home to sleep.

Q. Were you available to the prisoners to discuss camp conditions, in general, if they wished to discuss them with you?
A. Yes, at any time.

Q. Did you make yourself available to the prisoners to receive complaints of any type, including punishment?
A. When I passed through the camp, I was alone. If they wished to stop me, they could do so.

Q. Father, did your duties, as prescribed by your senior chaplains in the Italian Army, require you to make reports of conditions within the camp?

Prosecution: May it please the Commission, we object to that question. In the first place, there is no evidence before the Commission that he is required to make any reports, and the question is leading.

President: Can you put the question in a way that will remove the leading element?

Q. State whether or not you were required to make reports of conditions within the camp?

A. Yes, each month I had to make a report which I had to send to the Military Archbishop in Rome.

Q. Would this report - state whether or not this report would go directly to the Archbishop?

Prosecution: Now, we object again to that question. It is not shown whether he knows or not. We all know that the reports usually go through military channels.

President: There may be a possibility of exception in this particular case, I don't know, of course. If that can be brought out, would that be acceptable?

Prosecution: It is a leading question, if he knows, that is all.

President: It is a leading question. Frame it some other way.

Defense: From time to time matters can be greatly shortened by partial leading - if partially leading questions are asked to lay the foundation. I am trying, but I will withdraw the question.

Q. Did this report go through military channels to the Archbishop in Rome?
A. Yes, it passed through two head chaplains.

Q. Where were these head chaplains located?
A. One was in Corleone and the other one at Enna.

Q. Are these localities in Sicily?
A. Both in Sicily.

Q. Did his - did these reports pass through the hands of Colonel Oldani?

Prosecution: Objection, if the court please. Counsel persists in leading his witness.

Defense: How else can you state it, sir? We can start at the very ground here and spend two days leading up to it. I am asking the ruling of the court whether these questions are improper and leading?

President: Would this report pass throughthe camp headquarters? Would that be acceptable?

Prosecution: Yes, if he knows.

Q. Would this report pass through the camp headquarters?
A. Never.

Q. Did this report pass through the hands of any military commanders other than those in the chaplains' service?

Prosecution: If the Commission please, if he will just ask him through whose hands the report passed, I think that will solve it.

Defense: Is there an objection to the question?

Prosecution: Definitely.

Defense: What is the ruling?

President: You have established that the witness is alleged to have made, states that he did make a report which passed through the hands of two chaplains before it reached the hands of the Archbishop in Rome, also that it did not pass through the hands of the camp commander.

Defense: This one question completes the rest of the picture.

President: If you wish to ask whether or not the report passed through the hands of any military authorities, it would seem to be acceptable.

Q. Did this report pass through any military authorities other than those in the service of the chaplain?

President: One question is enough.

Defense: He can be confused by military authorities. Chaplains are military authorities.

Defense: All right.

Q. Did this report pass through the hands of any military authorities?
A. Religious military authorities or not?

Q. Non-religious military authorities?
A. No.

Defense: The defense asks that Defense Exhibit G be marked for identification.

Prosecution: May it please the Commission, this is a ten page report. The original, of course, is in Italian. The judge advocate would like to have a little time to go over the report and also to check the translation. I understand it was not completed until 6 o'clock this morning, and I have not seen it until now.

President: The translation is not there?

Prosecution: Yes, it is here, but I have not seen it before. I'd like to have our interpreter make a check of it.

President: Quite proper and right. Do you wish a recess?

Defense: Yes.

President: Do you wish to do that now or, possibly, you can withhold the introduction of the exhibit? Do you wish to have a recess now so that the judge advocate can read the document, or do you prefer to go on examining the witness?

Defense: We prefer to have this at this time because there will be very little to question the witness about. Here is an idea, if it is acceptable to the prosecution. If they find any objection to the translation of this when they check it later, naturally, they can present any objections to the translation at that time.

President: Well, as I understand it, the judge advocate has not had an opportunity to examine the document just introduced.

Defense: That's correct.

President: It is quite proper that you should examine it. It appears that the Commission should take another recess until that is completed. How long do you think it will take you to check that?

Prosecution: We should have at least fifteen minutes to check ten pages.

President: Does any member of the Commission have any other idea? There is nothing else we can do about it. The Commission will take a fifteen minute recess.

The Commission then recessed at 1030 hours and was reopened at 1100 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the witness, the interpreter and reporter were also present.

Prosecution: If the Commission please, the judge advocate objects to the admission of this so-called report. I was misled at the time. I thought from the statements made that this report contained copies of monthly reports made by the chaplain. We have here what appears to be an original document. There is no date at the beginning. There is a date at the end "June 1st 1945". I do not know how we happened to get the original, that has not been explained, but all these statements are made by the witness on the stand and it seems to me he would be able to testify and save time.

Defense: I think these objections are in order but the explanation we have not arrived at yet. It is first necessary to have the witness tell what it is, then the court can determine whether it is credible evidence, so I would like to ask a few questions of the witness.

President: Before you introduce it. Proceed. You are going to ask him in regard to that document, you mean?

Defense: Yes, for him to identify it, characterize it in other ways. Show the basis for introducing this into the evidence.

President: Does the judge advocate have any objection to that?

Prosecution: No objection to that, if the Commission please, but this refers primarily to religious activities - activities of the witness over this period. I do not see any reference here to the specification. It may be in a general way, but there is no particular reference to any specification in here, except in a very general way as to - -

President: The document was apparently written, from what you say, sometime in June 1945, approximately three years ago, and if the witness wishes to use it to refresh his memory - you say it is an original document to remind him of facts that happened at that time. It is quite proper and there is no objection to its being admitted as evidence. The objection is overruled.

Questions by the Defense:

Q. Father, I show you Defense Exhibit G for identification. Can you tell the court what this document is?
A. This is a document which I drew up for my own private use, after having sent the monthly reports to the heads.

Q. Is this a true copy of all the monthly reports which you forwarded up to June 1st, 1945?
A. Yes, the only report missing is the one from 11th November to 12th January, which regarded work done at Artillery Company, 24 Artillery Regiment.

Q. In that period you mention, you were not present at Camp No. 98, isn't that true?
A. Yes.

Q. On what dates - strike that - is this the composite of the several reports filed during that period?

Prosecution: If the Commission please, we would like to know what we are referring to here and what this is.

Defense: It is an exhibit.

President: Why can't you ask him simply what the reports consist of?

Defense: I have another purpose in mind.

Q. You have previously testified that you made monthly reports, is that true?
A. Yes.

Q. Is Defense Exhibit G. a composite of all the reports you made from the period up to 1st June?

Prosecution: If the Commission please, we object, as I understood this was a copy of the report.

Q. Is this a copy of the composite report?
A. It is not a copy, but it is a report which I made for my own private use from the complete report, monthly reports, sent to Rome.

President: For the information of the members of the Commission, the Commission is led to believe that that so-called report is a brief of reports that he had previously submitted. Is that what it is?

Defense: No, it is complete. He filed a certain number of reports during that period. This is a complete list of reports but not separate forms. They are all on one sheet of paper, written successively. He has already testified that this covers the reports he filed during that period.

President: The reports - -

Prosecution: If the Commission please, I don't understand the testimony.

President: It is not a copy. Do you wish to call it a summary or brief?

Defense: No.

Q. Father, I show you exhibit, Defense Exhibit G. for identification, covering the period 3rd November to 31st January. Is this part of the report a word for word copy of the report which you sent to your superiors covering that period?
A. Yes.

Q. I show you that part of Defense Exhibit G. for identification which relates to the period February and March. Is that a word for word copy of the full report which you submitted to your superiors in Rome?
A. The only thing that is missing is the heading that I have made right at the beginning - to whom it is addressed, the complete heading, the name of the office, the name of the person, the address.

Q. I show you that part of Defense Exhibit G. for identification headed Month of March/April. Is this a word for word true copy of the full report you furnished headquarters in Rome, for that period in question?

A. Yes.

Defense: There is another month but I think the point will be sufficiently established. The defense offers into evidence Defense Exhibit G. for identification as Defense Exhibit G.

Prosecution: May it please the Commission, we did not have time to complete the entire translation of the document. We will waive that for the present, with the permission of the Commission if we find any irregularities in translation later to call it to the Commission's attention.

President: Now the witness himself wrote this Exhibit G. and it refers to a certain period of life in Camp 98. Now the witness himself is present. Do you wish to question him in relation to the contents of this document?

Defense: We shall see later, sir. We introduce this document and accordingly wish to have it read because this having been filed and this report having been made at the time when events were fresh - this being an official report - we think that it is a very broad type of evidence, particularly since it was prepared at a time when war agreements were, in fact, unknown.

President: The document has been introduced in evidence. You can use whatever means you wish to put it in front of the Commission, either by questioning or reading the document itself.

Defense: The defense would like to read this document because it relates specifically and generally to many of the specifications and we feel that, while no-one could doubt the word of the Father, this document is better even than his own word because this was written when his memory was fresh.

President: It is proper to read it, if you wish.

Defense: Here are additional copies in case, while I am reading it, anyone wishes to check.

The defense counsel read Exhibit G. to the Commission.

Defense: May I interrupt to ask that the following two paragraphs be followed carefully as they refer to specifications 2 and 4:

> "The only variety concerning the internal disposition was the worry of the Commanding Officer for the escape of 2 PWs, which occurred at 0300 hours after

Easter night. Some PWs did in some way get hold of a pair of pincers, while working in the Camp, and during the night, they cut the barbed-wire, but were fired upon as the guards heard them crawl, nevertheless they were able to escape through the fields. After three days search they were found in the house of a shepherd, who at first had furnished them food and then denounced them to the Fascist guards in the vicinity of Borghetto. After the interrogation of the escaped PWs, it appeared that the escape had been attempted not for mistreatments they received, but for their mental impulse that brought them to believe they could possibly reach the seashore with means of fortune, from there to Malta, then to Africa or to their own country. These escaped prisoners were punished by the Commanding Officer with confinement and field irons (handcuffs) for two hours a day, as prescribed by regulations of Higher Commands."

Defense: The next paragraph is entitled "Unpleasant Note" and pertains to the incident of specification 4:

"During this month an unpleasant incident occurred: a PW of American nationality and Italian origin (son of Italian immigrants) treated the Commanding Officer with very bad respect while he was recommending PWs to be good and disciplined, and gave them the usual prizes for work performed and good conduct; he (Oldani) invited the PWs to remember the Italians with gratitude during peace time, for having treated them well during their prisoner status; that PW instead, in a bad way told the Colonel that as soon as the war was over, if he happened to meet him with his soldiers he would spit in their faces. The Colonel was ready to denounce the PW to the Military Tribunal, but he first asked my advice as a Chaplain and then decided to reduce the punishment administering him confinement and two hours of manacles per day, which lasted for three days; because he (Oldani) considered that the PW had probably drunk some Sicilian wine at the nearby PW canteen. This punishment was carried out in order to give an example to all PWs, so that they would respect the authority of the Commanding Officer and the honor of the Italian soldiers, and to avoid further abuses of that type."

Lt. Colonel OKeefe: I have a question on this original document. You have on the last sheet some notes in Italian which were not translated.

Defense: They were not translated because the Father wrote them down when it arrived here and they are not a part of the report.

Lt. Colonel OKeefe: But they are part of your exhibit.

Q. Father, these pencilled notes on this report, when were they written.

A. This summer I went to San Giuseppe Jato and took this document with me and I then made these notes.

Defense: Since it is not a part of the original report, the simplest thing to do - unless the court wishes, we have no objection - we will have the interpreter read them and then if the court - -

President: You had better let the judge advocate read them. Do you wish to have the witness testify under oath that this document is his?

Defense: Only the last part of the report was made on the 1st June.

Q. Father, will you swear under oath that you made these statements at the time of each report, the time each report was filed, that they are your statements, that they were true then and that they are true now?

Prosecution: If the Commission please, we do not like that going into the record. This witness is under oath. He is cross-examining his own witness. He is putting a leading question and answer in his mouth.

President: If the judge advocate is willing to accept the premises that this is - since the witness himself is on the stand and has taken a proper oath - that it is a document made under oath.

Prosecution: If the Commission please, I was trying to get a translation of these pencilled notes, I did not know what was going on here.

President: I was endeavoring to find out from the witness whether he has sworn to the accuracy and if it is true to the best of his knowledge and belief, the contents of the document itself. Is that acceptable to you?

Prosecution: Yes. There are numerous interlineations and markings throughout the original and I would like to know when that was made and why.

Defense: First of all we will get this question, have him answer this question. Will you read that last sentence I propounded?

The reporter repeated the question.

Prosecution: If the Commission please, if he desires to testify that this is his report that is all right, but there has been no information given as to where, what, how he derived his knowledge of those reports. We desire at least a chance to cross-examine or to know whether it is based on his own knowledge or from someone else.

President: You have the right to cross-examine in any field you wish.

Prosecution: That should be brought out before this particular question is answered. He is stating that this is a correct statement and the facts therein are true. The statement does not show how he arrives at the fact that the facts therein are true.

Defense: He already has testified that he had the responsibility and duty to make reports.

Prosecution: It may be a true copy of the original report, yes.

Defense: Qualify it that the facts are true to the best of his knowledge.

President: I think it is sufficient to require him to testify that it is true to the best of his knowledge and belief. It is acceptable that some of the information might have been obtained from someone else.

Prosecution: Yes, sir, but this report has not been sworn to. It was not sworn to at the time and it does not say where he obtained his information from, where he compiled the report.

President: Do you object to its being made into a sworn statement now?

Prosecution: No, sir.

President: That's all I am trying to do.

Prosecution: Provided the questions are properly put to the witness.

President: All the Commission wishes to do is to have the exhibit sworn to by the witness, as being true to the best of his knowledge and belief.

Defense: I will withdraw that question and break it into two smaller questions.

Q. At the time you made the statements which were a part of your report - at the time you made the statements comprising your report, did you then believe the statements to be true to the best of your knowledge and belief?
A. Naturally.

Q. At this time do you consider the statements contained herein, all of them, as true to the best of your knowledge and belief?
A. Yes.

Defense: I think that covers that point, does it not, sir?

President: Whatever he said on the witness stand, he said under oath. Now the remaining notes that a member of the Commission brought to light a minute ago?

Prosecution: I am still looking at them.

Defense: While we are waiting, there is a possible ambiguity which might be called to the attention of the court. The caption here refers to the 31 January as the termination date. That's because that's the first report and that does not include the subsequent reports.

Prosecution: I'd like to ask the Commission if the interlineation marks are on the copies submitted as well as the original?

Prosecution to defense: I have had no chance to get a translation of this. You keep asking questions.

Defense: If I had had a chance to look at this, I would not have --

President: There is no need for hurry.

Defense to interpreter: Will you translate that which is in handwriting below?

The interpreter complied with the request.

Defense: As the father has testified, this was not a part of the original report. You will see from the translation, it was pencilled in this summer.

Interpreter: The father just said he did that from memory.

Defense: It is not a part of the original report and for that reason was not translated. To avoid further confusion, if the Commission please, we will eliminate this part, cut this part off.

President: Any objection on the part of the judge advocate since it has been introduced and has no bearing on the case?

Prosecution: No objection.

President: Delete it.

Questions by the Defense:

Q. Father, do you know whether the rules of the Geneva Convention were posted in this camp in a place where they were available to prisoners?
A. There was a list near the kitchen, at the canteen where they could read it.

Q. In what language was it published?
A. In English.

Q. Do you know whether or not some of the prisoners in leaving the camp for other camps left letters addressed to Colonel Cidani?
A. Yes, some did that. Some went to him personally and some asked me to do it for them.

Q. Did you observe the living conditions of the prisoners at this camp, Father?
A. Yes, because I was daily amongst them.

Q. Can you describe the shelter, the type of shelter which was provided for prisoners?
A. Yes, there was a large square and in the middle of that square there was a building in stone with a courtyard before it. Inside there was a kitchen with storeroom for food, exclusively reserved for the prisoners.

Q. Will you describe the living quarters now?
A. You mean the huts. There were five, if I am not mistaken, four or five tents, then one hut where they went when they arrived and had still to be qualified; another small hut near to that one reserved for those who may have some infectious disease.

Q. What description could he give of a typical hut or barracks or whatever it was in which the average prisoner lived?
A. The huts were all the same. There was a platform like a pavement, a wooden structure, frame. A large canvas was spread over that which reached right to the ground. Running around it there was a ditch which was there so that the water would run off. Inside there were two rows of sleeping cots and each prisoner had a straw sack.

Q. Did he ever see a prisoner or prisoners who had been without this mattress or sack?
A. All of them had it, but, of course, with use some of them tore at times and not all of them were so diligent either to repair it immediately or restuff it, or even go straight to the commandant and ask for a new one or ask for it to be repaired.

Q. Were they furnished blankets?
A. They had one large blanket which we with a military expression called coperte. It may have been about two meters by one fifty and two smaller blankets one seventy by one fifty approximately. Naturally there were a few soldiers who were very tall and his feet looked out from underneath.

Q. Does he know what type of blankets are furnished the Italian soldiers?
A. The same as these. I myself had such blankets when I was a recruit.

Q. Does he know how many blankets the Italian soldier was normally furnished?

Prosecution: May it please the Commission, this man went in service in May, I believe, 1942 and out in July 1945. I doubt if he can be qualified as an expert in the Italian Army.

Q. Did you in connection with your duties as chaplain for this entire camp, did you observe the living conditions of the Italian soldiers in the camp?
A. Yes, because there was also our detachment. I was their chaplain as well as the guard detachment.

Q. Does he know how many blankets they were furnished?
A. They too had thisceperte dicasernagio and the two small ones.

Q. Did you observe how the prisoners were dressed in this camp?
A. When they arrived they were all dirty. They undressed and their clothes were then washed and disinfected and then they received clothes as our soldiers, boots and clothes as our soldiers would have because there was nothing else but gray green material.

Q. Do you know whether prisoners were used for work details?
A. They were all free to work, not obliged, and nearly all of them did work, but spontaneously because by working they received more food.

Q. How were prisoners selected for the work details?
A. That I cannot say.

Q. Were prisoners required to work against their will?

Prosecution: If the Commission please, we object to that. In the first place, it is a leading question and, secondly, has already been answered.

President: I think the question could be framed in another way.

Q. Did you ever observe prisoners protesting against work?
A. No, because I, with my own eyes, saw that it was rather easy work.

Q. Did you ever observe prisoners who were sick at work?
A. No, because first of all they were not obliged to work, so a sick man would even less go to work.

Q. Did any of the prisoners ever complain to you about being beaten by anyone in the camp?
A. No, none of the prisoners has ever complained to me.

Q. Did you ever observe the chaining of any prisoner by the legs?
A. That, never.

Q. Did you ever hear that any prisoner was chained by the leg?
A. That, neither. Nobody has ever told me about that at the camp.

Q. Father, did you ever see anyone manacled or chained to the flagpole - to a flagpole?
A. I have never seen it. Somebody said that something of this kind had occurred.

Q. When did you hear that something of this kind had occurred?
A. The only time that I saw a prisoner in irons was the case when a Mulatto, as we called him, who, as I was told, had given an answer rudely to the commandant and insulted the Italian Army. I was in my office at headquarters. A soldier came in and told this. I came down to the camp and before entering the camp, I stopped at the guard post where the carabinieri were. There I saw that prisoner already among the carabinieri but still there. Finally the commandant of the guard post came and, after having again told about the circumstances as they had occurred, told the carabinieri to put him into irons and then, together with the commandant, I went to headquarters and the prisoner was led away towards the tents. I have not seen him again so I don't think that camp commandant has given orders to chain him to the flagpole and when together with the commandant, we passed the flagpole whilst going to the village in the little truck, there was nobody chained to that flagpole. That is all I know about this incident.

Q. Where is the location of the flagpole with respect to the center of the camp?
A. It is in the camp ten or fifteen meters outside the prisoners' kitchen.

Q. Is the flagpole at a location where both prisoners, guards and officers are always passing nearby?

Prosecution: Objection, if the court please.

Defense: I can spend twenty minutes bringing this out - where the flagpole is. If we can shorten this with this question, I'd like to.

Prosecution: We could probably stipulate as to the location of the flagpole but clearly this question is obvious.

President: Can we stipulate it now?

Defense: Will the prosecution stipulate that the flagpole within the camp was located at the central piazza near the gate, the main gate, the gate to the camp?

Prosecution: Yes, we will stipulate there is one near the main gate and two within the prisoners' enclosure.

President: There appears to be a difference of opinion as to the location of the flagpole.

Defense: I will stop this line of discussion now. Later I will have someone draw a diagram. I will withdraw the question and spend no more time - -

President: Do you wish to withdraw the question?

Defense: Yes, I will withdraw it.

President: How long will it take to finish with this witness?

Defense: I think twenty or thirty minutes more.

President: Then it would be better if we recess, unless it interferes with your line of questioning.

Defense: No, I would prefer it.

President: The Commission will recess until 1400.

The Commission then recessed at 1255 hours and was reopened at 1400 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the witness, the interpreter and reporter were also present.

Questions by the Defense:

Q. Father, did you ever hear, did you ever see or hear of any cases of prisoners being manacled for more than two hours, for a day?
A. I personally have only seen what I spoke about this morning and only that moment.

Q. Did he ever hear of a prisoner being manacled for more than two hours per day?
A. No, then one could have seen it. It was in the camp.

Q. State whether or not you have ever seen a prisoner punished for some act done by another prisoner?
A. No.

Q. Did he ever hear of any such incident?
A. An incident of prisoners punished by whom? I don't understand.

Q. Punished by anyone for the act, the misdeed of another prisoner?

A. No, I did not hear of it, nor do I understand this - committed by another prisoner. What do you mean to say by that?

Q. Supposing there was a group of five prisoners. One of those prisoners struck a guard. Would all - could the other four prisoners be punished for the act?

Prosecution: Objection, if the Commission please.

Defense: He has asked for an explanation of an obtuse question, hypothetical.

Prosecution: He has asked for a conclusion also - could they be punished?

Defense: Would they be punished? What I mean is punishment of the other four prisoners as well as the man who struck the guard.

President: Is that acceptable to the judge advocate?

Prosecution: Now I don't know the form of this question.

The reporter repeated the question to the judge advocate.

Prosecution: Not acceptable.

President: The question still seems a little awkward but the Commission understands you are merely trying to get an answer to your previous question, so explain to the witness what you want. It seems all right to me, if the witness understands it.

Prosecution: He says "would" or "could". It is a conclusion that the witness would have to arrive at. What somebody else would do in the circumstances.

President: Why don't you ask him if, under the situation you have drawn up, he has ever seen all of them punished for the acts of one?

Q. Supposing a case - there was a group of five prisoners, one of the prisoners struck a guard. In a case such as that, have you ever seen a case like that where all of the prisoners were punished for the act of the one, the act of the one in striking?

A. I have never seen anything like it, but I imagine that in such a case, disciplinary action, the commandant would be obliged to take some disciplinary action against the individual striking or all five.

Prosecution: If it please the Commission, the imagination on the part of the witness, I do not think should be admitted.

President: It appears like an expression of the witness' opinion, which is a little irregular. I don't think it will do any good. I think you have your answer already.

Q. Did you occasionally have opportunity to visit the mess, the dining rooms and kitchens of the prisoners?
A. Not the dining room because there was none, but the kitchen, yes.

Q. Did you have the opportunity to speak to prisoners about their food?
A. Yes.

Q. Did you have reason to know what rations the prisoners were authorized to draw?
A. According to what was written on that list, there was a fixed quantity, but what this quantity was I cannot remember now.

Q. Do you know whether or not the prisoners were getting the rations to which they were entitled?
A. I am absolutely convinced of it, because the food of the prisoners was completely separate from that of our military and was weighed in the presence of their representative - of the head of their tent.

Q. Did any prisoners ever complain to you about not receiving Red Cross packages?
A. Nobody ever complained and I do not think there was any reason for complaint because these parcels were distributed regularly.

Q. When prisoners arrived at this camp, did you - on some occasions were you present to greet them?
A. I was nearly always there.

Q. Did you observe - were the prisoners searched after they arrived?
A. When they got off the truck they went into a separate room and there they were searched and all the items produced in the search were then handed in at headquarters.

Q. Does he know whether or not the prisoners were given receipts for the items taken?
A. I know that there was an officer and interpreter entrusted with this.

Q. Did you ever hear any complaints about valuables being taken and never returned?
A. To me nobody ever complained but I heard about a small incident, of which I heard from the Colonel, and it was about a ring, a family ring I remember.

Q. Was there a prisoner of war canteen in this camp?
A. Yes, it was on the left-hand side from the kitchen.

Q. Did you ever visit this canteen?
A. Yes, I often went in there. I spoke to the prisoners and mixed some wine.

Q. Did you observe what items were sold in this canteen?
A. Wine, whenever it was possible to have it from Palermo, some beer, wrapped-up little rolls, some cakes, chocolate and other small things, writing paper and other small things that I don't remember now.

Defense: The defense at this time desires no further questioning. We wish to point out to the court that we have quite a large number of witnesses who were in the camp during this period. From now on it will not be our intention to question fully. In order to save time, we are going to have the witnesses cover most points and invite questions from the court of the other side, the prosecution, on any points which we have not covered.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. In relation to PG 98, that is prisoner of war enclosure, where did you live?
A. I remained there the whole day and then I went to sleep, only to sleep I had to go to the village of San Giuseppe Jato because as there was no church in the camp, I could not say Mass there, so I said Mass each morning in the village and then went to the camp.

Q. Your quarters were in the village then instead of in the camp, is that correct?
A. At the camp I would have had the right to a room, but it was not possible, there was no space because there were so many officers, so, by way of exception, the Colonel had obtained permission for me to sleep in the village.

Q. How far was the village from the camp?
A. About four kilometers.

Q. Do you speak English?
A. Just a little.

Q. When did you learn English?
A. When I was a missionary in Africa, in North Uganda, but I have not much practice.

Q. You have understood in English all the questions asked, is that correct?
A. Not all of them.

Q. Did you talk to the American and English prisoners in English?
A. As far as I could, but I always had the interpreter with me so that when I could not get on, he could help me.

Q. What interpreter?
A. There were two interpreters. There was a Sergeant Mario Minardi and a Sergeant Mannino, if I am not mistaken.

Q. Were both interpreters on duty all the time?
A. They were always in the camp. They were usually around the prisoners. There were no turns of duty. They were on continuous duty. It may have been that some time one did one thing and another something different.

Q. Is it not a fact that one interpreter was on duty one day and the other interpreter the following day?
A. No, because as they were military personnel, they were in service.

Q. What time would you leave the prisoner of war camp in the afternoon?
A. Always at about 7, 7.30 when the Colonel finished, closed his office.

Q. What time did you arrive at the PW camp in the morning?
A. Not later than 8 o'clock.

Q. Did you go to the camp every day?
A. With the exception of those few days when I was away, as I have said before, for the purpose of preaching.

Q. In other words, you spent each day in camp from 8 in the morning until 7.30 in the evening, except for the thirty days when you were absent from camp, is that correct?
A. Yes, as a rule I was in the camp.

Q. By that you mean you were not there then every day?
A. When I say "as a rule" I mean that those days when I was away have to be excluded.

Q. Do you know whether or not you were there on the 28th April 1943?
A. 28th April, yes, it was Easter, during the time of Easter.

Q. Were you there on the 26th January 1943?
A. Yes, on the 26th January 1943, I was also at the camp.

Q. Did you keep a diary?
A. I did not keep the diary each day.

Q. Were you there on the 1st day of March 1943?
A. I assume that I was because I believe that the two or three days when I was away were in February.

Q. Were you there on the 2nd May 1943?
A. In May, certainly.

Q. What were the weather conditions in Camp PG 98 during the months of December, January and February 1942 and 43?
A. During the day one could resist fairly well. At night it was rather cold, particularly certain, some nights when there was a wind on the mountains and there was a reflex, and it was rather cold. I remember that one night there was a storm which even tore the roof off one of the tents.

Q. What were the weather conditions during March 1943?
A. In March it was already less. There were already beautiful days during March.

Q. Was there any rain or snow during the winter months?
A. Yes, there was often rain; snow, there was none actually in the camp but in the mountains nearby.

Q. Did the prisoners of war have any heat of any kind in their tents?
A. No, because it was impossible. There was straw and there was canvas. It would certainly have been an improvement if anything. There was sometimes someone who lit a small fire with straw and wood in order to get warm, but it was - this was stopped mainly because of the danger, for no other reason.

Q. What, if any, flooring did the prisoners of war have in their quarters?
A. It was good and dry. It was well stamped down. It was of earth.

Q. Earth floor?
A. Yes.

Q. What kind of covering did their quarters have?
A. With canvas.

Q. Did it leak?
A. No.

Q. Then if twenty-five prisoners stated that had mud ankle-deep to knee-deep in their tents, they were wrong, is that right?
A. Outside the tents, yes. We stamped on it too, but not inside the tents, it was impossible.

Q. Now in your direct examination you stated that prisoners were given prize money, prizes. Who furnished the money to purchase the prizes given to the prisoners?
A. The Colonel personally gave these premiums. From where he took the money, I imagine he had a separate fund, or else the funds may have come from the profit of the canteen.

Q. While you were at the PW camp, where did you spend your time?

A. Whenever I was not going about among the tents or the kitchen or the hospital where people with infectious diseases were, I was at headquarters of the camp.

Q. From whom did you receive information of the punishment of prisoners?

A. Sometimes from the interpreter himself and always from the Colonel himself, who told me about all this, also, because he wanted my opinion as to whether or not he was doing right, in connection with the punishment - whether he was doing right or wrong in giving these punishments.

Q. How many cases did the Colonel tell you about?

A. As far as I remember exactly, there was the case of the Mulatto and once when around Easter two prisoners escaped or three, I don't remember exactly.

Q. Did he not tell you of more than one attempted escape?

A. When I arrived at the camp, they told me that during the time I was with the regiment other prisoners had escaped, but I knew that already because whilst I was at Salemi the officers of the regiment had received a telephone call to send out patrols.

Q. How many attempted escapes or escapes do you know about personally?

A. I personally know of that one which I was told about. I know of the one around Easter and that's all.

Q. Were you present in camp when some American and British soldiers smiled at the lowering of the flag in the evening?

Defense: Objection to this question.

A. No.

Defense: It is leading but he has answered.

Prosecution: Leading?

Defense: I never brought in in direct examination any raising of the flag into the testimony.

Prosecution: You brought in everything connected with the camp you could think about from November -

President: That is, if I remember correctly, I remember no question on that point. It would seem you are going beyond the scope of the direct examination in asking that particular question. Do you wish to continue on that line? That particular question seems irregular?

Prosecution: You always have a right to cross-examine a witness with the facts immediately connected with the case to test his veracity.

President: That is quite correct. I was not aware that his credibility as a witness was, at the present time, under consideration and the simple point of my inquiry is, does not your question go beyond the scope of the direct examination, in which case it appears irregular to ask it? Possibly, you can reach it some other way.

Q. Were you present when American prisoners of war allegedly insulted Colonel Oldani?
A. No, I was not present. I was at headquarters.

Q. Did you see any part of the incident that followed?
A. I started to see, when this was reported by a soldier, and I went down to the camp to see how things stood.

Q. What, if anything, did you see?
A. At the guard post that prisoner among Carabinieri who were on duty, still free.

Q. Then what happened?
A. Whilst we were still there and they told me what had happened, the Colonel arrived and he told me what had happened.

Q. The Colonel arrived after you arrived, is that right?
A. At the guard post, but the Colonel had already been in the camp before me because the guard post was outside the camp.

Q. Actually the Colonel was at the guard post when you arrived, is that correct?

Defense: Objection. He has testified otherwise.

President: Do you wish to lead the witness into that answer? If you want -

Prosecution: I am trying to find out what happened.

President: You are putting the answer in his mouth. You said, "Was the Colonel is there before you were there?"

Prosecution: He said the Colonel was not there.

President: Can you ask him, "Who was there first, yourself or the Colonel?"

Prosecution: Yes, sir. Will the reporter repeat the question?

The reporter repeated the question.

Prosecution: Strike it out.

Q. Did you see that American prisoner in irons - referring to the one at the guard post to which you have just been testifying?
A. Yes, at the guard post.

Q. Where was he taken, if you know?
A. When they had put the irons on him, they led him towards the camp and whilst they were going along the road to the camp, on the road to the kitchen, we together with the Colonel left and went to headquarters.

Q. Do you know where the prisoner was taken?
A. I imagine, I suppose that they led him to the tent which was used as a prison, because afterwards I did not see him any more, not even that evening.

Q. Or the next day?
A. Neither.

Q. Did you ever see him after that?
A. In prison?

Q. The question was did he ever see him after he saw him being taken to the guard house?
A. Yes, afterwards he was in the camp.

Q. How long afterwards was it that you saw him?
A. I cannot say exactly.

Q. When prisoners arrived you have testified that they were taken into a hut where they were examined and personal items taken from them, is that correct?

Defense: Objection. He did not testify, to my knowledge, that they were taken into a hut. I believe he said they were taken into a compound.

President: That's correct. Do you wish to ask it that way? Is that material whether it was a hut or a room or what?

Defense: No, sir, we will withdraw the objection.

The reporter repeated the question.

A. Yes.

Q. Now you have also testified about working conditions at this camp. What work did the prisoners do?
A. It was work for the setup of their tents, the roads which passed through one tent and another between one tent and another, and the road that led to the headquarters, and that road which led from the camp to the main road, so that the trucks could pass easily.

Q. Did the prisoners carry the stones from near the top of a mountain to the camp for that purpose?
A. Yes, but not masses of stones. The biggest ones were that big and they carried them one by one on their heads, especially the Indians.

Q. When was that?
A. During the whole time that I was there. As a matter of fact, the Colonel even considered these light labors so that their rations could be increased.

Q. Did you ever see any American or British soldiers, prisoners of war, carrying stones on their head?
A. That I cannot say exactly because, apart from carrying it on their heads, they also had these small push carts.

Q. What other means did they use to carry stones?
A. Also with small barrels, wooden barrels, stretchers. They did not use their hands. They all had their shovels and picks.

Q. Do you consider carrying stones down a mountain for the purpose of building a road light work?
A. It was light. Then they were also often helped by our soldiers and then they could carry as much as they liked, more or less, it depended on their ability.

Q. Did they have any guards or officers to supervise the work?
A. Usually there was one officer on duty and who spoke English well and then there were the sentinels.

Q. Actually they prescribed the amount of stones that the soldiers carried, is that right?

Defense: Objection on the ground that first of all the witness has testified that the prisoners chose the amounts they would carry and, secondly, he is arguing with the witness.

Prosecution: This is cross-examination and I think I am within my rights to ask a question like that.

President: Cannot you frame it some other way so it will be less objectionable. You are putting the answer in his mouth. Your question was, "Isn't it a fact that the officers prescribed the load that these PWs should carry?"

Prosecution: That is perfectly right on cross-examination. He has testified that this was light work and it is within the scope of cross-examination.

President: Why don't you ask it this way, "Did the officers prescribe the load the PWs carried?"

The question was repeated by the interpreter.

A. Never.

Q. How do you know that?
A. Because when I passed I could observe that some took more; that they took what they liked. Some took more, some less, some carried on their head, others carried it in the push cart. It may have been that they sometimes said

to a certain group of prisoners, "You are going to finish this particular piece, then you can go home to the tents," and to another group, "You are going to finish that particular part" simply to determine, ration out the work.

Q. How far did they carry the stones?
A. When they first started the work near the camp, it may have been about 300 meters to the mountainand then at the end about 50 meters, but very often the military truck of the camp was loaded up at the mountain by the prisoners and then brought down to the camp, so that then it was not more than a few meters that they carried it.

Q. How often did you visit the loading point or the point at which the prisoners picked up the stones?
A. I saw them every day because they took the stones on the mountains about 50 meters from the headquarters. It was sufficient to be outside the house to see everything.

Q. Could you hear the orders of the guards or the man in charge when you were outside the house?
A. Yes.

Q. Did the guard in charge specify any particular load for any individual?
A. It was not in his competence, there was the officer in charge.

Q. Where was the officer located?
A. He was always with the prisoners whilst they worked.

Q. Up on the mountain or down on the road?
A. He worked up and down to see how they worked, where they worked. He assisted the work.

Q. Do you mean by that he helped carry stones too?

President: Now, this is an unnecessary question and will not appear in the record unless you wish to ask that question, "Did the officers carry stones also?"

Prosecution: No, sir. Strike it out. He said he assisted in the work. I don't know what he was doing.

President: The Commission has no objection to the question being answered if the question is, "Did the officer assist in the carrying of stones?" Is that what you wish to ask?

Prosecution: No, strike it out. If she means supervise, all right. Now I am advised that there has been an error in the interpretation as to the distance these stones were carried - that they were carried to approximately 50 meters from where the road building took place.

President: The Commission understands the witness has said

the stones were carried anywhere from a distance between three hundred meters to fifty meters. The initial distance was around three hundred and the work progressed and progressed until it was about fifty meters.

Prosecution: From what I understand the interpretation now is correct.

Q. You have stated that the prisoners' food was weighed out. Were you present at any time when the food for the prisoners was weighed?
A. Several times.

Q. Who cooked the food for the prisoners?
A. Prisoner cooks.

Q. How long were the prisoners there on an average before leaving?
A. Usually they remained there in quarantine about forty days, more or less, as it depended on how many other prisoners were expected.

Q. Then they did not leave in two weeks or three weeks after arrival?

Defense: Objection. He has already testified that forty days depended -

Prosecution: The evidence in the record so far indicates the prisoners were only there two or three weeks.

President: Do you wish to ask the witness if he recalls any time when a group of PWs left in less than forty days, approximately?

Prosecution: The witness has testified that the prisoners were furnished as cooks. If there was a complete change every two or three weeks, that is one thing so far as cooking is concerned. That is what I was getting at here.

Q. How often were the cooks changed, do you know?

President: Do we wish to eliminate the previous question?

Prosecution: Strike out the previous question.

A. I should think that they would have been changed with every change. Those left and others came. I remember one only remained for a long time. He was a little Russian fellow.

Q. Did the Italian guards have any personnel in the kitchen? Did they furnish a regular cook at any time?
A. No, because they had their kitchen separate, outside the camp.

Q. Was there an officer or anyone designated in the PW camp to receive complaints?
A. The officer who was assigned to the prisoners, then there was myself, if they wanted to come to me through the interpreter.

Q. Were you the complaint officer?
A. No, there was a special officer for that.

Prosecution: No further questions.

Defense: No further questions.

President: Any questions by members of the Commission?

EXAMINATION BY THE COMMISSION

Questions by Major Cambrill:

Q. How many flagpoles were within the confines of the camp?
A. Inside the camp there was one near the kitchen and outside the camp there was another one near headquarters.

Q. Do you know General Perugi?
A. Yes.

Q. How often did General Perugi visit the camp, Camp 98?
A. He came several times because it was his responsibility to see to it that the work for the camp proceeded properly.

Q. How often?
A. I cannot say, several times.

Q. Was it once a week, twice a month?
A. Once a week would be too often. Once a month I think, yes.

Q. Was there more than one interpreter in the camp named Mario?
A. Mario, one I remember for certain. The other one I think was Affio, not Mario. Mario Minardi I remember for certain. The other one was Affio Mannini.

Q. Was there any other non-commissioned officer in the camp by the name of Mario?
A. I don't remember that.

Q. What was Mario's rank?
A. Mario, he was a private. Affio was perhaps a corporal.

Q. Does he know one Mario was an American citizen?
A. So he told me - that he had come to Italy, for what motive now I cannot remember, but certainly he told me that he had come to Italy, but he was in America.

Q. Did he at any time ever say, to his knowledge, that he came to Italy precisely to join the Italian Army?
A. Exactly for that purpose, I don't remember that he told me that.

Major Gambrill: That's all.

Questions by Lt. Colonel Lucree:

Q. Did you ever see prisoners exchange personal items like watches or fountain pens for more food?
A. I have never seen it, but I heard that sometimes it happened with some of our soldiers.

Q. Were they punished when they were caught doing that?
A. I know that the Colonel punished our own but I have not heard that he punished the prisoners.

Q. Now in his testimony he mentioned that Red Cross parcels were distributed regularly. Ask him if there was a fixed day or a certain day each week or each two weeks, or something like that, when these parcels were distributed?
A. I cannot say for certain when - which day was set aside for this, but I think it was several times a week. As a matter of fact, it may have been each day, but it was not that a parcel was given to this or that or some other prisoner, but the contents of several parcels were distributed among a certain number of prisoners in such a way that each day each prisoner had something of these parcels. I was often present at this distribution.

Questions by Lt. Colonel Albin:

Q. You said that about the 11th November you were ordered to Rome. That is correct, isn't it?
A. No, the order came from Rome.

Q. And what day did you leave, approximately state?
A. On the morning of the 12th November.

Q. And how long were you gone?
A. I remained away until I believe the 12th January 1945.

Q. He was gone about two months then?
A. Yes, the rest of November, the whole of December and that part of January.

Q. In this written report here that we have, in the paragraph regarding prisoner of war cemeteries you end up with the line, "Now there was finally a cemetery exclusively for dead PWs." That was in the report for March and April. Then we come over to the April, May report. "As it wasn't possible to obtain from the Town Hall of San Giuseppe Jato a special place in the cemetery for the burial of PWs - " and it goes on. I'd like to have that explained, please.
A. When I made the first report, I had already interviewed the Mayor and he had assured me that this place would be given to me, then time went on and this place they never gave me. I had interviewed him several other times, so that when we arrived to the second period and the matter

still stood like that, so that we finally decided to put a cross for those who were Catholics and a sign for those who were not Catholics.

Questions by Major Williams:

Q. How, in what type of buildings were Italian troops quartered at that camp?
A. In the beginning they too had a large tent, then the civilian internees started to build huts for them and it was predicted that there should be huts in the whole camp, but it was not possible because work proceeded very slowly.

Q. During the cold weather were there any provisions for heating the billets of the Italian soldiers?
A. I excluded because as it was all of wood it was always dangerous.

Question by Lt. Colonel Lucree:

Q. What does he mean by "I excluded."
A. I assume that the military authorities would not even have permitted it.

Question by Major Williams:

Q. You have testified that you have been in the billets of the Italian troops as well as within the quarters of the American and British prisoners. Did you see any provision within the Italian billets for heating, or any evidence of any fires having been lit there?
A. Yes, I have seen that small fires were lit both in the tents of the prisoners and in the huts of the soldiers, but it was always forbidden, both for our soldiers and for the prisoners, so that the corporals as far as our troops were concerned, and the heads of the tents in regard to the prisoners always shouted at them if they saw it. I can also point out that I have had this impression, that whereas between the planks in the huts of our soldiers some air passed, the canvas over the tents of the prisoners kept it less cold. I do not say warm, but less cold, the inclosure of this canvas was more weathertight.

President: I'd like to ask a question. This interpretation of this document Exhibit G. was made when and by whom?

Defense: It was started by the official court interpreter and it was finished and typed by Mr. Menna who is the interpreter for the defense.

President: When was it done? When was it started?

Defense: It was started on Saturday I believe and it was finished - we worked at it most of last night until 6 o'clock this morning.

President: There seem to be no questions. You have a question?

Major Gambrill: Yes, sir. One that I did not get answered.

Questions by Major Gambrill:

Q. Was Private Mario an American citizen? Does he know, was he an American citizen?
A. I don't know that, but it seems to me that his parents were Sicilians.

Q. His parents were Sicilians. He testified a short while ago that he always had Mario with him, always had Mario Minardi with him when he went to see the prisoners.

Defense: I object to that question, sir, because -

President: That is supposition you are using.

Defense: As I recall, he testified that he was accompanied by one or the other, Mario or Mannini, if he needed an interpreter.

Major Gambrill: OK, but I still think I remember him saying Mario Minardi.

President: If you think so, we will look back in the record and find out.

Defense: The other interpreter is named Mannini. There is some similarity.

Questions by Major Gambrill:

Q. Did - at any time that Mario was with you, did he ever mention, in any way, why he came to Italy?
A. It seems to me that he once said that he had to finish some studies, but others -

Q. Did he ever make any mention about whether or not he wanted to fight in the Italian Army?
A. He told me that he too should have come into the Army, but I don't remember for what reason.

Questions by Lt. Colonel OKeefe:

Q. This American prisoner that you referred to as "Mulatto" was he a first sergeant?
A. As they did not have the chevrons, I could not distinguish their ranks. I do not know the ranks of their military hierarchy.

Q. Did he have any stripes on his sleeve?
A. That I don't remember. I remember that he was a big man of dark complexion, but other than that, I don't remember.

Q. When he walked out at the time of the incident between the American prisoner of war and Colonel Oldani, what did he see Colonel Oldani do, if anything? Let me reword that. When he walked down and saw this prisoner among the Carabinieri and the accused walked over there, what was the next thing that the accused did?
A. That is not correct like this, because the accused was already at the guard post when I arrived down at the camp I entered.

Defense: We believe that this interpretation is not quite correct according to the accused. This man is the accused in this case.

A. When the Colonel came to the guard post he was there quietly.

Q. And then the Father left the camp with the Colonel?
A. Yes.

Q. This flagpole which is outside the camp, is that near a road?
A. It is outside the headquarters, completely outside the camp.

Q. The last time he saw the Mulatto walking away from the camp with an escort, in which direction was he going?
A. He was outside of the guard post and the road led directly to the kitchen.

Q. Within the camp?
A. Yes, it started right there.

Q. The next time he saw the American prisoner were there any marks on him?
A. Absolutely no.

Major Cambrill: That's all I have, sir.

Questions by the President:

Q. Where did the witness eat during the period that he was serving at camp?
A. During the first months I ate in the camp at the officers' mess. During the last three months I ate at home in the village.

Questions by Lt. Colonel OKeefe:

Q. Where did he say his morning mass?
A. I said Mass each morning in the village in the Church of Nuns.

Q. He was a chaplain of this camp, was he not?
A. Yes.

Q. Why did he say his daily Mass outside the camp?
A. Because there was no chapel at the camp, not even the possibility of a room. It was always said outside, so that even on Sundays when it was said for all of them, it was always held outside in the open air.

Questions by Lt. Colonel Albia:

Q. About what time each day did you get up to camp?
A. It was always at about 8 o'clock.

Q. Then you never would be out there for the morning meal?
A. Usually I arrived there when they had just had their coffee.

Questions by Major Williams:

Q. In your capacity of chaplain for Italian troops, would it be part of your duties to occasionally check the mess feeding of the soldiers in your command?
A. Certainly.

Q. Did you ever eat the same food that the Italian soldiers in your camp ate?
A. I ate one and the other, both.

Q. The question was did he ever eat in the mess of the Italian soldiers in that camp?
A. Yes.

Q. Did he ever eat in the mess maintained for the prisoners of war in that camp?
A. I visited also the mess of the prisoners of war.

Q. Did he notice any difference in these two?
A. They both tasted well.

RECROSS-EXAMINATION

Questions by the Prosecution:

Q. Do you know the accused?
A. Yes.

Q. How long have you known him?
A. From when I arrived at the camp.

Q. In other words, continuously since November 1942?
A. Since 3 November 1942.

Q. Were the prisoners of war paid for the work which they did, if you know?
A. I remember that something was given to the prisoners for their work, but I cannot be more precise. I can actually say yes because I saw them buy things at the canteen, so they must have got money from somewhere.

Prosecution: That's all. No further questions.

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel OKeefe:

Q. Do you know the accused fairly well? Let me reword that -
A. In what way? As a character?

Q. Did he spend a lot of time with Colonel Oldani? Did he see him at least once a day?
A. Yes, also more than once a day because when I was not with the prisoners, I went up to headquarters, and as I did not have an office of my own, owing to the limitation of space, I was either in the Colonel's office or else in the office of the Administrator, so that I was always in contact with them.

Q. Did Colonel Oldani habitually carry a riding crop? Did he always carry one?
A. Yes, he had a little riding whip which he carried under his arm.

REDIRECT EXAMINATION

Questions by the Defense:

Q. From the date this camp closed in July of 1943 until the present time, present week, or last few weeks, have you seen Colonel Oldani?
A. I did not see Colonel Oldani from 22nd July when I left him at Punta Faro, near Messina, until January or February 1944. I then saw him again in May 1945. Then I did not see him any more.

Defense: No more questions.

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel OKeefe:

Q. Did the accused smoke?
A. Yes, he smoked.

Q. What kind of cigarettes did he smoke, if any?
A. I cannot say that since he never gave any to me, I can't say what cigarettes he used. There was a ration of Italian cigarettes as for all officers.

Prosecution: There appear to be no further questions from the defense, the judge advocate or members of the Commission. Therefore, the witness is excused.

There being no further questions, the witness was excused and withdrew.

Defense: If it please the Commission, the defense would like to ask for a five minute recess at this time.

The Commission then recessed at 1600 hours and was reopened at 1610 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Antonio Bisato, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Bisato, Antonio.

Q. What is your occupation?
A. At the moment I am a student of architecture at the University, but I am also qualified as a teacher of architectural design.

Q. Where do you live?
A. At Padua:

Questions by the Defense:

Q. Were you a member of the Italian Army during the years 1942, 43?
A. Yes, I was under arms.

Q. Did you ever, during this time, serve at PW Camp No. 98?
A. From the end of January 1943 till 25 July 1943.

Q. What was your rank at that time?
A. Sergeant in the Engineers.

Q. Military Engineers?
A. Yes Military.

Q. What were your duties at this camp?
A. During the first time I was a non-commissioned officer of the Engineers. Later I remained alone at the camp together with thirty soldiers who in the beginning were of the Engineers and then were exchanged with Infantry soldiers.

Q. What was your responsibility at this time?
A. I had the task to direct the work which had been handed over to me by the Colonel.

Q. What work?
A. Maintenance of the camp, construction of more latrines, baths.

Q. Did this work include supervising the work of the PW work details?
A. Prisoners and Italian soldiers.

Q. What days were the Italians - as you were - what days were the prisoners required to work? What days in the week?
A. Each day of the week with the exception of Sunday.

Q. What were the required hours when the prisoners did work?
A. From 8 in the morning 'till 11.30 and from about 1.30 in the afternoon 'till 4 or 4.30.

Q. Was this work by the prisoners on a voluntary basis, or a required basis?
A. They were volunteers.

Q. Were prisoners of war that were sick required to work?
A. No and no sick men came to work.

Q. What was the primary project that prisoners were required to do when they wanted to work - strike that - what was the primary work that prisoners did? Road building, monument building?
A. Not road building, maintenance of roads only.

Q. This was done in order to maintain the camp - as you were - this work was required in order to maintain the camp?
A. To maintain the camp, yes, because there was a road outside the camp and one inside the camp which led to the kitchen and the various offices in the camp.

Q. Did they do any other type of work, to your knowledge?
A. Yes, such as disposal of rain-water inside the camp, construction of new latrines and they made, as materials were missing, they made bricks inside the camp of straw and earth.

Q. Did you make daily inspections of their work?
A. Daily. I always walked about at all hours, during all working hours.

Q. Did you observe at any time any abuse of the prisoners while they were working?
A. No.

Prosecution: If the Commission please, we object to that question. The question is leading.

President: Before it is answered, let us get this straightened out.

Prosecution: We are getting leading questions. I have not objected before.

President: Try again. You withdraw that question and you are going to try it some other way, is that correct?

Defense: I will take a crack at it, yes, sir.

Q. In the course of your duties did you observe at any time any prisoner being abused?

Prosecution: That's the same question, if the Commission please.

Defense: This man was with them all day long, and we want to bring out, did he see something or didn't he see it. I don't say specifically, "Did you see so-and-so hit so-and-so with a rock," or did you see - -

President: The question can be either answered in the negative or the positive. I don't see why you object. The question may be answered.

A. No, they were never insulted by any Italian soldier and there was a good understanding between them. No.

Defense to interpreter: The meaning of the word "abuse" is the same in Italian as in English.

Interpreter: I translated it as "insulted."

Q. Where were you quartered while you were stationed at Camp 98?
A. In the first time outside at the regiment of the company; later inside in the infirmary.

Q. When you were in the company what type of building were you in - stone, wood, canvas?
A. A wooden hut.

Q. Was this building that you were in weatherproof?
A. No, because more than once it rained in.

Q. Were there any stoves or other heating apparatus in this building that you were in?
A. Nothing.

Q. How many blankets did you have?
A. Three.

Q. What type of mattress did you sleep on, or other - -
A. Straw.

Q. What type of bed did you use?
A. Wooden.

Q. Was that one man or two men? Was it a double decker or single?
A. Double.

Q. Double bunk. Where did you mess?
A. At the company.

Q. What did you normally have for breakfast?

Defense to interpreter: He misunderstood you. He is speaking about lunch.

Q. I am talking about breakfast. What did you normally have for breakfast?
A. Coffee.

Q. Did you have sugar in this coffee?
A. A little sugar.

Q. Did you have milk?
A. No milk.

Q. Was this a coffee or a coffee substitute?
A. It was a coffee substitute.

Q. What were you normally served at lunch?
A. Minestrone or else a clear soup with a little piece of meat and bread.

Q. What was in the minestrone normally, the ingredients?
A. A little pasta and vegetables.

Q. What did you have at dinner or the evening meal normally?
A. If we had minestrone for the mid-day meal, we had clear soup in the evening and a little piece of meat or cheese, but I don't remember. Some days in the week we had cheese instead of meat.

Q. Were you often served meat at any of the meals?
A. One meal only with meat.

Q. Was that every day?
A. Except Fridays.

Q. What type of latrine did you have?
A. None.

Q. Were you ever punished?
A. No.

Q. Did you ever observe any other Italian soldiers who were serving with you punished for a breach of discipline?
A. Of my soldiers I don't think so, I don't remember. Of the soldiers in the company, I heard of many that were punished.

Q. Did you see any actually punished?
A. Of Italian soldiers?

Q. Yes.
A. I don't remember exactly.

Defense: I will make a short preliminary statement in regard to the next few questions and in each case this preliminary statement pertains to that question, but I want you to answer the question "Yes" or "No." The preliminary statement is "In the course of your duties - " The first question is:

Q. Did you see any mass punishments of PWs?
A. No.

Q. Did you ever hear, while at 98, of any mass punishments of PWs?
A. No.

Q. Did you ever see any individual punishment of a PW as a matter of discipline?
A. I don't remember. I don't think so.

Q. Did you ever hear of any individual punishment of a PW as a matter of discipline?
A. So much time has elapsed, who can remember that now?

Q. Answer "yes" or "no" if you will please?
A. No.

Prosecution: If the Commission please, the witness has answered.

Defense: I can request that he can answer "yes" or "no" which I did in the beginning of my questions. If it please the Commission, what do you desire as the answer?

President: I understand he answered "no."

Defense: Your witness.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. Did you have a camp engineer?
A. At first there was a civilian geometrist.

Q. When did he leave?
A. In March 1945.

Q. After he left, you were the engineer in charge of all work in the camp?
A. Yes, I carried out the orders of the Colonel.

Q. Colonel who?
A. Colonel Oldani.

Q. Do you refer to the accused?
A. Yes.

Q. Colonel Oldani was in command of the camp at that time?
A. Yes.

Q. What was your highest rating?
A. Sergeant.

Q. You have testified that the prisoners of war volunteered for work. Did they receive an extra ration for working?
A. Double ration. In addition to that Colonel Oldani always asked me to give him the names of those who worked best and who behaved best and they then received extra items from the canteen. They received donations to get things at the canteen and in addition to that they got a special ration of bread.

Q. Were articles given to them from the canteen for their extra work or were they required to pay for the articles?
A. They received it free.

Q. What was the ration for those who did not work?
A. Half of the ration to what those who did work received.

Prosecution: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:

Q. Was that half of everything or half of the bread?
A. Everything.

Prosecution: If the Commission please, he has already testified to receiving half of the ration.

Defense: Does the Commission have any questions?

President: Apparently.

EXAMINATION BY THE COMMISSION

Questions by Major Gambrill:

Q. Do you know General Perugi?
A. So-so. I don't remember him well.

Q. Do you remember how many times you saw him?
A. I don't remember well because sometimes I went out to fetch materials. I went to the town.

Q. And does he remember or does he not remember having seen General Perugi?
A. I don't remember having seen him.

Q. He has testified that the roads were merely being maintained by the prisoners, the roads were not being built. On the strength of that, what material was being used for maintenance?
A. Rocks, part of the rocks.

Q. Where was this material obtained?
A. At the foot of the nearby mountain, a few hundred meters away.

Q. How large were these little stones or rocks?
A. They were about from one to two kilos at the maximum.

Q. And how were they carried?
A. They carried them in their hands, one to three at the most. If they were small, they carried three; if they were larger, they carried two.

Q. Were they ever carried any other way except in their hands, in a wheel-barrow or anything like that?
A. If they carried them in wheel-barrows, they were the civilians carried them or else our soldiers.

Q. I don't understand that answer?
A. The prisoners never carried large stones, either in wheel-barrows or in larger wheel-barrows.

Q. The question was not whether they carried large stones in wheel-barrows or not. The question was whether or not the prisoners carried these stones any other way except by hand?
A. No, the small ones they carried in their hands because the big ones had already been carried by the engineering company. The basis of the street had already been constructed - the foundation of the street.

Questions by Lt. Colonel Luerce:

Q. Was he as a sergeant eating more and better food than the prisoners?
A. I cannot say because very often I did not see what the prisoners ate. I think that, more or less, it was the same quantity and the same quality. The difference was that the prisoners prepared their food as they liked it, whereas for us it was the same for all.

Questions by the President:

Q. What was the allowance of bread for the Italian soldiers?
A. I think 400 to 450 grams.

Q. When, if ever, was the construction of the latrines completed?
A. The latrines were already there, then the firm, engineering firm, had given up that work and in the camp they had to be finished.

The President repeated the question to the witness.

A. Part of them was already completed when I arrived. In the first camp they had already been completed, then we tried to complete the rest but the materials were lacking.

Questions by Lt. Colonel OKeefe:

Q. Did Camp 98 have a flagpole when you came to the camp?
A. I don't remember well.

Q. Did he know where headquarters was located?
A. It was above the camp, outside the camp.

Q. Did he ever have occasion to go to the headquarters?
A. Yes, several times.

Q. Was there a flagpole near headquarters?
A. It seems to me that there was and now I seem to remember that there was one inside the camp and another outside near the headquarters.

Q. Did you ever see anybody chained to either flagpole?
A. No.

Q. Did you ever hear of anybody being chained to either flagpole?
A. No.

Q. Did he ever swap any items with the PWs?
A. If I had a piece of bread over, I gave it to the prisoners with whom I worked.

Lt. Colonel Lucree to interpreter: Will you repeat the question to him please?

The question was repeated by the interpreter.

A. No.

Questions by Lt. Colonel Borndahl:

Q. What date did you arrive at the camp?
A. At the end of January 1945.

Q. He spoke of the latrines being finished at the first camp, what did he mean?
A. They were already finished to distinguish from those that were still under construction.

Questions by Lt. Colonel OKeefe:

Q. He has stated that the camp commandant would put out an extra ration of bread if a prisoner worked real well. If he knows, where did that special ration of bread come from?

Defense: Objection, because he did not say that they got an extra ration of bread for working well. They got these extra gifts from the canteen in bread.

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Prosecution: If the Commission please, the witness has testified that the men who worked received an extra ration of everything.

Defense: But this was not, as the Colonel says, an extra ration for working good or working well.

President: He testified "A double ration and extras for those who behaved well."

Lt. Colonel OKeefe: Extras, I presume, include bread.

Prosecution: It went down on the record as a double ration for those who worked.

Defense: It should have been those who worked were allowed double rations.

Prosecution: My understanding was that the prisoners who worked got a full ration. Those who did not work got half of those who did. That is, half of everything.

Defense: We intend to clarify that for the record. We had a question to ask ourselves.

President: That should be clarified - those who worked received a double ration and extras, if they behaved particularly well. That does not mean that those who did not work got a half ration. If that is wrong, I would like to be informed. The question now in front of the Commission is where did the ration - -

Questions by Lt. Colonel OKeefe:

Q. If he knows, where did the special ration of bread which was given to people who worked real well, where did that ration come from?
A. That I don't know. I know that the Colonel sent to have a look in the kitchen whether there was some bread over. If there was he distributed it among them.

Q. Which kitchen? The POW kitchen?
A. At times in the kitchen of the prisoners. At times also in the kitchen at the headquarters of the company.

Questions by the President:

Q. For the prisoners of war who did not work, did they receive a full ration?
A. It seems to me that they all worked, all in keeping the camp clean, or else they worked outside. For the rest I don't know. The Colonel had asked me to bring as many people as possible to work, even if they were not needed, so sometimes they came there and just sat down and talked among each other because, by order of the Colonel, I never forced anyone to work. If we didn't finish today, we finished tomorrow.

Questions by Lt. Colonel Boradahl:

Q. He has stated that the PWs that worked received a double ration. Did they receive twice as much as the Italian soldiers?
A. No, double of the ration of those who did not work received.

Questions by Lt. Colonel OKeefe:

Q. Was this so-called double ration of the prisoners who worked was that the same as the Italian soldiers received in quantity?
A. More or less yes. I think it was the same.

Questions by Lt. Colonel Lucree:

Q. Who was fed first, those prisoners who worked or those who did not work?
A. I don't know because I was not exclusively - I did not live exclusively in the camp. When work was finished, they returned to the camp with the guards and I went to headquarters or to my office.

Q. I think there is still a misunderstanding in regard to one point. I would like the witness, if he can, to give me his definition of one Italian ration?
A. As Italian ration they gave 400 or 450 grams of bread, because there was a difference between simple soldiers and combat soldiers I believe. In addition minestrone or else clear soup, with a little piece of meat or cheese if there was no meat; in the morning coffee, and the mid-day meal was the contrary to the evening meal. If there was minestrone at mid-day, there was clear soup in the evening or vice versa.

Questions by the President:

Q. In order to get a better understanding of this matter, I am sure the witness will have to be asked possibly a leading question. I will see if I can ask that without offending the judge advocate or the defense. Is one ration for the Italian soldier the food allowed him by higher headquarters for one day?
A. Yes, higher headquarters. I do not say that for certain because I cannot know it.

Q. Does he mean by one half ration for those who did not work that those individuals got half of the allowance of food?
A. Speaking of half ration, one refers to half of the ration received by those who worked, or rather half of the ration received by the Italian soldier.

REDIRECT EXAMINATION

Questions by the Defense:

Q. Were you receiving as an Italian soldier a ration as mobilized troops or as base troops?
A. I don't know. I think as a mobilized soldier.

Q. Do you know whether there is a difference in ration?
A. I think so but I cannot say for certain.

Q. You don't actually know about the details of the rations?

Prosecution: If the Commission please, he is apparently trying to discredit his own witness.

President: Keep your question within bounds please.

Q. Do you know who authorized and fixed the ration?
A. I don't know.

Q. Did you ever see or have access to the records as to what was actually issued to the prisoners that did work or did not work?

Prosecution: If the Commission please - -

President: Can you get that out in a little simpler way? You have combined three questions in one.

Prosecution: This is rebuttal. It was not covered in direct or cross-examination.

Defense: It pertains to this business of ration and we are trying to clarify it.

President: Go ahead.

Q. Did you ever see the ration issue book?
A. No, I have never seen it.

Q. Do you know the quantity of food-stuffs authorized for prisoners?

Prosecution: Objection.

Defense: What is the objection?

President: I think he has said that he had never seen the book.

Defense: This is for the actual issue. It is - the question now is - -

President: State your objection.

Prosecution: This witness has testified to the ration received by workers and non-workers and the purpose of this is to discredit the witness.

President: I don't know what the purpose is and I have not taken cognizance of that. It is a discussion of ration and we are trying to find what the witness knew about it. From these answers there has been some confusion into the record. The members of the Commission can reserve the right, of course, to draw their own conclusion as to the credibility of the witness.

Defense: We are not checking him and we mean that sincerely. There has been this confusion.

President: You are free to go on with it, if you wish, and keep your questions within bounds and try to make them simple.

Q. Did you, at any time, ever see the ration breakdown?
A. Whilst passing I saw it. I was actually present.

Q. What did you see?
A. I saw that near the huts about twenty meters away from the huts they distributed the minestrone, bread and the rest of the ration.

Q. Did you ever see any prisoners served separately?
A. No.

Prosecution: If the Commission please, we object to this line of questioning. It is solely for the purpose of discrediting the witness.

Defense: It was quite clear at one time until - -

President: Will you repeat the question please? Do you want the question answered?

Prosecution: He is trying to discredit his own witness.

President: Your using the word "discredit" is not acceptable to the Commission at this time.

Defense: I believe the prosecution is trying to throw that inference on and it is not intended. We are asking questions to lead - -

President: If there is anything wrong in the question itself, we will listen to an objection on grounds, if they be within reason.

Q. Did you ever hear of any prisoners being served separately either individually or in groups?

President: Are you asking if he ever heard of it? Ask him if he ever saw it? Do you want him to state his opinion?

Defense: No, sir, I don't want him to state his opinion but did he see or hear?

President: It would be best to confine your examination of the witness to things he actually knows.

Defense: Strike that question.

Q. Did they eat in separate groups, to the best of your knowledge, depending on whether they worked or not worked?
A. I saw that the food was distributed for each tent outside the entrance of the tent.

Q. Do you mean that those that worked got twice as much - -

Major Williams: Don't start that again.

Q. You have testified as to this double ration. Do you mean by that that those that worked got double ration of greens, twice as much?

President: You are commencing to quibble a little bit.

Defense: If it please the court, there is an ambiguity.

President: I think that there has been enough, but I don't want to restrict your questioning. The members of the court will draw a reasonable conclusion.

Defense: Well, let us find out what he means by this question double ration?

President: We have endeavored to find out but so far - -

Defense: Is the Commission satisfied with what has been said?

President: In our own minds we are and we will interpret it in a reasonable way we trust. There is no desire to restrict any question you wish to ask, that is acceptable. You are free to ask. Try not to repeat the questioning, if only for the saving of time. If you wish to emphasize some matter, you are free to do that.

Defense: We are only after putting the complete picture, as it is, in the minds of the Commission. If it is clear, we will stop at this point; if there is any doubt in the minds of the Commission - may we ask the question what he means by a double ration?

Prosecution: He has already testified to that.

President: It is in the record.

Defense: By making a specific instance because there may be confusion in his mind - a catch phrase, double ration - and I don't know for sure that he knows the implication of that.

President: The members of the Commission are very much interested in knowing what he means by a double ration. In my own mind I am not exactly clear as to his meaning.

Defense: Are you sure the witness knows? He may not realize the implications. A few questions, then, we will all know one way or the other.

President: Possibly a question by a member of the Commission would clarify matters a little bit.

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel OKeefe:

Q. The witness ate the regular Italian ration when he was at Camp 98?
A. Yes, that of the soldier.

Q. Yet was he often hungry on that ration? Did he get enough to eat?
A. Sometimes yes, I was hungry.

Lt. Colonel OKeefe: He has testified that the double ration - -

Defense: When he states that is a double ration, does he mean twice the amount of a single ration on all points? We will be able to clarify this tomorrow by other witnesses, I am sure. Is it double pasta, greens and everything?

Lt. Colonel OKeefe: If a man is hungry, he is hungry. It does not matter if he is hungrier. It is a relative stage.

Defense: My point is is he getting twice - on a single ration is there just half as much pasta as on a double ration? It may be on some items, on bread that it is double.

President: We have on record now that the double ration in the camp, as earned by a working prisoner, was equivalent to the Italian ration, also that the half ration is something less than that.

The Commission then at 1740 hours on 4 November 1946, adjourned to meet at 0900 hours on 5 November 1946.

Clyde W. Weller
CLYDE W. WELLER
Lt. Colonel, INF
Judge Advocate

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The Military Commission met pursuant to adjournment, at 1300 hours, 5 November 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused, the interpreter and the reporter were also present.

Defense: If it please the Commission, the defense desires to recall General Yango. We believe it is of most vital importance and feel that the information that he has is of great value.

President: As you wish.

General Luigi Yango, an Italian national, was recalled by the defense, reminded he was still under oath, and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. You are the same witness, General Yango, that previously testified in this case?
A. Yes.

Questions by the Defense:

Defense to interpreter: In all of the questions which are to follow, will you inform the General that the period is that from December 1942 to May 1945?

Q. In your previous testimony you stated that headquarters of the Ministry of War in Rome, the Department of Sanitation, fixed the rations for both prisoners of war and Italian troops, is that true?
A. That's right.

Q. Did the headquarters in Rome fix a basic ration?
A. Fixed a basic ration.

Q. Was this basic ration applicable to everyone in Italy, military, prisoners and civilians? Yes or No?
A. Not civilians, only military.

Q. And prisoners?
A. Prisoners.

Q. Will you state, to the best of your knowledge, the amounts of the following food-stuffs authorized under the basic ration?

Prosecution: If the Commission please, the basic ration should have been fixed by tables that were distributed and would be the best evidence rather than having to rely on a man's memory after three years' time.

Defense: I ask the court why did the prosecution not bring them. The prosecution has alleged that these prisoners were not fed as well as the Italian troops. It was their burden of proof to bring these documents, if there are such. We are compelled to work with what we have and this man is highly qualified to tell.

Prosecution: If the Commission please, we have shown that the prisoners did not receive the same ration as Italian troops. We have carried the burden of proof on that.

President: Do you wish to show now what were the basic elements and the approximate amount of ration authorized by higher headquarters in Rome to the Italian soldier?

Defense: Or anyone to whom the basic ration was applicable.

President: The question may be answered.

Questions by the Defense:

Q. Bread?
A. Basic ration 800 grams.

Q. Pasta?
A. Pasta or rice was 800 grams of rice or else 120 grams of pasta.

Q. Is this the figure per day, General?
A. Per day.

Q. For the purpose of simplicity, will you give the figure per day unless some other standard is preferable and, if so, state it. Vegetable and fruits?
A. Vegetables one lire per day for each one person.

Defense: I see they are surprized at this figure, but I may point out at that time a lire was a greatly different thing.

Q. Did that one lire per day include fruits as well as vegetables?
A. Vegetables was the basic ration, but if one could economize on that lire, one could buy fruit. It has to be added that the lire had a much greater value, purchase value than the lire of today.

Q. Coffee or coffee substitutes?
A. Substitute 15 grams.

Q. Sugar?
A. 10 grams.

Q. Condiments?
A. I cannot say precisely, but there was cheese, tomato sauce, dry vegetables, but I don't remember the basic rations of that.

Q. Did you mention oil?
A. Yes and oil.

Q. Tobacco?
A. Tobacco, if I am not mistaken, they had thirty-five cigarettes per week.

Q. To make this clear, was this basic ration the basic ration authorized for both prisoners and Italian troops in base camps?
A. It was fixed for the troops at base camps and, therefore, automatically for the prisoners, because the prisoners had to have the same ration as the troops.

Q. Now did the ration regulations make any provision for increasing the basic rations under certain circumstances?
A. Yes.

Q. Under what circumstances could the ration be increased for Italian soldiers in base camps?
A. When the troops were submitted to work. The same occurred for prisoners.

Q. Who had authority in this manner to increase the ration for a particular soldier in a base camp?
A. The commandant of the base camp or the regiment.

Q. If a soldier at a base camp was not engaged in work, what ration would he be entitled to normally?
A. To the basic ration.

Q. Under what circumstances did the law authorize an increase of ration, an increase over the basic ration in a prisoner of war camp?
A. When a commandant had to have some work done inside the camp or also a little outside the camp, he used prisoners for that and in such circumstances the commandant of the camp increased the ration.

Q. For an Italian soldier in a base camp what increases, if any, in the basic ration were authorized when the commanding officer placed him in the category of a worker? I will take the items specifically:
Bread?
A. Bread was double, 400 grams.

Q. Pasta or rice?
A. I cannot say precisely how much it was increased by. I know it was increased. I don't know exactly the quantity of the increase. It was slightly increased.

Q. Was the amount of pasta double for workers?
A. No.

Q. Vegetables - what was the ration for workers?
A. It was always one lire whether it was for workers or non-workers, always one lire.

Q. Coffee substitutes?
A. Neither sugar nor coffee changed.

Q. Tobacco?
A. Did not change, that was always a fixed ration.

Q. Condiments?
A. I don't know. I can't say that exactly. It was not part of my task to know that. I don't remember that.

Q. Does he know whether they were double?

Prosecution: Objection, if the Commission please. He has already said he did not know.

Defense: He said he did not know precisely.

President: You stated an exact amount "double." Can you ask him does he know for a fact whether it was increased at all?

Q. Do you know for a fact whether it was increased at all - condiments?
A. I cannot be precise about it, but it seems to me that there was actually a slight increase in the condiments. Twice a week they had meat.

Q. Is this under the basic ration?
A. Yes.

Q. On the increased ration for workers what was the meat ration?
A. I don't know by how much it increased for workers, but the basic ration was 150 grams, but I cannot say by how much it was increased.

Q. Now these increases you have just testified to, which would normally be allowed an Italian soldier who was classified as a worker, would these same increases be allowed a prisoner who was classified as a worker?
A. Yes.

Q. Besides this increased ration which you have discussed authorized for workers, was there a special increase, in addition to this, authorized for Italian troops who were in combat areas?
A. Yes.

Q. Was Sicily classified as a combat area?
A. Not as a combat area but an area for combat troops.

Q. General, after prisoners had departed from Camp No. 98 and when they arrived in the new camp, would they have an opportunity in the new camp of reporting to appropriate authorities complaints of any type for activity occurring in Camp 98?

Interpreter: Will the reporter repeat the beginning of the question.

Defense: I will strike that question.

President: You can ask that simpler and get the full meaning.

Q. Could prisoners who had formerly been in Camp 98 make complaints at their new camps about conditions in Camp 98?

A. Yes. As a matter of fact, not referring to this Camp 98, but there was an instance where prisoners had instigated my visit in their new camp in order to complain about conditions in the camp where they had been previously.

Q. Does he recall any complaints made to him at the new camp by former inmates of 98?

A. No, it may have been that I have had some complaint, but I don't remember.

Q. If the commandant of the new camp received a serious complaint about a previous camp, was it his duty, under the instructions of your office, to forward that complaint to your office in Rome?

Prosecution: If the Commission please, we object to that question. It is leading. We have had a lot of leading questions we have let pass by.

Defense: What is leading about it? It can be answered with a "yes" or "no."

Interpreter: He answered "Yes."

President: Would the question be repeated please?

The reporter repeated the question.

Prosecution: That question clearly suggests the answer and, if the answer is made, I move it be stricken from the record.

President: If he leaves out the last phrase of that question and asks him what the commandant of the camp would do with a complaint he received in regard to a previous camp, I think he would have the same answer.

Q. What would the commandant of a camp who received a complaint about a previous camp do with that complaint?

A. What he would do with it? It was his duty to transmit it to Rome.

Defense: That's all. Your witness.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. General, what Italian soldiers were living on the basic ration that you have previously described?
A. Those who were at base camp.

Q. All soldiers at base camps except those working received a basic ration, is that what you mean?
A. Yes, all those, with the exception of those who worked who were on guard duty; in fact, all those who had a particular task which implied work, whereas all those who remained inoperative had to receive the basic ration. I remember having seen in some barracks, in the kitchens, that special pots were prepared for those who were not working, different from those prepared for the soldiers who were working.

Q. What soldiers were not working?
A. I cannot be precise about this because I was not the commandant of the base camp.

Q. Did you have any soldiers in base camps that were not employed either in training or work, if so when?
A. Yes, I know that there were soldiers who were not employed because I did not have any soldiers.

Q. Can you tell us any group of soldiers in any camp that was not employed?
A. I have to go by supposition. For instance, those who were free of guard duty, who on that day were not on guard duty and others according to the different stations.

Q. Do you refer to Italian prisoners?

Defense: Objection.

A. Italian prisoners no.

Defense: He stated a specific question and he tries to cross him up by asking another question. Then tries to put words in his mouth.

President: There might be some misunderstanding so far as the interpretation of the question. It would be well to specifically ask if this applies to prisoners of war or soldiers in the Italian Army. So far his answers have all been pertinent to soldiers who worked or those who were unoccupied. If you wish to ask if that also applies to PWs that is perfectly proper. Do you mean Italian prisoners?

Prosecution: Yes, sir, that is what I was asking.

President: You are not referring to prisoners of war, that's different. I am sure that question is apt to be misunderstood. Explain that you are not referring to Italian prisoners of war. You are referring to Italian prisoners who are prisoners for any reason.

Prosecution: My last question to you referred to Italian soldiers who were prisoners and not to prisoners of war. Do you desire to change your answer?

Defense: It is very difficult for the General to follow this. Why cannot he rephrase the complete sentence, so it can be understood?

President: The members of the court are very anxious to have an answer to this question. If someone would state it clearly, we would be glad to have it. I don't want the witness to be confused between Italian garrison prisoners and prisoners of war, because it will lead to a loss of time.

Prosecution to reporter: Read the last question.

The reporter read the last question.

President: Why don't you ask him what was the ration for Italian soldiers?

Q. General, what was the ration for Italian soldiers who were held as prisoners in base camps for disciplinary reasons?
A. Those who were in the prisons of the garrison basic ration because they did not do anything.

Q. Do you know Amerigo Chiarotti, a Lieutenant Colonel of the General Staff of the Italian Army?
A. No.

Prosecution: No further questions.

Defense: Does the Commission have any questions?

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. The witness did not make it clear in regard to the allowance of meat in the ration. He stated 150 grams twice a week. Does he mean that the allowance was 300 grams of meat per week?
A. Yes, 150 grams per day and 300 grams per week.

Q. The witness also stated that for troops in combat areas of combat troops an additional allowance could be granted.

Q. Does he recall any of the components of the ration and approximately how much? What the items were or anything at all in regard to that additional increase?

President: Do you object to the form of the question?

Prosecution: I was just going to suggest to the Commission that we now have an official report of the ration during 1945 which would probably save a lot of questioning and a lot of time.

President: We have had explained to us a basic ration. We have had explained to us an increase in that ration for working troops. In addition to that increase, the witness has spoken of an additional increase allowed combat troops or troops in combat areas. Am I correct? I'd like to find out what that increase is.

A. I cannot say that. I do not know. I don't remember because I have never troubled to know about this.

Questions by Lt. Colonel Lucree:

Q. Did a sick soldier receive a basic ration?
A. That was of course in the hands of the commandant to determine according to what the doctor had said, but he should have received the basic ration.

Q. All right, ask him this. Was it possible for a sick soldier to receive an increase in the basic ration without working for it?
A. I, as a commandant, would not have given him the increase except in a case where a doctor would have said that such an increase was necessary.

Q. Could he get an increase in the basic ration without working for it - a sick soldier?
A. The commandant kept the register regarding rations, so he could increase it if he wanted. There was no control.

Questions by Lt. Colonel OKeefe:

Q. What ration would a soldier assigned to clerical duties draw?
A. From what it appears to me, soldiers who were doing clerical work were considered as workers.

Questions by the President:

Q. Did the witness have inspecting officers under his command?
A. No, only myself because I maintained that one man alone could give directions that were the same for all camps without difference. At territorial headquarters there were officers who the commanders sent to the various camps, but I paid no attention to the visits which they made, because I wanted to observe things personally.

Q. Did he receive reports of inspection as regards prison camps from other sources?
A. I received data and information about the various camps from commandants of the territorial camps - headquarters - before I went to the camps I went to the commandants of those territorial camps before going to the headquarters - headquarters of the various areas as, for instance, of the area Florence, headquarters of the area Pisa, they were all Generals who informed me about the camps in their area.

Q. Did the witness have authority in his capacity as Prison Camp Inspector, or whatever he happened to be, to issue orders for the government and control of prisoner of war camps?
A. Yes, more than orders, since the commandants of the various territorial headquarters were often superior to me in rank, I made suggestions.

RECROSS-EXAMINATION

Questions by the Prosecution:

Q. You were the sole officer responsible for checking all the prison camps in Italy?
A. Yes.

Q. That included all prison camps on Italian soil?
A. Of the prisoner of war camps on the continental territory and the islands, such as Sardinia and Sicily. Excluded was Africa and excluded was Venezia Giulia beyond Istria.

Q. How many prisoner of war camps were you responsible for?
A. The actual camps were little more than fifty. Furthermore, there were working camps which amounted to about two hundred and fifty - working camps where detachments of prisoners were proprietors of large estates.

Q. Did you have any assistance of any kind in your work?
A. I had the office in Rome and an office in Florence.

Q. How many officers did you have serving with you?
A. Officers in the offices, I cannot say, but quite a number.

Q. State whether or not you visited all the prisoner of war camps quite frequently?
A. I was continuously travelling and my life was a continuous sacrifice because nearly always I have spent the night in the train, but I made this sacrifice because I had a high conception of the responsibilities entrusted to me.

Q. You spoke of complaints being forwarded by various commanders to headquarters in Rome, is that correct?

Defense: Objection to this question. "You spoke - - is that correct?" The question is most ambiguous and particularly through an interpreter. I don't see how he can make anything out of it.

Prosecution: If it please the Commission, we certainly have a right to cross-examine this witness. The defense is making objections to very simple questions.

President: You wish to know, and the question has been answered, if he received complaints in his headquarters in Rome from other camps? You simply wish to repeat the question?

Prosecution: I simply wish to repeat it and find out what time and where.

President: I am not sure that the question is proper in its framing. Do you mean, did you speak of complaints being forwarded from other camps to Rome, or do you mean to ask him is it correct that complaints were received? Which one do you want now?

Prosecution: Strike the question out and I will repeat it.

Questions by the Prosecution:

Q. Where were commanders directed to send complaints made by prisoners of war?
A. They forwarded them to the office of prisoners of war in Rome, which office formed part of one of the sub-divisions of the headquarters. That office, when it received such complaints, then took the necessary steps.

Q. Was that office under your control?
A. No, it was under the control of another General who commanded that sub-division, that department, but each time that I came to Rome, I was informed of all that had happened during my absence. If there was anything special or interesting, I was informed of it. Otherwise, these things were hunted up and I was told that the necessary steps had been taken.

Q. What would you classify as special or interesting?
A. Something of a certain importance that might have happened in the camp.

Q. What importance?
A. Of important events there may be many, particularly when there is a conglomeration of communal life - life together, for instance in a camp where there are twelve thousand prisoners there may be events that have great importance or have little importance, as, for instance, an attempt to escape, an actual escape, a fight between prisoners and of those there were several, particularly among different nationalities, for which reason it was, one was forced to make camps separated according to nationalities, divided according to nationalities.

Q. Would a complaint about food be a special or interesting report that would be sent on to you?
A. But complaints regarding food I myself brought them to Rome suggesting that the ration was actually small. I always got the reply that the Department of Sanitation has prescribed it and then we all in Italy were suffering hunger.

Q. Would a prisoner's report of cruel or inhuman punishment be forwarded to you?

Defense: A prisoner's report or complaint?

Q. A prisoner's report or complaint of cruel or inhuman - -

Defense: Objection. "Cruel or inhuman punishment", those are legal phrases which can cover a multitude of things. Could he not be more precise?

President: Could we not use the word mistreatment?

Prosecution: I don't know - I could use the words beating or chaining. Strike out "cruel or inhuman" and substitute "beating or chaining."

A. If such a report had reached Rome, Rome would have ordered the territorial commandant to make inquiries about this.

Q. On the average, how many days per month did you spend in your office in Rome?
A. Usually a few days per week, sometimes less, sometimes more - usually two days a week.

Prosecution: No further questions.

Defense: Does the Commission have any further questions?

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel OKeefe:

Q. We have one question. Will you ask the General if he knows how many grams a day constitute the basic ration in the Italian Army?

Defense: Would a member of the Commission direct that question to him instead of having the interpreter ask the question?

Q. How many grams a day constitute the basic ration in the Italian Army?
A. The basic ration was determined on the basis of calories.

Q. How many calories and approximately how many grams was the basic ration?

A. That depends on the items. Pasta could give a certain number of calories, greens could give a certain number of calories. I did not go into these details.

Q. What was the average weight of the basic ration, average weight? Was it a thousand grams, was it 800 grams, one kilogram, two kilograms, or what?
A. I cannot say that.

Q. What was the required number of calories authorized for the basic ration?
A. I never paid any attention to this. I never went into this.

Defense: May the witness be excused?

President: Just a moment.

Questions by Lt. Colonel OKeefe:

Q. You have stated previously that the prisoners weighed their food daily?
A. Actually I did not say that, but anyway, one bought the food, these foodstuffs were brought to the camp and brought to the kitchen. The head cook of the prisoners received the foodstuffs and weighed them on the basis of the number of rations he was supposed to receive, based on the number of prisoners who had to eat.

Q. What was the total weight per one hundred prisoners per day, or any number of prisoners per day, he was supposed to receive?

Defense: If it please the Commission, I think he has already testified that he cannot recall and he does not know the weights.

Lt. Colonel OKeefe: He is the Inspector General.

Defense: Yes, quite true, but to know these particular weights is something that might be outside his duty.

Lt. Colonel OKeefe: He can remember the number of grams of sugar.

Defense: I know today what the Italian ration is of some things, but not on the total things.

President: He has testified that he does not know what the approximate weight content of the basic ration was. He does not know. Is that correct? Any other questions?

Defense: May the witness be excused?

Prosecution: If the Commission please, I am not sure of one point. Did the witness testify that he did not know how many grams or how many calories constitute a day's ration?

President: He testified that he did not know the approximate calory content or weight in grams of the basic ration.

RECROSS-EXAMINATION

Questions by the Prosecution:

Q. Do you know the number of calories in the basic ration, that is the number of calories per day in the basic ration?

President: He has answered that question and says he does not know.

Prosecution: He does not know in grams.

Defense: May the witness be excused?

Prosecution: No further questions.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

Defense: The next witness is likely to be on the stand for a couple of hours. Should we have a recess now or break up the witness?

President: We will have it now.

The Commission then recessed at 1425 hours and was reopened at 1440 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Umberto Nascia, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Nascia, Umberto.

Q. Where is your residence?
A. Palermo.

Q. What is your occupation?
A. Civil servant.

Questions by the Defense:

Q. Were you ever in the military service?
A. Yes, recently I was recalled for four years.

Q. What was your rank? Were you in the service in 1942 and 43?
A. Yes.

Q. And what was your rank?
A. Captain.

Q. Was he ever assigned to duty at prisoner of war camp No. 98?
A. Yes.

Q. Between what dates was he assigned?
A. From December 1941 to 22 July 1943.

Q. In the period from December 1942 until May 1943 what were your duties at this camp?
A. In the beginning I had the qualification of adjutant.

Q. In the beginning?
A. I had the rank of adjutant.

Q. Did you hold any other positions during this period?
A. And head of the administration, chief of administration.

Q. As chief of administration what were your duties, briefly state them. Tell him we are interested only in the period between December 1942 and May 1943. We want to know his duties in that period?
A. I was adjutant and chief of administration. The usual office work and administering prisoners' affairs and all the bookkeeping.

Q. In connection with your duties as chief administrative officer, did you have a knowledge of the rations authorized prisoners?
A. Yes.

Q. Did you receive the regulations of headquarters in Rome establishing the rations for prisoners of war?
A. They were received by the headquarters of the camp commandant who then forwarded them to the competent officers.

Q. Did he see these regulations? Yes or No?
A. Yes.

Q. Do you know what was the basic ration authorized for prisoners of war?

Prosecution: The prosecution objects to that question. The instrument itself, the regulation setting forth the ration is the best evidence.

Defense: If the court please, he is a qualified person to testify as to what he knows. This war has left the documents and the records of these camps in great confusion. Again I say it is the prosecution's burden. On these points they did not produce any; we have not had time frankly. Give us say two more weeks and we would have lots of records here.

Prosecution: It is just a question of whether the Commission desires the best records available.

President: Did the judge advocate make any effort to secure any copy of such a ration allowance?

Prosecution: I do have the ration allowance, yes sir.

President: Do you wish to make a stipulation between yourself and the defense as to what it was?

Prosecution: Yes, I would be very glad to.

Defense: This is the first I know of this. We have spent much effort in getting to these facts. I ask the court to ask this question. Why did he not present it as a part of the prosecution's case? Is there some effort to conceal information?

Prosecution: If the Commission please, I stated I had received it and offered to put it in evidence during the testimony of the last witness.

President: The Commission is very much interested in this problem of rations. Any question or document that can be introduced to indicate to the members of the Commission just what the rations were in Camp 98 would be gratefully received. Continue with the question. The objection is overruled and the question may be answered.

The reporter repeated the question.

A. 200 grams of bread.

Defense: Just a moment. That's all right. Ask if the answer is yes?

A. Yes.

Q. Did you, in conducting the administration of this camp, follow the regulations of the high command in connection with rations, authorized rations?

Prosecution: Objection, if the Commission please, leading question, asking for a conclusion.

President: I think the question is all right, if put in a little different way. You might ask that in three questions and it will avoid confusion if you get them out in simpler questions.

Defense: I will bring this out later. We will get back to this later.

Questions by the Defense:

Q. Under the ration regulations, were any means provided for increasing the basic ration, yes or no?
A. For the workers.

President: Is the answer "Yes?"

Defense: Yes, for the workers.

Q. By that do you mean that if a prisoner was on duty as a worker, he received a larger ration?
A. Yes.

Q. Take the item of bread. Do you know what the basic ration of bread was at that time, in approximate figures?
A. For the non-workers it was 300 grams.

Q. For the workers do you know, in approximate figures?
A. 400 grams.

Q. Do you know how much vegetables were authorized under the basic ration?
A. The greens were determined by meal. It was one lire per meal for each recipient of the ration.

Q. And how much under the increased ration, do you know how much, in approximate figures, was allowed a worker in greens, in vegetables?
A. One just bought greens, different greens.

Q. Does he know how much was allowed as a part of the authorized ration?
A. There was no prescription, there was no rule for greens. It was bought as a betterment, as an improvement of the meal.

Q. You say it was bought. What was it bought with?
A. With that lire which the State gave. The State gave one lire as an improvement of the meal.

Defense to interpreter: He said one lire per day and I think he did before too and you translated one lire per meal. Find out how much per - -

Prosecution: If the Commission please, it is in the record now.

Defense: I am sure it was just misinterpretation. Was it one lire per day or one lire per meal?

President: Do you object to the question?

Prosecution: Yes, I object.

A. One lire per day for each one person.

Prosecution: If the Commission please, I ask that the attorney for the defense be required to ask proper questions and not leading questions all the time.

Defense: Is that an objection? Will the court instruct him to present his objection before the answer.

Q. Was this one lire per day for vegetables the basic ration?
A. Always one lire.

Prosecution: If the Commission please, this is still a leading question.

President: In what respect does that lead? The question is, "Is one lire per day part of the basic ration?" It can be answered yes or no.

Defense: If we just go ahead and ask him everything he knows - we have to center his attention.

President: I think you are going to confuse him when you are confining your questions to rations and he is thinking in terms of lire. He said that the basic allowance, as I understand it, for the purchase of greens is one lire per day per man, per meal, now he has changed it to state one lire per day.

Defense: His first statement I think was a misinterpretation.

Lt. Colonel Albin: The interpreter straightened that out when she asked the question a while ago. She admitted it was an error. I don't see why we should argue all afternoon over a little thing like that.

President: Continue in your own way.

Q. When prisoners worked, how much of a monetary allowance per day was authorized for greens and vegetables?
A. Also, always one lire, worker or no worker.

Q. Do you know whether or not the quantities authorized of coffee and sugar and tobacco were the same for workers or non-workers?
A. Yes.

Q. State whether or not there was a different pasta ration authorized for workers and non-workers?

A. There was a small difference, but I don't remember how much, but as the pasta was made, manufactured, made in the camp, the commandant regulated it more or less at will because one could not make a difference in the manufacture of the pasta. It was only for bread that it was 300 or 400 grams. For pasta it was different.

Q. Did you in connection with your duties as administrative officer prepare any lists, any reports, yes or no?
A. Yes.

Q. Did you prepare lists of prisoners who were classified as workers?
A. There was a register. It was called the bookkeeping register, where the prisoners were inscribed by name and sir-name, then there was a sheet which showed the labor force of the prisoners and there was another one, the daily numerical strength of all prisoners

Defense: That's enough about these reports for the minute. He has answered my questions more than fully.

Q. Who furnished you the information from which you compiled the list of prisoners who were workers?
A. There were the heads of the base camps and they received, the officer on duty each day received information as to the prisoners working and the officer on duty collected the information from the various officers in charge and forwarded it to the administrative office, so as to be able to receive the food.

Q. Who furnished the duty officer with the list of workers on a particular day?
A. From the representatives of the prisoners each head of each tent each morning sent so many workers.

Q. In other words, the prisoners, representatives of the prisoners themselves reported the names of the workers? Is that true?

Prosecution: Objection, if the Commission please.

President: Put it some other way please.

Q. Who was the final authority in this camp for classification of prisoners as workers or non-workers?
A. It was the commandant of the camp, but he did not classify. It was the heads of the various tents who said there will be so many workers or non-workers.

Q. What do you mean by the heads of the various tents?
A. There were various tents. Each tent had about seventy or eighty prisoners and there was one head of that tent who was responsible for cleanliness, hygiene, etc.

Q. Did Colonel Oldani ever issue you instructions when you were preparing these lists of workers as to who was to be considered as workers?

President: I think the first part of your question was sufficient.

Q. Did Colonel Oldani ever issue instructions to you when you were preparing your reports - period. Let me start from there?

A. Colonel Oldani signed and supervised the whole of my book-keeping.

Q. If there was a question as to whether a certain prisoner should be included as a worker or a non-worker, would that question be resolved by Colonel Oldani?

Prosecution: Objection, asking for a conclusion on the part of the witness.

President: What is the basis of the objection?

Prosecution: It calls for a conclusion on the part of the witness as to what the Colonel would do.

President: Can you frame that some other way now, defense counsel?

Q. Did the question ever arise in the administration as to whether a certain prisoner should be classified as a worker or a non-worker?

A. No, because that was voluntary. There was no rule who had to work or did not have to work.

Q. If a person, prisoner in this camp, was sick and in the infirmary what type of ration did he receive?

A. He had special treatment if he was in the infirmary, milk, eggs, that was an extra expense which was separate especially for those in the infirmary.

Q. If a person was not sick enough to be in the infirmary, but still too weak to work, what type of ration did he receive?

A. For those who did not work but who nevertheless were under-nourished, weak, Colonel Oldani gave the same ration as for the workers.

Q. Were there any other types of cases where Colonel Oldani gave non-workers an increased ration?

A. There were those who, according to their constitution, had more appetite, then they asked the Colonel whether they could have more food and the Colonel gave it to them.

Q. Did the Colonel establish prizes for good workers?

A. Yes.

Q. What was offered in the way of these premiums? What items were offered?

A. We had a cooperative canteen which the commandant of the camp had created especially in order to improve the food of the prisoners. From the profits realized from the sales of the canteen, he gave prizes to prisoners, workers or non-workers, who were most meritorious.

Q. During the normal month were most - strike that - during the period of December 1942 until May 1943 can you tell the Commission what percentage, approximately, of prisoners were carried as workers?

A. The camp was not suitable for more than a thousand prisoners. We arrived at the maximum of about nine hundred. There were always six, seven, eight hundred prisoners who changed constantly because when the period of quarantine was finished, they were transferred to permanent camps and others came.

Defense: I don't think he understood the question.

The reporter repeated the question.

A. The minimum of those were non-workers, the major part were workers.

Q. Was there published and made available to the prisoners any list of rations which prisoners were authorized, yes or no?

A. Yes, it was fixed in the kitchen, written in English, so that each prisoner knew to what ration he was entitled.

Q. Who actually - when the rations were broken down for the prisoners - who actually received and drew the ration for a particular group of prisoners?

A. Each head of a tent, because as there were not very many, one could not distribute them en masse, because there were too many.

Q. Would these chiefs of the tents have the opportunity to complain if the full ration was not issued?

Prosecution: Objection, if the Commission please.

President: Leave out the last part of the question.

Defense to interpreter: Will you state the question without the last part?

A. The heads of the tents received on the basis of the numbers the rations as shown in the kitchen, on the list in the kitchen.

Q. Did you ever receive any complaints from the chiefs of tents?

A. I personally not because I was little at the camp because of my duties as administrator. There was a duty officer and then the interpreters.

Q. After the ration was issued and the food was cooked, did anyone check to see that the workers got their increased ration?

A.9 There was the officer on duty who supervised the distribution of the meals.

Q. Did the chief, do you know whether the chief of the tent had any responsibility in this connection?

A. He had the responsibility towards the prisoners themselves.

Q. From where were rations when they arrived at the camp, from where were they normally drawn, do you know?

A. From the substations at Palermo and part of it from San Giuseppe. The bread was from San Giuseppe.

Q. In connection with your duties as administrative officer did you make reports on all punishments imposed on prisoners?

A. Yes.

Q. Who in this camp had authority to punish a prisoner offender?

Prosecution: If the Commission please, objection. Calls for an interpretation of the law and this witness is not shown to be an expert.

President: The witness has shown to be the adjutant in the camp, who, in military terms, is the representative of the commanding officer in administrative affairs. It would seem that he should be well enough informed of his duties to be familiar with that particular situation. The question may be answered.

A. The commandant of the camp.

Q. Did anyone else in this camp have authority to punish offenders?

A. No.

Q. In the normal Italian Army camp do officers other than the commander also have authority to punish offenders?

A. In the Italian Army all officers are authorized to punish but the commandant fixes the punishment - whereas for the camp it was quite different, only the commandant fixed it. He made inquiries and fixed the punishment, whereas in the Army it was entirely different.

Q. In the period from December 1942 until May 1943, do you recall making reports on any offenses and punishments therefor, yes or no?

A. Yes.

Q. Does he recall the number of occasions when punishment - does he recall any specific occasions when punishment was ordered by the commanding officer?

A. Yes.

Q. How many instances can you recall at this time?
A. I don't remember the time but I remember that one day the commandant informed me that he had ordered irons for a man and seven days confinement. He explained the reason.

Q. Did the Colonel in this telephone call tell you the length of time the chains were applied?

Prosecution: If the Commission please, we object to that question for several reasons. It is the first time I have heard of a telephone call. It is a leading question.

Defense: Did he not say telephone call? I will withdraw the question.

Q. State whether or not the commandant informed you as to how long he ordered this prisoner to wear irons?
A. The irons were usually applied for about half an hour, three quarters of an hour, not more.

Q. Did you make a record of this sentence and punishment in the report that you have already testified to?
A. One notes this punishment in the ledger.

Q. Does he recall - do you recall the punishment which you noted for this case in that register, yes or no?
A. In the journal one enters the punishment by day, according to the day, not the reason for the punishment. For that there is a special book.

Q. Does it record the type of punishment in this register?
A. No, not in the journal. In the journal one notes the prisoner entered on the 5th, left on such and such a day, so one notes when the sentence is finished.

Q. Is the full punishment reported in some other book?
A. Yes, there is an entirely separate register in which the motive, the grounds for the punishment are entered fully.

Q. Did you make entries in that other book?
A. Not I. It was not my duty. It was the duty of the headquarters, but I understand that it has been entered.

Q. What has been entered?
A. It. The facts were these. One day Colonel Oldani, as he did often, went distributed premiums from the canteen to the prisoners, after which he said these very words, the Colonel to the prisoners, "Boys, I am sure that you will be grateful for me for this attention and for my interest in you and one day, tomorrow, when the war will be finished, we will all be friends." There was a Mulatto who to these words said, "No, you Italians, if we meet you, we will spit you in the face."

Q. Do you recall seeing any record of the punishment, if any, which was adjudged by Colonel Oldani for this incident?
A. For this Mulatto?

Q. Yes, whatever he is talking about?
A. All the punishments were entered.

Q. Does he recall what punishment in this case - does he recall what the entries stated in connection with the punishment in this case?
A. For this particular offense as the Colonel had been offended and the whole Italian Army, the Colonel had him arrested, put him in irons and then simply confined him for five or six days.

Q. Do you recall the length of time he was kept in irons, in manacles?
A. It would have been half an hour, three quarters of an hour not more. The irons were applied like that temporarily.

Q. But in this case he does not know.
A. No, I don't know.

President: The last question should come out of the record. You asked the question and answered it also for the witness. Please see that it is taken out of the record too. Do you want to strike that question? However, you can get an answer if you wish, but don't answer it for him.

Q. Can you state in approximate numbers the total number of prisoners who passed through Camp No. 98 during its period of existence?
A. About twenty thousand.

Q. What, if anything, was done with seriously ill prisoners of war?

Defense to interpreter: Tell him to respond just to the question.

A. They were sent to the hospital.

Q. Where was the hospital?
A. In Palermo.

Q. Was an infirmary maintained in this camp?
A. Yes.

Q. Who, what type of prisoners, under what conditions were prisoners admitted to the infirmary?
A. Some influenza, cold, some stomach trouble and if they could not stay in the tent.

Q. In what type of building was the infirmary housed?
A. A wooden hut. There were so many small rooms and each sick man had his own little room, with bed, chest of drawers, covers, straw mattress.

Q. Was there a doctor on duty in this camp, yes or no?
A. Yes there was an officer doctor who was always present at the camp and he even slept in the infirmary.

Q. Were you present on some occasions when prisoners of war departed this camp for other camps?
A. Yes, I organized the movement.

Q. Did you ever observe them giving anything to Colonel Oldani?
A. Gave what, the prisoner to the Colonel?

Q. Yes, did the prisoners give anything to the Colonel?
A. That has never happened.

Q. State whether or not you ever saw a prisoner deliver a letter?

Prosecution: Objection, if the Commission please. The witness has already answered. This is repetitious and a leading question.

Defense: It is obvious that the word "anything" is a little broad for him.

Prosecution: If the Commission please, this is a Captain in the Italian Army.

President: The witness did answer that at no time did he ever see a prisoner of war give anything to the camp commander, is that right? You can get that in another way by attacking it from another direction, if you compose your line of questioning on that particular point.

Defense: I get the point clearly thank you.

Q. Did Colonel Oldani, did you ever see Colonel Oldani receive any letters from prisoners as they left the camp?

Prosecution: If the Commission please, we object. That question was asked before and the witness has already testified to it.

President: Do you object to any line of questioning - do you object to any questioning dealing with the delivery or acceptance by Colonel Oldani of anything from a prisoner of war, is that correct?

Prosecution: Not if the proper questions are asked, but certainly not a leading question like that and particularly after the witness has replied to it.

President: It looks like the objection to the question should be sustained there, but I believe the information can be obtained by a series of questions that are not leading.

Q. Did Colonel Oldani ever show you any letters, yes or no?
A. Letters, what letters?

Q. Did he ever show you any letters written by prisoners of war?

Prosecution: If the Commission please, it is still a leading question.

President: I don't quite see why that is a leading question. Explain that to the Commission please, how that is a leading question?

Prosecution: Did you ever see any letters written by prisoners of war. Putting the answer right in the witness' mouth.

President: He can answer yes or no to it. If he did not see any, it would be answered by no.

Prosecution: This witness was a Captain in the Italian Army. He certainly knows and he has answered the question time and again that he has not seen any.

President: He is asking in an entirely different light. It seems to me a proper question.

Prosecution: We have a question by the witness that I want in the record, "What letters?"

President: The objection to the answering of the last question which, as I remember, is something about correspondence received by Colonel Oldani is overruled and may be answered.

A. Yes.

Q. Did you ever see Colonel Oldani receiving these letters?
A. When, at the end of the quarantine, prisoners of war were transferred to other camps, there were prisoners who forwarded through the head of their tent letters of this kind to Colonel Oldani.

Q. Do you know what, if anything, was done with some of these letters?
A. The prisoners sent letters thanking him for the paternal treatment, etc. received during their stay at the camp and I know that Colonel Oldani, commandant of the camp, forwarded some copies of some of these letters to the office at the headquarters in Rome.

Q. Does he know whether the originals of any of these letters were forwarded?
A. The originals remained in the files of the headquarters. That is a complete file and could not be sent.

Defense: Your witness.

President: Are you through with the witness?

Defense: Yes, sir.

President: The Commission will take a break for five minutes.

The Commission then recessed at 1605 hours and was reopened at 1620 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the witness, the interpreter and reporter were also present.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. Do you know the accused Colonel Oldani?
A. He was my commandant.

Q. Is he in this room?
A. Yes.

Q. Will you point him out?
A. (The witness indicated the accused.)

Q. How long have you known Colonel Oldani?
A. From January 1942 when he was designated commandant of that camp until July 1945.

Q. Is the accused the same Colonel Oldani you have testified ordered a prisoner into chains and confined for five or six days?
A. Yes.

Q. Where did the incident to which you have testified to occur?
A. Near the camp.

Q. Were you present?
A. No, sir.

Q. You have quoted the words that the American soldier is supposed to have said at the time Colonel Oldani ordered him into chains. Where and how did you learn that quotation?
A. At the office because the punishment was registered.

Q. Who registered the punishment?
A. The personnel of the office.

Q. From whom did they derive their information?
A. From the officer and the commandant.

Q. Did you see Colonel Oldani that day?
A. Yes, because our rooms were next to each other.

Q. Did you see him go in or go out just prior to or just after the incident to which you have testified?

A. He was at the camp when he gave that punishment, ordered that punishment, then he came to the office for office work.

Q. Was he carrying his riding crop?
A. He had a little riding crop. A little stick. He always carried it.

Q. Is it a fact that when prisoners of war were transferred out of PG 98 they were required to write a letter?
A. No, they were not obliged to. It was a voluntary, a spontaneous thing that a prisoner did.

Q. Did the prisoners have any shower baths or places to take a shower bath?
A. There were the baths.

Q. Was hot water supplied?
A. Yes.

Q. Were the baths in working order?
A. Yes.

Q. How many?
A. I don't remember. There were two or three baths especially erected for the prisoners, built for the prisoners.

Q. By that you mean two or three persons could take a bath at one time, is that correct?
A. Even more at the same time because the bath was big, large.

Q. How was it operated?
A. There was a tent and there was a tube for the depth of the shower. First the water was heated and then they gave the baths.

Q. How was it heated?
A. With wood and little machinery that heated the water.

Q. Will you describe the machinery?
A. Who can remember that now? There was some wood and then the water was heated and went up through the tube and into the tent where it came out of the showers as a shower, and when the water was ready, four or five went in, took their baths, then left and others came. It was continuous.

Q. Was it manually operated?
A. No it was a motor - little machine.

Q. Were the prisoners required to pump the water for their shower bath?
A. Sometimes yes, sometimes the machine itself was there, so then the water rose through the tube and came out through the shower.

Q. Did you have a large tank for hot water for the showers?
A. Yes, there was a large tank so that continuously water could be supplied which was then heated.

Q. The water was heated after it left the tank, is that correct?
A. First, the water went into the tank, then it was heated, and then it passed into that tube.

Q. How many gallons of water would the tank hold?
A. That I cannot remember. There was this large recipient and the water was heated and went into the shower and came out in the shower.

Q. You have testified about food being received in the camp. Did you ever personally receive any food that was delivered into camp?
A. It was not my task. There was an officer, food officer, supply officer.

Q. I have here what purports to be the basic ration due to an Italian soldier inside Italy in 1943 up until 8 September 1943, prepared by Amerigo Chiarotti, Lieutenant Colonel of the General Staff. I will read the items comprising the ration, with the quantity thereof, and get you to state whether or not, in your opinion, this statement is correct?

President: Could I interrupt just a moment. Will the figures you are about to read, or the data you refer to there refer to the period, the particular period?

Prosecution: For 1943 up until 8 September 1943.

President: What is the beginning of the date?

Prosecution: In Italy in 1943 up until 8 September 1943.

President: What is the starting date?

Prosecution: January of course.

President: To be assumed you mean?

Prosecution: Yes, sir. The ration due Italian soldiers inside Italy up until 8th September 1943.

Defense: We object to this because he has not - there is no showing whether this is the basic ration or whether it is the workers' ration - the ration normally received by an Italian soldier or a combat soldier.

President: He has the opportunity to identify the data in there and the court can weigh it for what it is worth. The objection is overruled. The members of the court are interested in having the data specifically define the period.

Fresh or frozen beef	gr.	200
or 200 gr. of macaroni or 150 gr. of rice		
Bread	gr.	400
Dried vegetables: 50 gr. or 100 gr. of potatoes ..		
Coffee substitute	gr.	10
Sugar	gr.	15
Bacon or oil	gr.	15
Double concentrated paste, tomatoe	gr.	15
or Fresh tomatoes	gr.	100
Salt	gr.	20
Wine	lt.	1/4
Grating cheese	gr.	10

Prosecution: That's a daily ration.

Witness: For whom was this?

Prosecution to interpreter: Ask the question. Repeat the entire question.

The interpreter repeated the question to the witness.

A. I do not doubt what is written there but I must point out that the food of the Italian soldiers was not taken from the camp because the soldiers were not administered by the camp but by headquarters, but by regimental headquarters at Palermo.

Prosecution: Repeat the question.

The interpreter repeated the question to the witness.

A. I do not know that because the camp administered prisoners of war. It was a completely different administration.

Q. Then you don't know what ration was fed to the prisoners of war in Camp 98?
A. Yes.

Q. Was this ration fed to the prisoners of war in Camp 98, referring to the list which you have in your hand?
A. No.

Interpreter: I only read the first bit so far.

Prosecution: Read it all.

The interpreter read the list to the witness.

A. No, first. No, second. Bread, 400 was given to the working prisoner. Regarding the greens I cannot remember the ration from any agreement because that was determined by the Ministry. Coffee, actually one gave 15 to the prisoners and 10 of sugar. Actually I do not now remember that it was 15 grams of coffee and 10 grams of sugar, or

10 grams of coffee and 15 grams of sugar. I don't remember that now. The ration was composed of meat, pasta, vegetables, sugar, lard, oil, tomato paste, salt, but I don't now remember the grams of each item. I remember that pasta was something like 100 to 120 grams; tomato, maybe regarding the fresh tomato yes, but generally they gave tomat paste out of tins; salt, it may be 20 grams more or less; wine was not given daily, every now and then one gave wine, not daily. This may have been the ration for the troops in combat zones; cheese - yes.

Q. Was the PW or were the prisoners of war in Camp PG 98 fed the ration on this list, or its equivalent?

Defense: Objection. I think he has already answered that.

President: Any objection to its being repeated. You asked him if the PWs at Camp 98 were fed the rations on that list?

Prosecution: That is correct, but the answer has been so mixed, I don't know what it is now.

President: Get your answer.

A. They received the rations prescribed or fixed by the Ministry of War, the War Ministry.

Q. Do you mean by that the workers were prescribed that amount?

President: Do you want the answer to your last question as you have not received it yet? You asked him a question and the members of the Commission would be interested to receive the answer.

Prosecution: Strike out the last question and repeat the former one.

The former question was repeated by the reporter.

A. No, with the exception of the bread.

Prosecution: No further questions.

REDIRECT EXAMINATION

Questions by the Defense:

Q. Do you know whether the Italian soldiers at Camp 98 received the following daily ration: beef, fresh or iced 200 grams per day?

A. I don't know because they were not administered by the camp.

Q. Did you ever visit the mess of the soldiers at Camp No. 98?

A. They did not have a mess. In our Army the soldier does not have a mess. They had a place where you get the food and a mess kit.

Defense: Nothing further. Does the Commission have any questions?

President: I presume so.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. How many officers were assigned to camp?
A. We were about fourteen.

Q. During the period January 1943 to July 1943?
A. Yes.

Questions by Major Gambrill:

Q. When this happening occurred regarding the speech that Colonel Oldani gave his prisoners, just exactly where did it happen?
A. Inside the camp where the prisoners were.

Q. Was it near the gate?
A. Near the kitchen where the prisoners often collected.

Q. Were you there when it happened?
A. No, I was not present. I heard about it like that at the office.

Q. From whom?
A. The commandant told me about it in order to register the punishment and also other officers.

Q. You have stated in your testimony Colonel Oldani always carried a riding whip?
A. All Italian officers carry a riding whip.

Q. What did Colonel Oldani do with that whip when this happening occurred?
A. Nothing. He carried it like that. It was usual in the Italian Army to carry a small stick.

Q. That does not answer my question. I asked him what he did with it when this happening occurred?
A. He said "Nothing."

Q. How does he know?
A. Because I was told about it. I was so told. I was told only about the irons and the punishment.

Q. Then you do not know whether or not he did anything with the whip at the time?
A. Whatever happened at the camp, good or bad, we always knew about it at once.

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Q. Then do you or do you not know what happened or what Colonel Oldani did with this whip at the time of this happening?

Defense: If the Commission please.

Major Gambrill: There is nothing wrong with that question. I have asked it three or four times before and have not got an answer. He testified he has always carried it.

Defense: I think the question is ambiguous. I think the witness is having difficulty in knowing what you are driving at. That may be the difficulty in the question.

Major Gambrill: I guess I am in error. If so, I'd like to know. Did the witness testify or did not the witness testify that he was not present when the thing happened? Then I asked him a point blank question "What he did?" and he said "Nothing." Then I asked him "How does he know that he did nothing?" and he replied that not having been there he had heard about it.

President: You are trying to find out what he heard from other sources?

Major Gambrill: Yes, sir, and after showing that, I am trying to find out what he knew. Is that all right, sir?

President: Whatever answer you get will be an answer that is based upon what someone else told him, is that correct?

Major Gambrill: No, sir. My question was do you or do you not know what he did with that whip at that time?

President: Let's have it answered.

The interpreter repeated the question to the witness.

A. I don't know, but I understand that it has not been used because one would have known about it immediately at the camp.

Lt. Colonel OKeefe: It has not been used for what?

Major Gambrill: Where did he get this understanding? I don't recall it having been brought out?

Defense: Sir, if it please the Court, I have read the charges to him and he has been discussing the charges with the other witnesses in the hall for a week. I would point that out. If he wishes to ask the question now, I have no objection.

Questions by Major Gambrill:

Q. You say you understand it was not used. Upon what do you base that understanding?

A. Because when he told me about the incident and the punishment, he would also have told me if he had used the riding whip for, perhaps, giving a little slap, and then other officers would have told me about it as well.

Q. Did he ever use it before for that purpose?
A. He never used the riding whip. We don't use the riding whip for such occasions. One punishes soldiers according to regulations.

Q. What sort of a disposition did Colonel Oldani have? Was he quick-tempered?

Defense: Objection. The question calls for the conclusion of the witness.

Prosecution: If the Commission please, I think that is a perfectly proper question, the character of the accused. You have been testifying about character all day long.

President: I have not heard the character of the accused brought into any questioning of this particular witness so far.

Prosecution: Not of this particular witness so, but of the others. Remember, his nature, his habits, his reactions in certain circumstances. This man was with him. He associated with him day after day, clearly he should know.

Defense: If it please the Commission, we will withdraw the objection for the reason, I think, we would like to hear the answer to it, not that it makes any difference.

A. To give the truth its due, I was with Colonel Oldani for about two years, always at his side. He is a man very reflective, calm, of high sentiments, noble sentiments and good heart.

President: I'd like to ask a question.

Questions by the President:

Q. You state there were about fourteen officers on duty in Camp 98? Ask him that.
A. Yes.

Q. Did most of them wear riding boots? Put that question in another form please. Did any of them wear riding boots?
A. All of them riding boots. The riding boot is prescribed for an officer.

Q. Usually how were such boots put on?
A. There are two aluminum hooks. Internally there are little rings of material and one pulls them up by boot hooks.

Q. Usually how are such boots taken off?
A. There was a small wooden thing against which one hooked the heel of the boot and then pulled it off. I am of the Cavalry so I always wore boots and I know.

Q. It is difficult to remove such a boot without a boot jack?
A. You cannot remove it. There would always have to be someone who pulls it.

Questions by Colonel OKeefe:

Q. What sort of boots, what kind of shoes did the non-commissioned officers wear?
A. They had the shoe and the leather leggings which were then tied with a belt, strap and generally the officers wore that as well because it was quicker put on. It was more practical.

Q. What kind of shoes did the Italian soldiers wear?
A. Normal walking shoes but at the camp they wore nailed shoes because we were in the hills there.

Questions by the President:

Q. What was the source of drinking water for Camp 98?
A. It came I think from Piana Dei Greci, but I don't know for certain. Anyway, there was plenty of water. I don't know really. I was not particularly interested whether the water came from Piana Dei Greci or elsewhere, but I think it came from there.

Q. Do you know of your own knowledge whether or not there was a well within the confines of Camp 98?
A. No, I don't know for certain. I know that there was plenty of water, but I don't know if there were wells. It was drinking water at the camp. There were no wells.

Q. The point of the question is you don't know where it came from or do you?
A. From Piana Dei Greci I assume.

Q. You have stated that Italian soldiers were punished according to rules laid down in regulations, is that correct?
A. Correct.

Q. Are you familiar with those rules?
A. I may remember some things. It is now - several years have now passed.

Questions by Colonel Lucree:

Q. What, if any, were the limitations on the punishment that could be administered, maximum limitation?
A. The maximum was ten days confinement, from one to ten days.

Q. What was the diet, nutritional diet during that ten days' period?
A. The complete ration.

Q. Was a combination of bread and water and confinement given as a punishment?
A. No, bread and water was used forty years ago.

Q. As an example, one Italian soldier murders another Italian soldier. What is the punishment in the Italian Army?
A. For that the rules of discipline would not apply any more. That would be denounced to the Military Tribunal.

Q. Were not prisoners' cases at PO 98 referred to the Military Tribunal?
A. Never.

Questions by Lt. Colonel OKeefe:

Q. Where was his office located? In the headquarters, in the camp?
A. It was a little way from the camp, 300 meters, 200 meters.

Q. Was he in the headquarters building?
A. Yes.

Q. Did he leave his office during the day at any time?
A. During the hours that I went home to eat. We were on duty from 8 o'clock in the morning 'till 8 and sometimes 9 in the evening.

Q. Did he ever see a flagpole near the headquarters?
A. Yes.

Q. Did he ever see anybody chained to it?
A. Never.

Questions by Major Cambrill:

Q. Did anyone ever build a fire in one of the tents of the prisoners?
A. I don't know.

Q. How long were you there?
A. During the whole period from December 1941 up to July 1943. As a matter of fact up to the 22nd July 1943, because after that I was taken prisoner.

Q. To his knowledge, no-one of any group of prisoners ever built a fire causing damage to the tent, to keep warm?
A. One could not make a fire in the tent, but it does not appear so to me, I don't know

Questions by Lt. Colonel OKeefe:

Q. In the time he was at the camp, did he ever hear of any other unpleasant incident involving an American prisoner other than the one he has described?
A. Some punishment for other cause, for attempted escape.

Q. What was the punishment for attempted escape?
A. Prison three days, five days, six days, it depended.

Q. Did he ever see any of these prisoners after they had been returned to the camp?
A. Yes.

Q. He did?
A. I remember, after Easter.

Q. What was the punishment inflicted on this man who returned to the camp at Easter?
A. A few days of prison.

Q. How does he know that?
A. Because it was registered.

Q. Does he know how many prisoners were involved in that escape?
A. I think there were two or three. I don't remember. I think there were two and then they were caught and brought to the camp.

Q. Who made the entry in the record of punishment book?
A. The headquarters had a book register where the motive for the punishment was registered and then I had the journal, the bookkeeping journal where the days of the punishment were registered.

Q. What was the condition of the prisoners' faces when he saw them on their return to camp?
A. They were brought to the headquarters and the Colonel was there and wanted them to explain to him the motive for their escape.

Q. Will you repeat my question to him. Will you please repeat the question. I want to know what they looked like, when he saw them?
A. They were smiling, content.

Q. They were smiling?
A. They were young boys.

Q. What did Colonel Oldani say to them?
A. He told them that they should not escape, the commandant was responsible.

Q. And then what?
A. And then out of respect for discipline and also as an example to the other prisoners, he then fixed several days of prison. I don't remember how many days.

Q. What was the example to the other prisoners?
A. Naturally, as far as others were concerned, they would have all escaped. If one is not punished, then they all do that and discipline would end completely.

Q. He stated, he said in his previous answer that an example was made of these two men.

Defense: Object.

Lt. Colonel OKeefe: He said "out of respect for discipline". Will the reporter read the answer to the previous question.

The reporter read the answer as requested.

Q. What was the example he made of these men?
A. He put them into prison. He fixed the punishment four or five days.

Q. He testified before that the punishment was a light punishment. You said before that the punishment you were not sure of but it was light.
A. The usual punishment - light.

Q. How can it be a light punishment and at the same time an example?
A. Even one day is a punishment.

Lt. Colonel OKeefe: Ask the question again please.

The interpreter repeated the question.

A. It was in the hands of the commandant. When an offense was the first time he gave three or four days. If it was repeated one gave a heavier punishment.

Q. If it was repeated again, what would the punishment be?
A. Instead of three, there would be six, seven days.

Questions by Lt. Colonel Albin:

Q. You said you were the keeper of the book and made the entry of punishments as they were meted out?
A. Yes.

Q. When this man that you refer to as Mulatto was sentenced, what name did you put down for him in the book?
A. I don't remember. Four years have passed. I cannot remember now.

Q. Did you enter Mulatto in the book?
A. I remember that he was a Mulatto, but I can't remember his name.

Q. What was his rank?
A. I don't know. I knew he was a Mulatto.

Q. How many interpreters did you have in the camp?
A. Three.

Q. What was their rank?
A. There was a lieutenant and two corporals and the other I don't remember.

Q. Could you give me the names of the two corporals?
A. There was the corporal Mannino and corporal Minardi.

Q. Was there one by the name of Mario?
A. Yes, Minardi.

Q. Mario Minardi?
A. Yes.

Q. Do you know what nationality he is?
A. I know that he was an American citizen.

Q. Did you associate with him in any way?
A. No. He helped me at the office to draw up the records when they arrived and when they left because he knew English.

Q. Would he, by chance, ever help you make up the punishment records?
A. No, he helped me to draw up the lists because when the prisoners arrived, one had to draw up the lists with all the names in triplicate, which were then sent to the Ministry.

Questions by the President:

Q. What was the elevation of Camp 98?
A. Four or five hundred meters.

Q. What is the average rainfall there?
A. According to the season.

Q. Approximately the yearly rainfall, January to December?
A. The climate of Palermo is a soft climate. We have no severe days. In January, February, March it rains, but in March the sun starts already.

Q. During his period of service in Camp 98, does he recall a period when it rained for nineteen straight days and nights?
A. Who can remember that? Sometimes it may have rained for two or three days, then stop and started again, but nineteen uninterrupted days, that seems impossible to me.

Questions by Major Williams:

Q. As adjutant was it your responsibility to supervise the personnel in accounting?
A. The commandant supervised the accounts and he signed each evening before leaving.

Q. Did you not maintain the personnel records at camp?
A. I had the accounts. I registered every operation.

Q. In that respect was it your responsibility to record and report deaths of prisoners?
A. Yes.

Q. During the year of the Fall 1942 and the Spring of 1943 how many prisoners died at POW Camp 98?
A. There may have died two or three because as soon as they were dead this was communicated to the Ministry.

Q. You have previously testified that the prisoners, seriously ill prisoners in Camp 98 were transported to Palermo for hospitalization and medical care, is that correct?
A. Yes, they were sent.

Q. What was the occasion for the prisoners dying in PW Camp 98 rather than in Palermo in the military hospital?
A. One had been at the hospital at Palermo and sent back as recovered, then when he was at the camp he contracted pneumonia or something and he died.

Q. How long a period was this man ill before he died?
A. Who can remember that?
Q. Was it one day, two days or a week, how long?
A. Certainly, he had all the attention necessary.

Q. That is not the answer to the question. Will you repeat the question please?
A. I do not know that because to me they did not tell how long a prisoner was ill. They informed me that he was dead and I then entered this into the register.

Q. Do you remember the circumstances of the deaths of any other prisoners in addition to this one?
A. I don't remember. I can remember things which were part of my duty because I had to advise, to inform the Ministry of details of prisoners, deaths of prisoners.

Questions by Major Gambrill:

Q. You were administrative executive to the camp commandant, is that true?
A. Yes.

Q. You were responsible for seeing that administration was kept correctly at all times, correct?
A. Yes and the Colonel controlled each evening and signed.

Q. Was the Colonel very definite and stern with his administration?
A. Yes, because it was the direct responsibility of the commandant.

Q. And when a Captain here would make a major administrative error, what would the Colonel do?
A. He would have reported it to the higher command for decision on this case.

Q. If he was in command, as we know he was, why is it necessary for him to report something to higher command to take disciplinary action against his own adjutant?
A. Because he was not the superior commander for that, for disciplinary action we depended on the headquarters of the Territorial Defense.

Q. At one of these errors, when they did occur would he get mad?
A. Certainly. If it was a light offense, he probably punished the officer, he reprimanded him, but if it was a serious offense, for instance, missing funds, then it was his duty to report it to the higher headquarters.

Q. But he would get mad? He did get mad?
A. Certainly. He had to get annoyed. He reprimanded the officer. He had to reprimand an officer if there was some error.

President: Are there any questions by the defense or judge advocate?

Prosecution: No questions by the judge advocate.

Defense: No questions.

President: The witness can be excused.

There being no further questions the witness was excused and withdrew.

President: The Commission will be adjourned until 9 o'clock tomorrow morning and the Commission will meet all day.

The Commission then at 1750 hours on 5 November 1946, adjourned to meet at 0900 hours on 6 November 1946.

CLYDE W. WELLEN
Lt. Colonel, INF
Judge Advocate

The Military Commission met pursuant to adjournment, at 0910 hours, 6 November 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused and the reporter were also present.

Prosecution: May it please the Commission, I would like to introduce the new interpreter Vera Kornis.

President: Have you authority to employ?

Prosecution: Yes, sir.

President: Yes.

Vera Kornis was sworn as interpreter.

Antonio Di Marco, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Di Marco, Antonio.

Q. Where do you live?
A. Aquila.

Q. What is your occupation?
A. Office clerk in an insurance company.

Questions by the Defense:

Q. Were you a member of the Italian Army in 1942 and 1943?
A. Yes.

Q. Were you stationed at Prisoner of War Camp No. 98?
A. Yes.

Q. Were you there during the months of December 1942 to May 1943?
A. He was there until July 1943.

Q. What was your rank while you were stationed at Camp 98?
A. Private, he worked in the office as a private, typist.

Q. What office did you work in?
A. Headquarters.

Q. Is that the headquarters?
A. The camp headquarters.

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Q. What were your duties?
A. Typist.

Q. Were you quartered with the Italian guard detachment in Camp 98?
A. No.

Q. Did you live with the Italian company?
A. The other soldiers lived down in tents and he was up at headquarters. He had a room at headquarters.

Q. You lived in headquarters?
A. Yes.

Q. Did you have any heat in that building?
A. No.

Q. How many blankets were you issued for use in this camp?
A. Two in summertime and three in winter.

Q. Can you describe the size of these, the ones that were used in winter.

Prosecution: May it please the Commission, I'd like to have the witness talk a little louder. Our interpreter cannot hear him.

A. The approximate size of the blanket was 230 meters by 150.

Q. All three of these?
A. One was shorter. It was hardly two meters long, one of these three.

Q. How long had you been stationed in Sicily?
A. From June 1942 to July 1943.

Q. How long had you been stationed in the vicinity of Palermo?
A. Since the camp went from Boturro to Palermo.

Q. What weather conditions did you have during that winter of 1942/1943?
A. It changed. There were some very cold days and some fair days too.

Q. Was that true in January and February too?
A. Yes, December, January and February.

Q. To the best of your recollection, what was the longest time that it rained as one continuous period?
A. He does not remember well when but he recollects certain periods of ten to fifteen days of continuous rain.

Q. Of continuous rain?
A. He does not remember if it was actually continuous but sometimes half a day of fair weather came, but he remembers it was rainy and windy.

Q. Were you cold at night?
A. When it was cold, yes.

Q. What steps did you take to keep warm?
A. He did not take off his clothes in the night.

Q. How many uniforms did you have?
A. One only.

Q. Were showers or baths accessible to you?
A. No.

Q. How did you bathe?
A. He had to go out in the field in a little stream.

Q. Was that in January, February and March?
A. Yes.

Q. Was that true of other soldiers serving immediately with you?
A. All his fellow soldiers who worked with him at headquarters had to do the same.

Q. What type of latrines were you furnished?
A. Out in the field.

Q. Was a tobacco ration furnished to you?
A. They had some against payment. They had to buy some. When they were not available in the camp, they could buy them, but that was not always.

Defense: If it please the Commission, may the answer be stricken?

Prosecution: We object to the answer being stricken from the record.

President: What is the objection, please? Do you think the answer should be corrected?

Prosecution: I wish to leave it as it is.

President: The answer is when tobacco was not available in camp, he could purchase it.

Defense: He has not specifically said that in his answer.

President: The answer should be corrected but not by eliminating the previous answer from the record. It is a matter of interpretation and that can be corrected.

Defense to interpreter: Will you repeat his answer in order to correct the record.

A. He means that they did not have any ration of cigarettes but when they were available, they could buy them at the camp.

Q. During these periods that you did not have cigarettes available, to your personal knowledge, did the prisoners of war have cigarettes?
A. Sometimes they had some.

Q. To your knowledge, did the prisoners of war have a regular ration?
A. He remembers that they were issued five cigarettes in the week, daily, in the week - five cigarettes daily.

Q. Do you know whether they always received this ration?
A. Almost always they received the cigarettes, except in very few occasions that there were not any.

Q. And at the time that you recall they did not receive, were you receiving cigarettes?
A. No.

Q. To your knowledge, were individuals of your unit punished for infractions of discipline?
A. Yes.

Q. Were you ever punished?
A. Yes.

Q. Why were you punished?
A. Because he was three days late coming back from leave.

Q. What was your punishment?
A. Two days handcuffed and four days in prison.

Defense: Just a moment she did not insert the irons. Repeat the answer.

A. Five days in prison and two days in irons for one hour or two.

Q. To your knowledge, were irons permitted in excess of two hours a day in a twenty-four hour period?
A. He does not know.

Q. Where were you confined?
A. Next to the prison reservation for the prisoners.

Q. What type building or inclosure was this?
A. A little stone hut.

Q. Was there heat in this hut?
A. No.

Q. Were there latrine facilities in this hut?
A. They had to go out accompanied by the guard.

Q. What food did you receive while in confinement?
A. The same ration as the free soldiers got.

Q. Did you receive tobacco or cigarettes?
A. He had his own, but they were not given any.

Q. You have testified that you were a clerk in headquarters. Did you type reports?
A. Yes, daily schedules and reports.

Defense to interpreter: Daily orders did he not say?

A. Yes, daily orders and reports.

Q. In typing the reports were any of the reports reports on punishments of prisoners of war?
A. Yes.

Q. Do you recall any of the punishments that you typed on any of these reports?
A. He remembers two of them.

Q. Now what was the first one that you remember?
A. In December 1942 and January 1943.

Q. Just the first one now.
A. He does not know exactly. It was either December 1942 or January 1943.

Defense to interpreter: Will you please repeat the question?

A. Seven days of confinement and three days of irons for one hour a day.

Q. Do you remember the name of those prisoners, or name - excuse me, strike that.

Defense: Just a moment, he said for one or two hours a day.

A. One or two hours a day.

Q. Do you recall the name or names of the prisoners that received this punishment?
A. No.

Q. Do you recall the nationality?
A. No, he is confused about it. He had too many.

Q. Do you recall why they were being punished?
A. Escapement from the field, from the camp, AWOL.

Q. If you know, where was this place of confinement for prisoners, if they were being punished?
A. Next to the prison where the Italians were kept.

Q. What type of construction was that?
A. It was a stone house.

Q. Were there any rooms - -

Defense: Will you interpret the rest please?

A. It was a stone building with wooden cots, wooden tables and they had to bring their own blankets.

Q. Were there any windows in this place of confinement?
A. One window.

Q. What size, to the best of your memory, was this window?
A. It was thirty centimeters high and seventy centimeters wide.

Q. Do you recall which side of the building this window was on?
A. It was very high in front of the front door, almost under the roof.

Q. Do you recall whether it was on the east side, west side, north or south side of the building?
A. The front door towards west and the window towards east.

Defense to interpreter: On my next question or two, caution him that it is going to go back to his place of confinement so that he won't have the other in mind. Will you caution him?

Q. What were the furnishings, if any, in your place of confinement?
A. No furniture at all.

Q. Were there bunks in your place of confinement?
A. Only a table, wooden table, like in the one for prisoners.

Q. Were there any windows in your place of confinement?
A. It was exactly like the one in the prisoners' confinement.

Q. What side of the building was that on? East, west, north, south?
A. The same side.

Q. You have testified as a clerk in headquarters that you did prepare daily journals and reports. Did you in the course of your duties prepare or type any reports on the punishments of Italian soldiers?
A. Many.

Q. Can you recall any of the punishments that you typed?
A. He remembers having typed about ten or fifteen, not more than that.

Q. Do you in these remembrances, do you recall any in which manacles were used in excess of two hours?
A. He does not recall having these periods exceeded, two hours, but it lasted sometimes over five and even seven days.

Q. Do you recall whether any of the punishments that you typed included whippings or beatings?
A. No other punishment

Q. He means none then?
A. The most severe punishment for them was irons.

Q. Again do you recall any punishments of Italian soldiers where more than one Italian soldier was involved, in violation of discipline, in which the punishment was depriving those Italian soldiers of food?

President: There are too many elements in that question. Can you simplify it please?

Q. Did any of the punishments that you typed include depriving Italian soldiers of food?
A. No.

Defense to President: Is that satisfactory?

President: Any objection? No objection here. It has been answered.

Q. You testified regarding two instances of punishments to prisoners of war. What was the second one?
A. It was in the Easter holidays.

Q. What was the punishment?
A. The one he typed was similar to the other one, to the first one.

Q. Will he please state specifically?
A. One hour or two in irons and seven of solitary confinement.

Q. Do you recall the names of the prisoners?
A. No.

Defense: She has failed tp mention manacles for three days. One or two hours for three days.

President: Don't put the words in the witness' mouth, just -

Lt. Colonel OKeefe: Let's have the question repeated.

The reporter repeated the question.

A. One hour or two in irons for three days and seven days of prison.

President: Is that satisfactory?

Q. Was that a total of seven days?
A. It was seven in all.

Q. In the course of your duties were you ever required to go in to the prisoner of war camp?
A. It was not his duty, it was not within his duties to go to the camp, but he went sometimes on his own.

Q. How many - do you recall whether there were any - do you recall whether there were any flagpoles within the camp?
A. Yes, I remember.

Q. How many do you recall?
A. He does not remember exactly if there were two or three.

Q. Where were they located?
A. He does not remember whether there were one or two inside the camp, while one was before the headquarters in front of the headquarters.

Q. The ones inside, were they close to the gate?
A. They were close to the kitchen.

Q. From your duty station in the office, could you see these flagpoles?
A. He could only see the flags, he could not see the poles because there were houses and huts in front of them.

Q. Could you see the flagpole in front of the headquarters building?
A. Yes, that one I could see.

Q. Did you ever see any prisoner of war manacled to that flagpole?
A. He never saw any near the headquarters either punished or tied.

Q. Did you ever see any prisoner of war manacled to the other flagpoles?

President: That's - -

Defense: He has testified that he was inside at various times and this question is purely to clear up this point. Strike that question.

Q. Did you ever see or hear of any prisoner of war being manacled to any of the flagpoles?
A. I never saw any handcuffed, tied to the flagpole, nor did he hear about it. All he heard about was being handcuffed in the prison but not tied to the flagpole.

Q. Did you ever see or hear of any prisoner of war being whipped or beaten as a punishment?
A. He has not seen and has not heard about it.

Defense: Your witness.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. Do you know Colonel Oldani?
A. He does know him.

Q. Is he the accused in this case?
A. Yes.

Q. Is he in this room?
A. Yes.

President: The reporter has pointed out that the interpreter does not translate exactly, but translates in the first and third person even in the one sentence. Will the interpreter translate exactly please.

Q. Point him out please.
A. (The witness indicated the accused.)

Prosecution: May the record show that the witness indicated the accused.

Defense: For the purpose of the record, we will stipulate that every one of these witnesses knows the accused and has pointed him out, if that will save time.

Prosecution: That is very satisfactory.

Q. How long have you know the accused, Colonel Oldani?
A. For a year.

Q. Where did you first meet him?
A. In the camp of Boturro.

Q. When?
A. In June 1942.

Q. Were you ever stationed in an Italian base camp?

Defense: If it please the court, base camp is a phrase which lawyers and others who are drafting regulations use. I believe it is hardly within his knowledge to know what a base camp is. Would it be better if he asked the witness precisely where he was stationed in his military career and the court could determine whether any of these were base camps.

President: Do you wish to frame your question differently?

Prosecution: I did not get the answer to the last question.

President: You asked if he was ever stationed in a base camp.

A. He said he did not understand. What he means is a place where they have training?

Q. Yes?
A. I understand by deposit a place where we had our training and where we kept our supplies. I don't know if that is the same as you mean.

Q. Were you ever in a training camp?
A. Yes.

Q. Where?
A. Trapani.

Q. What other camps have you been in?
A. In no other camp.

Q. While in training camp, did you ever see any Italian soldiers that did not work who were not engaged in training?

President: Can I interrupt there, please? I personally did not understand the question. Possibly, the witness does. Can not that question be broken down into its three elements. I think the answer is bound to be confusing. There are three elements in your question and each one is proper to ask, but one at a time please.

Prosecution: Strike it for the record. Request that the last question be reinstated in the record to keep the record straight.

Q. Do you know where the reports of punishments that you typed are now?
A. No.

Q. Are you familiar with the provisions of the Geneva Convention?
A. No.

Q. You have testified concerning blankets that were issued to you. Were they wool or cotton?
A. Woolen.

Q. What was their weight?
A. I could not say.

Q. Did you see cigarettes issued to prisoners of war?
A. Yes, I have seen them.

Q. When?
A. I saw the cigarettes at headquarters where they were divided up in five for each, but I have not seen them distributed to the prisoners in the camp.

Q. Were those Italian cigarettes or cigarettes from Red Cross packages?

A. They were Italian cigarettes, Militi or Popolari, which is the cheapest.

Q. How many officers, Italian officers were there stationed at PG 98, if you know?
A. I don't remember. I am trying to think. About ten, but I am not sure about it.

Q. Were their wives there also?
A. No.

Q. Have you seen the Italian officers smoking American or British cigarettes?
A. I have never seen them.

Q. How often did you visit the prisoner of war inclosure?
A. I went there sometimes but I don't know how many times

Q. Five, ten, fifteen, twenty?
A. It could be ten, could be thirty, fifteen, I don't know.

Q. What months?
A. In any month or every month.

Q. Did you visit the inclosure once a week?
A. I repeat I don't remember. I might have gone sometimes every week. I may not have gone there for three months or two months.

Q. How far was your headquarters from the prisoner of war inclosure?
A. There were about two hundred or three hundred meters to the wire fence and to the camp, to the inside of the camp about five hundred meters.

Q. Were there any storerooms in your headquarters building?
A. I remember there was a storeroom, but I don't know what was in it.

Q. Do you know whether part of the contents of that storeroom were Red Cross parcels?
A. I remember that there was some packages from the Red Cross but I don't know if they were there only temporarily before they were sent down to the depot in the camp or if they were kept there all the time. I just heard something about these packages coming there.

Prosecution: No further questions.

Defense: Any questions by the Commission?

President: Apparently not. The witness is excused.

There being no further questions, the witness was excused and withdrew.

President: The Commission will take a five minute recess.

The Commission then recessed at 1015 hours and was reopened at 1030 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Ernesto Bertuccio, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Bertuccio, Ernesto.

Q. Where do you live?
A. At Genoa.

Q. What is your occupation?
A. He is surveyor and is studying, is preparing for his degree in economics, science.

Questions by the Defense:

Q. Did you ever serve in the Italian Army?
A. Yes.

Q. Were you ever assigned to duty at Prisoner of War Camp 98?
A. Yes.

Q. When?
A. From June 1942 to May 1943.

Q. What were your duties?
A. He was a clerk in the office.

Q. Do you know whether Colonel Oldani ever ordered punishment of his soldiers?
A. Yes.

Q. Were you ever punished?
A. Yes.

Q. What punishment did you receive?
A. I was condemned to irons for two hours a day for seven days.

Q. For what reason?
A. For - I was late coming back from leave.

Q. How many days were you late?
A. Six or seven days.

Q. During your period of service in this camp, did you ever see or hear of Colonel Oldani whipping a prisoner?
A. Never.

Q. Did you ever see or hear of prisoners being chained to the flagpole as punishment?
A. Never.

Defense: This witness can repeat much of what the other said, but we are going to stop.

President: Very good.

Defense: Your witness.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. Did you see or hear whether Colonel Oldani struck an American prisoner of war with his riding crop?
A. Never.

Q. What were your duties in the office?
A. I was assigned to the accounting.

Q. Did you work in the building?
A. I don't understand the question.

Q. Did you work inside the headquarters building?
A. Yes.

Q. How large a building was it?
A. About ten meters to twenty.

Q. Of what construction?
A. It was an old stone building.

Prosecution: No further questions.

Defense: Does the court have any questions?

President: Just one.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. Would this building that he speaks of be classified as a castle, an old Italian castle?
A. No.

Q. Does it bear any resemblance to the average old Italian castle?
A. No, it did not resemble to any castle. It was just an old building.

President: Any other members have any questions they wish to ask the witness?

Major Gambrill: Just one.

President: Go ahead.

Question by Major Gambrill:

Q. Do you know where Colonel Oldani lived?
A. At San Giuseppe.

Major Gambrill: That's all.

Question by the President:

Q. Did he ever see the house in which Colonel Oldani lived?
A. I have never seen it.

President: Any more questions by members of the Commission?

Question by Lt. Colonel Albin:

Q. Was there any building in the vicinity of the camp, a large building, that could be considered a castle?
A. I have not seen any.

President: There appear to be no further questions of the witness. The witness is excused.

There being no further questions, the witness was excused and withdrew.

Candido Assanelli, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Assanelli, Candido.

Q. Where do you live?
A. Milan.

Q. What is your occupation?
A. Clerk.

Questions by the Defense:

Q. When did you enter the Italian Army?
A. In February 1941.

Q. What was your grade?
A. In 1941 I was a private.

Q. Did you ever serve as an officer?
A. I served as an officer since January 1942.

Q. How did you achieve your commission?
A. As an officer?

Q. Yes, commission as an officer?
A. I was infantry officer at base camp.

Q. No, he does not understand. How was he commissioned? How was he made an officer?
A. Going to the Officers' School. Supplementary Officers' School at Fano.

Q. Were you in the Italian Army in 1942, 1943?
A. I was in the Italian Army until June-July 1943.

Q. What occured at that time?
A. I was captured by the American troops.

Q. Where were you captured?
A. At San Giuseppe Jato.

Q. What was at San Giuseppe Jato - what were you with at San Giuseppe Jato?
A. I served at the camp of PG No. 98.

Q. How long were you a prisoner of the Americans?
A. For a year I was prisoner of the Americans.

Q. How were you released?
A. After a year with Americans, I was released to the English and served with the English in Algiers. After a year in Algiers, I was released because I collaborated with them.

Q. As a prisoner of the Americans where were you kept?
A. At Palermo.

Q. You have testified that you were stationed at Camp 98. What date did you report at that camp? What date did you report at Camp 98?
A. It was about 20th December 1942.

Q. What duties were you assigned to?
A. I was assigned to the guard duty.

Q. You were assigned as an officer of the guard?
A. I was a member of the guard company but as an officer I served in turn with the others, yes, I served as an officer, but guard duty in turn with the other officers assigned to the same duty.

Q. Did you ever serve as officer of the day for the camp?
A. Yes, I did.

Q. Do you recall the first, your approximate date that you served as officer of the day?
A. It was Christmas 1942.

Q. Did any unusual incident occur while you were on tour as officer of the day?
A. Yes, I remember that three British prisoners escaped.

Q. Will you briefly describe, in your own words, what happened, what you did and what happened?
A. I was, for the first time, officer of the day, of the guard. To tell the truth, I was not very familiar with my duties. In the dark zone of the camp, of the inclosure, I had to guard, a guard had to serve at night, but this guard did not fail to take his turn as a guard.

Q. Did you post the original guard or have it posted?

Prosecution to interpreter: Will you put it differently please?

Q. The time you went on duty as officer of the day or guard, did you cause the original guard to be posted?
A. There was no guard in daytime on that point. He was supposed to take his turn and failed to do so.

Q. Will you continue with the story?
A. In the evening this guard was supposed to take the searches but it was my fault that he failed to do so because I was not familiar with the orders. The prisoners took advantage of the situation that it was very dark and foggy and that the guard was not at his post and escaped. Nobody noticed the escape, not even the officer, the inspecting officer who inspected the prisoners about midnight noticed that three were missing. About one or two o'clock at night when I was counting the prisoners in their beds, a bed check, I noticed that three were missing. As I was not sure about it and had to check several times, I did not give the alert, alarm except in the morning, the following morning. The next morning at a new check the missing of the three prisoners was confirmed and platoons have been sent out to locate them. All command headquarters have been notified and General Cimino came also to inspect and I received the punishment of five days solitary confinement. This General is from Palermo. Also the inspecting sergeant was punished. Two guards who served at the gates near to the place where the prisoners escaped got punished too, and I think, but I don't remember well, also the camp commander. That's all.

Q. Were these prisoners captured or returned to Camp 98?
A. Yes, I don't remember how many days later.

Q. Were you present when they were brought back into camp?
A. No, I have not seen them when they were brought back.

Q. Did you see them at all any time after they were brought back to camp?

A. I think I saw them in prison during an inspection visit.

Q. Do you know what their punishment was?
A. Yes, I know because it was on the daily orders. I don't remember exactly for how many days and for how long they had to be in irons, but I remember they were condemned to seven days solitary confinement.

Q. Do you know whether the time in irons was in excess of two hours daily?
A. No, I don't remember.

Q. In the course of your duties were you required to be present when new prisoners arrived?
A. Yes, sometimes.

Q. How did they usually arrive at the camp?
A. With what means?

Q. By what means, yes, airplanes, boat, trains?
A. They were transported by truck.

Q. Where were they first taken?
A. I don't remember exactly.

Q. When they arrived at camp, where were they first taken?
A. They were taken to an inclosure with no tents in it and separated from the other prisoners.

Defense (Captain Burck): Wait, separated from the other prisoners by a wide fence.

Q. As I understand, this was a separate inclosure?
A. Yes, it was separated from the stockade where the other prisoners were kept.

Q. Was this used entirely for processing new prisoners?
A. I could not say it was used solely for these individual prisoners, but the first time when they came in, they passed through this camp where they had a shower tent and disinfectant and a stabilizer for disinfecting and that is where they passed first.

Q. What was the first thing that happened after they passed this processing area?
A. At first the prisoners were searched by the Carabinieri.

Q. Was anything removed from the prisoners at this time?
A. If they had any, in this first occasion they were deprived of their weapons. If they had any blankets, they were taken away for disinfecting. Money was taken away from them in the presence of the interpreters, who issued receipt for it. They put in an envelope and receipt issued.

Q. This took place with all new prisoners?
A. For all those prisoners whom I saw enter, yes.

Q. What happened next?
A. After this the prisoners were taken to a first section of the stockade and if it was daytime they were examined by a doctor.

Q. Were they disinfected before this - as you were - were they disinfected before this physical exam?
A. I don't remember.

Q. After the physical exam, what occured next?
A. If they were found healthy, the prisoners were sent to the next stockade where other prisoners who came in the day before were already kept.

Q. What happened if they were not found healthy?
A. If they were not found healthy, they were sent to an isolation section where they had two tents, one for suspect cases and one for certain sicknesses. This is for infectious diseases like dysentery and amebic dysentery. For not infectious diseases they were sent to the infirmary.

Q. Were sick prisoners ever sent anywhere else except the infirmary?
A. I don't know. I don't think so.

Defense (Captain Burek): The interpreter altered the question and added "to work" giving it an entirely different meaning. Have the question stricken from the record. A different question was asked by the interpreter.

The reporter repeated the question.

A. There were no other places, either infirmary or isolation.

Q. Did you see or hear of any prisoner of war being beaten or whipped?
A. No.

Q. When was the first time that new prisoners were permitted to mingle with old prisoners?
A. After the medical examination, when they were found healthy, they could mingle with the others.

Q. What was the approximate time that this processing took?
A. It depends on the time of the arrival, whether it was on daytime or at night and also on the number of prisoners to be processed.

Q. What would he estimate the time for one individual prisoner?
A. Twenty minutes.

Q. Were any brutalities committed by your guards ever reported to you?
A. No.

Q. Did you ever see or observe any of your guards commit any brutalities?
A. No.

Q. Did you ever see or hear of any prisoner being chained to the flagpole?
A. No.

Q. Did you ever see or hear of any prisoner being struck by Colonel Oldani or other persons?
A. No.

Q. Did you ever see or hear of any prisoners being deprived of food as a punishment?
A. No.

Q. Did you ever see or hear of any prisoners being forced to work when they were sick?
A. No, because it was their representative or head of the camp who let them go to work.

Q. How often did your duties as officer of the day or guard require you to go in and out of the stockade?
A. I entered the camp when the guard was changing for a check of the prisoners. I entered for another check at night. In the morning when the prisoners went to work, before the prisoners went to work I had to enter the camp to control distribution of food.

Defense: Your witness.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. How many men did you have under your control when you were on duty?
A. Fifty or sixty men.

Q. What section of the camp did you guard or did your troops guard?
A. It was the whole area around the camp.

Q. Outside the stockade?
A. Outside the stockade.

Q. How often were you on duty?
A. About four or five times a month, four or five as guard officer and four or five as inspecting officer.

Q. How many groups of prisoners of war did you see arrive at PG 98?
A. I don't remember.

Q. Was it your duty to inspect these prisoners of war when they arrived at PG 98?
A. When I was on duty I assisted the searching procedure and the forwarding to the other sections.

Q. In addition to weapons, blankets and money, what else was taken from the prisoners?
A. Nothing else.

Q. How many groups did you assist in making the inspections of, that is of prisoners of war just arriving at camp?
A. I can't remember.

Q. After the preliminary inspection and physical examination were the prisoners searched again?
A. No.

Q. How do you know?
A. I remember because after the physical examination they were sent in the section together with the other PWs.

Q. Were all the PWs searched from time to time?
A. As far as I remember, no.

Q. When you were punished and condemned to seven days solitary confinement, who administered, who gave you that sentence?
A. He said five.

Q. Five days?
A. Do you mean prisoners or men?

Defense: His previous statement was five.

Prosecution: I am not sure whether it was five or seven days. I want to know who sentenced him.

A. The order came from General Cimini. Yes he said five days.

Q. When PW, that is prisoners of war, were sentenced, who gave that sentence?
A. I think from the camp commander.

Q. Was that a summary punishment?

Defense: Objection. "Summary punishment" is a term which the witness is not likely to understand when it is translated. Could he not be more specific?

President: It would be better if the counsel could put it in more understandable language.

Prosecution: This man was an officer in the Italian Army. I would like him to answer it, if he knows.

President: You want him to answer "Was this a summary punishment?"

Prosecution: Yes, sir.

Interpreter: He asks if this is for the punishment given to the PWs, refers to the punishment given to the PWs?

Prosecution: Yes.

A. I think this was a punishment established by rules and regulations.

Q. Was there any trial?
A. I don't know that.

Q. Do you know, in the light of your experience as an officer in the Italian Army, what amounts to any form whatsoever of cruelty when any corporal punishment is administered?

Defense: If the Commission please, the defense objects to this question because these are provisions of the law and the Geneva Convention. They are for the court to construe in this case. He is here to tell what happened and not to construe for the court as a legal adviser what is meant by the Geneva Convention - -

President: As an officer in the Italian Army, and due to the fact that punishments of all kinds have been brought up in direct examination, if he fully understands the meaning of corporal punishment, and if it applies to the Italian Army, I can see no harm in his answering the question, provided he fully understands the question. Repeat the question.

The reporter repeated the question.

President: I am afraid the question is not clear and should be clarified. Do you wish to ask the witness if he knows whether or not corporal punishment is authorized in the Italian Army?

Prosecution: No, sir. That is a different question.

Defense: The question is to none of us fully understandable and I think it is frightfully ambiguous, especially when it is translated by an interpreter.

President: It can be answered "Yes" or "No."

President to members of the Commission: Do you understand the question?

Lt. Colonel Albin: I have not any idea of what he is talking about.

President: If you will clarify the question, we have no objection to its being answered. It is confusing to the members of the Commission.

Prosecution: If the Commission please, I desire to call your attention to FM 27-10, "Rules of Land Warfare", particularly to paragraph 127: "Maximum summary punishments - Arrest is the most severe summary punishment which may be imposed on a prisoner of war." Now under paragraph 119:

"Punishments: Punishments other than those provided for the same acts for soldiers of the national armies may not be imposed upon prisoners of war by the military authorities and courts of the detaining power. Officers, noncommissioned officers, or soldiers who are prisoners of war undergoing disciplinary punishment shall not receive less favorable treatment than that provided in connection with the same punishment for those of equal rank in the army. Any corporal punishment, any imprisonment in quarters without daylight, and, in general, any form whatever of cruelty is forbidden. Collective punishment for individual acts is also forbidden."

President: That is understandable. I have no objection to what you read. There may be a possibility the defense will stipulate and accept that ruling.'

Defense: We will stipulate that these are the provisions of the Geneva Convention.

Prosecution: Will you likewise stipulate then that these punishments must be inflicted by a court and cannot be summarily inflicted.

Defense: That is for the court to determine.

Prosecution: This man was an officer in a prisoner of war camp and should have been fully aware of the terms of the Geneva Convention if he expects to perform his duties properly.

President: Let this matter be simplified by a different type of question.

Prosecution: I will break it down.

Questions by the Prosecution:

Q. In the Italian Army what amounts to any form of cruelty in administering punishment?

Defense: If it please the Commission, we object to this line of questioning. We cannot see what it is reaching or what it seeks and it is beyond the comprehension of the witness, and we must keep in mind that he was a second lieutenant, freshly assigned to duty, and no doubt was hard put to keep appraised of his current duties.

President: I would like to have that matter clarified if you will. That question is a hypothetical one and can be answered in either way you wish. How can he answer it?

Prosecution: What I want to bring out from this witness is if he knows the difference between cruelty and authorized punishment.

President: You can ask this: Does he know the difference between cruelty and authorized punishment. Do you wish to ask that question? Any objection?

Defense: No, sir.

President: Why don't you ask it that way then?

Questions by the Prosecution:

Q. Do you know the difference between cruelty and authorized punishment?
A. As far as I know, authorized punishment is the one prescribed by regulations.

Q. What regulations?
A. The Army regulations.

Q. Did you have a copy of the Geneva Convention in PG 98?
A. I did not have this copy but I had orders. I had orders of what I could do and I could not do, and what I should do.

Q. Did you see a copy of the Geneva Convention in PG 98?
A. I have not seen it.

Q. Were the rights of the prisoners of war explained to them?
A. I don't know.

Q. Was any notice posted in English showing the rights of a prisoner of war under the Geneva Convention?
A. I don't know. I have not seen any.

Q. You were through the prisoners' quarters on the days you were on duty, at least two or three times every day, is that right?
A. Yes.

Prosecution: No further questions.

Defense: Any questions by members of the Commission?

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. I'd like to get a clear definition of the witness' assignment and duties. Exactly what was your assignment in Camp 98?
A. Officer of the day and control of the guards of the camp, check of the prisoners, assist when the prisoners went out to work, to assist the distribution of food, also control of the cleanliness of the camp.

Q. How many guard companies were there on duty at Camp 98?
A. There was one section, one vigilance guard section and each day this section sent out the men to the officer. He did not understand whether the question was how many men?

President: I am not interested in how many men. How many companies of guards were on duty?

A. There was just one section only.

Q. How many men were in it? What was its strength?
A. About two hundred in all.

Q. Was he assigned, was he assigned directly to this guard section?
A. All officers, excluding interpreters, and the ones who were in headquarters were all assigned to this company.

Q. Who was in command of this company?
A. I don't remember the first one. The second one was a certain Captain D'Elia.

Q. He has testified that he was present when prisoners of war arrived at Camp 98. Did he ever see any prisoners of war with wounds on them, battle wounds?
A. I don't remember this.

Q. Did he ever see any ambulance cases among prisoners of war upon arrival at the camp?
A. I have not seen any.

Q. As a member of this guard company, or detachment as he calls it or section, was he familiar with the internal housekeeping of this company?
A. The men had their quarters in two barracks, in two huts outside the camp area. They had wooden cots with straw mattresses.

Q. How wide were they? I'd like to know as nearly as he can estimate how wide the individual beds now?
A. I don't remember. About a meter or meter and a half.

Q. Could he compare it with something in the room here, this table, for example. How would it compare with the width of this table? This table is about a meter, isn't it?
A. About the width of this table or a little bit smaller.

President: About the width of this table. If the members of the Commission agree, this table is about three feet wide and his statement said perhaps a little narrower.

Questions by Lt. Colonel OKeefe:

Q. Did the officer of the day at Camp 98 have standing orders?
A. Yes, they had them posted in the guard house.

Q. Did those orders permit the officer of the day to punish a prisoner?
A. For a light trespass he had to send a written notice to the commander and wait for orders.

Q. What would be a light trespass?
A. I consider a light violation the ones which were not considered rebellions, mutinies and this sort of thing. All the rest I consider light trespasses.

Q. You mean everything short of an actual rebellion was a light trespass?
A. Yes.

Q. To what extent could the officer of the day punish a prisoner within his standing orders?
A. In case of rebellion, I had to put them in prison. I was authorized to put them in prison. For any other trespass, which did not include any direct harm or offense to the Italian Army or to the camp, I had to send written notice to the camp commander and wait for orders.

Q. If this trespass happened after the camp commander left the camp, what would the officer of the day do?
A. He sent his note to the substitute, the one who represents the commander of the camp.

Q. Did the officer of the day's authority include in his confinement putting prisoners in irons?
A. This I don't remember.

Q. You said before that you could confine the prisoner?

Defense: He did not say that.

Lt. Colonel OKeefe: Yes, he did, in the case of rebellion.

Q. Your orders included confining a prisoner. Did that include putting him in handcuffs? Did you ever do it?
A. No, I never happened to have any light or grave trespasses to punish.

Questions by the President:

Q. What does he understand to be the meaning of the word "rebellion?"
A. I understand rebellion against the orders which have been given; assault to the guards.

Questions by Lt. Colonel Borndahl:

Q. You have stated that as officer of the day you had charge of distribution of rations?
A. I only was present. I assisted in the distribution of rations.

Q. Who was in charge?
A. The distribution was handled by the prisoners themselves and more exactly the cooks, in the presence of the camp chiefs;from each station a tent head came with two other prisoners to pick up the big drum, the recipient for food and take it back to the tents.

Q. Was this prepared food ready to eat?
A. Yes, it was cooked.

Q. Were you also present when Red Cross rations were distributed?
A. No, I had nothing to do with it. This was in charge of - this was the interpreter who had one man, the representative who handled all the papers, registers about the packages coming in and out in the storerooms and the keys.

Q. To go back to the food, where was the food prepared?
A. In the kitchens.

Q. Where did the cooks draw the unprepared food?
A. From the store.

Q. Where was the store?
A. I don't remember exactly where it was, perhaps near to the kitchen. I don't know.

Q. Was there only one kitchen?
A. There was one kitchen inside the camp for the prisoners and another kitchen outside the camp for Italian soldiers.

Q. How many warehouses were there, magazines?
A. As far as I remember, but I am not sure of it, there was only one warehouse from where the prisoners got their part, their rations, and the Italian soldiers their own.

Q. Do you know who distributed the food to the Italian kitchen and who distributed the food to the POW kitchen?
A. The officer in charge for food.

Q. Were the Red Cross packages kept at this same store?
A. I don't remember very well, but Red Cross food was stored near the kitchen in a separate part, next to the kitchen in a closed room.

Q. That's within the same building?
A. In the building of the kitchen.

Q. That's the POW kitchen?
A. Yes.

Q. In the stockade?
A. It was in the center of the camp on the road which led from the entrance through the camp to the middle of the camp.

President: Any other questions by members of the Commission?

Questions by Major Gambrill:

Q. Did you ever know an American prisoner called Mulatto, known as Mulatto?
A. I don't remember.

Q. Did you ever know one whose name was Serrano?
A. No.

Q. Do you recall a tent occupied by the prisoners being destroyed by fire?
A. Not from fire. Once they were destroyed by wind, damaged not destroyed, damaged by wind.

Major Cambrill: That's all.

Questions by Major Williams:

Q. How many times a day were the prisoners required to fall out for roll-call?
A. Once in the evening when the guards were changed, at about five or six o'clock, I don't remember now. Once in the morning when they were wakened up and once again they were called on the change of the guard, and twice in the night there was a bed check.

Questions by Lt. Colonel Lucree:

Q. What was the name of the camp adjutant?
A. Captain Nascia at first and Captain Calanchi later.

Q. Was it possible for Captain Nascia to punish prisoners of war?
A. I don't know.

Q. Was Captain Nascia ever officer of the day?
A. No because he was Captain and then he was adjutant major.

Q. Was Captain Nascia ever inspecting officer?
A. No, I don't think so.

Q. It was possible for officers of the day to punish prisoners?

President: Wait a minute. That is not regular.

Lt. Colonel Lucree: He has testified. I want to verify that. He has said it was possible.

Defense: He testified at a rebellion as an emergency.

President: All right answer the question.

Lt. Colonel Lucree: Give me that question.

A. As I already said only in case of a rebellion.

Q. Ask him if he knew General Perugi?
A. Only from hearsay. I only heard his name.

Q. Ask him if he ever saw General Perugi?
A. I don't remember having seen him.

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Q. Did he ever hear how often General Peragi frequented the camp?
A. I heard that he came sometimes and that he was very severe and strict and we were afraid of him.

Q. How often did he frequent the place? Once a week, twice a week?
A. I have never seen him and all I heard about him is that he was very strict and that each time he came there was trouble.

Q. Were the officers of the camp afraid of General Peragi?
A. They all said they were.

Q. Did Colonel Oldani carry a riding crop, a riding stick?
A. Yes.

Q. Did he, the witness, carry a riding crop?
A. No.

Q. Did the camp adjutant, did Captain Nascia, did he carry a riding crop?
A. I don't think so.

Lt. Colonel Lucree: That's all I have.

Questions by Lt. Colonel OKeefe:

Q. Did you ever see a whip, approximately one piece, with eight pieces of leather tacked to it hanging up anywhere in that guard house of the camp?

Defense: Maybe a picture would help.

Interpreter: He was wondering about the details

A drawing of a whip as described was shown to the witness.

A. No.

Q. Did you ever see any kind of a whip?
A. I only saw the Colonel's whip which was a regular riding whip like Cavalry officers used to have.

President: Any more questions from members of the Commission? Any questions by the defense, by the judge advocate?

Prosecution: Yes, sir, I have.

RECROSS-EXAMINATION

Questions by the Prosecution:

Q. Who was in charge of the kitchen within the PW inclosure?
A. The prisoners themselves.

Q. Did you have a member of the guard or a member of the Italian Army in charge?
A. I don't think so.

Q. Where was the bread that was issued to the prisoners made?
A. Like the bread for everyone it was made in the village.

Q. You have stated that an interpreter and a representative of the men were in charge of the Red Cross rations, who was the interpreter?
A. We had three interpreters in the camp. One was Lieutenant Trofolito, one was Mannino and Mario Minardi.

Q. Were all three interpreters plus the men's representative in charge of the Red Cross rations?
A. I don't remember exactly but I think all three of them, I think all three of them were in charge of these Red Cross parcels, but more than the other two I think it was the lieutenant.

Q. Do you remember a fire in the prisoners' tents made out of a bed or lumber out of the bunks or out of the blankets?
A. I don't remember.

Q. Do you remember any prisoners at any time building a fire in their tents?
A. I think that some small fires have been made inside the tents.

Q. Did the guard officer have authority to have prisoners whipped with belts for building fires in their tents?

Defense: Objection. He has already defined clearly what authority he had for punishing.

President: I thought the issue was clear. Do you want to ask in a specific case if the officer of the day had authority to impose punishment by whipping with a cartridge belt those men who built fires in their tents. Is that the content of the question?

Prosecution: I think it is generally about the same.

President: It looks like you have several elements in there, but the witness has said that the officer of the day had certain authority to punish. However, it may not be clearly defined in your mind. If you wish to ask it, I think your question can be made a little simpler.

Q. Do you know of any case where prisoners of war were whipped with cartridge belts?

Lt. Colonel OKeefe: Wait a minute that was not translated correctly. She added about the fire. That was not in the question.

President: Leave out the fire.

A. I have neither seen nor heard about that.

Q. What were your instructions in case prisoners of war built a fire in their quarters?
A. In case the fire was so big that it could have damaged the tents, I had orders to extinguish it, but if it was only a small fire to keep them warm at nights, I think I could leave it.

Defense: I have one question.

REDIRECT EXAMINATION

Questions by the Defense:

Q. Who had the key to the storeroom for the Red Cross packages?
A. I don't remember very well whether it was the interpreter and the representative. If it was both of them or one of them. I don't remember.

Q. Which interpreter?
A. I think it was the lieutenant and in his absence the other two, one of the other two.

Defense: If it please the Commission, possibly it is evident that there is some confusion in the previous testimony as to the visits of General Terugi. The defense desires to recall, with the Commission's approval, that he testified that most of his visits were made during September or November, whereas this witness did not report for duty until the 20th December.

Prosecution: If the Commission please, that is a matter of record before the Commission and the Commission will take judicial notice of it.

Defense: We are trying to bring those things out in the evidence.

President: Do you wish to ask any more questions of the present witness?

Defense: No, sir.

President: Do you wish to recall him?

Defense: No, sir.

President: Any more questions of the present witness? I don't understand your plan. Do you wish to recall the General?

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Defense: No, sir.

President: What do you wish to do now?

Defense: It was purely a statement by the defense.

President: It can be verified by the witness then. Let's not confuse the record.

Defense: I believe he has already testified to the time he arrived so we have no further questions of the witness at this time.

There being no further questions, the witness was excused and withdrew.

The Commission then recessed at 1230 hours and was reopened at 1400 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Defense: If it please the Commission the defense rests at this point.

President: Has the judge advocate anything further to offer?

Prosecution: Yes, may it please the Commission, the judge advocate would like to have thirty minutes at this time in order to have evidence in shape, rebuttal evidence.

President: You would like to have what?

Prosecution: Thirty minutes to prepare for rebuttal and get our witness.

President: You have other witnesses you wish to introduce?

Prosecution: Yes, sir.

President: The Commission will take a thirty minute recess. It is now about 2.05. Will you inform us when you are ready please?

The Commission then recessed at 1405 hours and was reopened at 1500 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: May it please the Commission, I'd like to ask whether or not the Commission would desire a reading of the law pertinent to the specifications filed in this case, at this time?

President: "The law pertinent to," will you further explain that?

Prosecution: The particular paragraphs under which the various specifications were drawn, as set forth in Field Manual 27-10, which is a reproduction, with explanations, of the Geneva Convention and the amendments thereto.

President: I think it would be quite appropriate.

Prosecution: Specification No. 1 is drawn under paragraph 83 of Field Manual 27-10, which reads as follows: "Installation of camps - Prisoners of war shall be lodged in buildings or in barracks affording all possible safeguards as to hygiene and healthfulness. The quarters must be fully protected from dampness, sufficiently heated and lighted. All precautions must be taken against danger of fire. As to the dormitories, the total area and minimum air space of dormitories, accommodations and bedding therein, shall be the same as those provided for the troops at base camps of the detaining power."

Lt. Colonel OKeefe: What is the date of that Field Manual.

Prosecution: The date of the Field Manual. U. S. Government Printing Office, 1940. Change 1, which does not affect this particular case, 15 November 1944. Specification No. 2 is covered by paragraphs 73, 119 and 127. Paragraph 73: "In power of enemy power; treated with humanity; reprisals prohibited - Prisoners of war are in the power of the enemy power, but not of the individuals or bodies of troops who capture them. They must at all times be treated with humanity and protected, particularly against acts of violence, insults, and public curiosity. Measures of reprisal against them are prohibited." Paragraph 119 was read this morning as well as paragraph 127. I will reread these two paragraphs, if the Commission desires.

President: Go ahead.

Prosecution: "119. Punishments; limitations; corporal; collective - Punishments other than those provided for the same acts for soldiers of the nationalarmies may not be imposed upon prisoners of war by the military authorities and courts of the detaining power. Officers, noncommissioned officers, or soldiers who are prisoners of war undergoing disciplinary punishment shall not receive less favorable treatment than that provided in connection with the same punishment for those of equal rank in the army. Any corporal punishment, any imprisonment in quarters without daylight, and, in general, any form whatever of cruelty is forbidden. Collective punishment for individual acts is also forbidden." Paragraph 127: "Maximum summary punishments. - Arrest is the most severe summary punishment which may be imposed on a prisoner of war. The duration of a single punishment may not exceed 30 days. Furthermore, this maximum of 30 days may not be exceeded in the case of a prisoner subjected at one time to summary punishment for several

acts, whether these acts be connected or not. When, during or after the end of a period of arrest, a prisoner shall have a new summary punishment imposed upon him, a space of at least three days shall separate each of the periods of arrest, if one of them is ten days or more." Specification 3 is under the same paragraphs, likewise specifications 4 and 5. Specifications 6 and 7 are also under the same paragraphs. Specification 8 is under paragraph 83, specification 9 under paragraph 84. "84. Rations; collective disciplinary measures affecting.- The food rations of prisoners of war shall be equal in quantity and quality to that of troops at base camps. Furthermore, prisoners shall receive facilities for preparing themselves, additional food which they may have. A sufficiency of potable water shall be furnished them. The use of tobacco shall be permitted. Prisoners may be employed in the kitchens. All collective disciplinary measures affecting the food are prohibited." Specification 10 is under paragraph 102. "102. Work for prisoner physically unfit prohibited.- No prisoner of war may be employed at work for which he is physically unfit." There are several sections here covering work. "103. Length of day's work.- The length of the day's work of prisoners of war, including therein the trip going and returning, shall not be excessive and must not, in any case, exceed that allowed for the civil workers in the region employed at the same work. Every prisoner shall be allowed a rest of 24 consecutive hours every week, preferably on Sunday." Specification 11 is under paragraph 79. "79. Effects that may be retained by prisoners.- All effects and objects of personal use - except arms, horses, military equipment and military papers - shall remain in the possession of prisoners of war, as well as metal helmets and gas masks. Sums in the possession of prisoners may not be taken away from them except by order of an officer and after the amount is determined. A receipt shall be given. Sums thus taken away shall be credited to the account of each prisoner. Identification tags and cards, insignia of rank, decorations, and objects of value may not be taken from prisoners."

Prosecution: The prosecution calls as its first rebuttal witness Mario Minardi, a witness who has previously testified in this case.

Mario Minardi, an American citizen, was recalled by the prosecution in rebuttal, reminded he was still under oath, and testified as follows:

TESTIMONY IN REBUTTAL FOR THE PROSECUTION

DIRECT EXAMINATION

Questions by the Prosecution:

Q. Are you the same Mario Minardi who previously testified in this case?
A. Yes.

Q. Where, if you know, were the Red Cross parcels and packages kept at PG 98?
A. In the group of houses outside the camp up on the hill where the commanding officer had his office.

Q. How many buildings were there, if you know?
A. About five.

Q. How far from camp was that?
A. At the extremity of the camp. It must have been just about three hundred yards or a bit higher.

Q. In other words, up on the hill above camp, is that right?
A. Yes, sir.

Q. Can you tell us how those buildings were built?
A. The form of a U. A group of houses and then two coming out forming a U.

Q. Can you describe their appearance from the location of the PW inclosure?
A. They seemed all one house, all one building.

Q. What would it look like?
A. I don't know what it looked like.

Q. Well, would it appear like a large building?
A. A large building, that is what I said, one building.

Q. One large building?
A. Yes, sir.

Q. Did it resemble a castle in any way?
A. Some prisoners of war would call it a castle where the commanding officer had his office.

Q. In what building were the Red Cross parcels kept, if you know?
A. In the same building where the commanding officer had his personal office.

Q. How large was that room?
A. About as large as this inside section here, beginning here.

Q. Did you ever see those Red Cross packages and boxes?
A. Yes.

Q. When?
A. When they arrived.

Q. Did you see them later?
A. Yes, I saw them afterwards when the camp was abandoned.

Q. Will you tell the Commission the quantity of Red Cross parcels and packages there when the camp was abandoned, if you know?

A. There was nearly about the same quantity as when they arrived. The room was nearly full.

Q. Had there been any distribution of Red Cross parcels?
A. Yes, a small quantity only.

Q. What became of the Red Cross parcels that were left?
A. After the camp was abandoned, first, I heard, on the previous night, from the people in town - I was in town at that time - that some trucks had gone during the night to load up some parcels. Early the next morning I went to the camp and I saw the lieutenant interpreter who had the door open and he was giving out those parcels to the local Fascists. One was the Mayor of the town of St. Joseph. I went over to the lieutenant and told him he was not supposed to give those parcels away, because they belonged to the International Red Cross and he tried to intimidate me, saying he was my superior officer. I then told him that he would take the responsibility. He, on hearing these words, said, "I am leaving, I am an old man. I don't know anything about this." I picked up a gun that was lying there. I defended those parcels against these Fascists who started shooting at me and I kept shooting at them until I ran out of ammunition, and just about that time the first American armoured car approached.

Q. What organization was that, if you know?
A. The Rangers, 7th Army.

Q. Did you later talk to any American Army officer?
A. Yes, I presented a complete list of all the prisoners of war that had passed through the camps and where they had gone to, which I had made secretly with the help of the prisoners of war, and also I told them that some of the Red Cross parcels had been taken by the local Fascists and we collected them off those local Fascists.

Q. Did any of those officers give you a communication of any kind - written communication?
A. Yes, they gave me a letter.

Q. Do you have that letter now?
A. Yes.

Q. Will you produce it?

Prosecution: If the Commission please, I request authority to read this letter to the Commission, but not file it as an exhibit in this case, in order that it may be returned to Mr. Minardi.

President: Is it acceptable to the Defense?

Defense: We have no objection to having it read and returned to him. Do you want this a part of the record however?

President: The document will be read in open court.

The judge advocate read the following letter to the Commission:

"Headquarters, Second Armoured Division
APO 252, C/o Postmaster.

24 July 1945

To the Allied Military Government of Occupied Territories.

Mr. Mario Minardi, Via Cusimano 32, St. Joseph, Sicily, is believed to be an American citizen, although he has no documentary evidence on hand to substantiate the fact. His passport was turned over to the Swiss Legation in Rome, in an effort to be interned in Italy as an American citizen, after the war commenced. Mr. Minardi has undoubtedly been of great service to Allied prisoners of war who were in the prison camp, vicinity St. Joseph (Palermo) Sicily. Upon the arrival of our troops in the Palermo area, he promptly reported to AC of S, G-2, this headquarters, with a complete list of Allied prisoners of war who had passed through the local prisoner of war camp. Amongst those prisoners were one officer and six men of this division, who had been captured vicinity Agrigento on 14 July 1943. Mr. Minadri was of considerable service to these men and even went so far as to arrange their escape, which, unfortunately, was not accomplished. When the PW camp, vicinity St. Joseph, was evacuated by Italian officials and local vandals attempted to loot American Red Cross supplies for Allied prisoners of war at St. Joseph, Mr. Minardi defended these supplies with gunfire, at the risk of his own life, until he ran out of ammunition.

Headquarters, 7th U. S. Army, have been notified of this case by the AC of S, G-2, Second Armoured Division, and a recommendation submitted that this man's services be used by AMGOT. Due to the difficulties of communication and movement of this division, proper action may not yet have been taken to clarify Mr. Minardi's status.

In this event, it is requested that Mr. Minardi not be considered as an Italian prisoner of war, but that further steps be taken to utilize his services officially for the U. S. Army through AMGOT.

Mr. Minardi states that he is willing to enlist in the U. S. Army and fight with the forward elements if this will further prove his American citizenship, which is now difficult to establish by direct documentary evidence. Mr. Minardi has valuable evidence of Italian

PW camps and their administration in Italy and Sicily, as well as lists of Allied prisoners. This information and services which can be rendered by Mr. Minardi are believed to be of value to the Allied cause and should be given consideration.

(Signed) B. M. Bailey, Jr.
Major, Cavalry,
Assistant, G-2."

Questions by the Prosecution:

Q. Was the room containing the Red Cross supplies kept locked at all times?
A. Yes.

Q. Who, if you know, had the keys?
A. The lieutenant interpreter.

Q. Was there more than one lock on the door?
A. I don't remember.

Q. Was there a well in the prison compound?
A. Not in the prison compound.

Q. Was there a well in PG Camp 98?
A. Yes, outside the camp.

Q. What was the source of water supply for the prisoners?
A. They received their water from a nearby town called Plain of the Greeks. There there was an artificial lake that supplied this water.

Q. Was it made available to the prisoners so they could get it at any time?
A. There were about six fountains near at the latrine on the upper part of the camp.

Q. Do you mean fountains or spigots?
A. Spigots.

Q. How many latrines were there in camp?
A. One big one.

Q. And where was it located?
A. An upper section of the camp.

Q. What water supply did the other sections have?
A. They had to go up to the upper section to receive it.

Q. Into how many sections was the camp divided?
A. Into three sections, two for the healthy prisoners of war and one isolation section where the very sick were kept.

Q. And the water for the entire camp, that is for the entire compound, was supplied from six or seven spigots at the one latrine?
A. Yes, sir.

Q. How many flagpoles were there in camp?
A. Inside the camp?

Q. In PG 98?
A. There were three.

Q. Where were they located?
A. Two were inside the camp and one was outside at the commander's office, outside the commander's office.

Q. By inside the camp you mean inside the prisoners' compound, is that correct?
A. Yes.

Q. You speak of a lieutenant interpreter. Were there any other interpreters?
A. Yes, corporal major. Name was Mannino.

Q. How many stripes did he have on his arm?
A. Three.

Q. What was your rank?
A. Equivalent to private first class in the American Army.

Q. How many stripes did you have?
A. One.

Q. Can you tell the Commission the size of the blankets issued to the prisoners of war?
A. They were Italian issued blankets for the Italian Army, two yards by three yards.

Q. Do you know what they were made of?
A. They were called woolen blankets.

Q. Do you know whether or not they were wool?
A. They were very thin blankets. I do not think they were all wool.

Q. How many of these so-called blankets was issued to each prisoner of war, if you know?
A. Two.

Q. In addition to your duties as interpreter, did you have any other duties in the camp?
A. Yes, my main duty was to assist the doctor, interpreting for the doctor during the sick call.

Q. Were there any epidemics or diseases of any kind in camp while you were there?
A. Yes, there were three epidemics.

Q. When if you know?
A. One was at the old site. It was about June 1942 and the other two were at the new site. One was in December and the other in February 1943.

Q. How many men, if you know, were affected?
A. Nearly all of them were sick at that time when there was an epidemic.

Q. What kind of an epidemic was it?
A. There were two dysentery and one diptheria.

Q. Speaking particularly of the new location, PG 98, what were those epidemics?
A. One was diptheria and the other dysentery.

Q. I will get you to state whether or not the work for the prisoners continued just the same, or was it lessened during the period of epidemic?
A. Some would be called on to continue the work, if they were not needed by the specialists who came from Palermo to visit them.

Q. What do you mean? Did the work continue or did it not?
A. Yes, it did continue.

Q. Did you at that time assist in receiving of prisoners of war into Camp 98?
A. Yes.

Q. How many different occasions, if you recall?
A. Whenever I was on duty I assisted.

Q. What were your instructions?
A. At first we only would take their money, their currency and weapons, knives or something that looked like a weapon. From about February 1943 we received orders to take their personal objects, as rings and watches from the prisoners of war, put them in envelopes, put the prisoner of war name and number on the envelope, and have the prisoner of war sign that envelope and the envelope was sealed in his presence and a list would be made at the same time.

Q. From whom did you receive that order?
A. From the lieutenant interpreter.

Q. Do you know whether or not that was the general order for the camp?
A. Yes.

Q. You have previously testified, I believe, that the prisoners of war lived in tents, I will get you to state whether or not the tents leaked?
A. Yes, sometimes they leaked.

Q. As a result of leaking tents, did the ground within the tents become muddy, or do you know?
A. Yes, they would. They did not leak from the top. The ground would sort of slide down around the tent and the water would come in around the edges of the bottom of the tents.

Q. You have previously testified concerning the ration or issue of bread. In order to clarify will you tell the Commission the number of loaves and approximate weight issued to each Italian soldier per day and to each prisoner of war per day?
A. The Italian soldier received one loaf a day. About the weight, I don't know the weight of the loaf. The prisoner of war would receive two loaves per day and each loaf was two hundred grams.

Q. What would you say the loaf issued to the Italian soldiers would weigh?

Defense: Objection. This line of questioning is irregular because there is no showing that these Italian soldiers were in a base area. If they received one thousand grams a day, it is not relative.

President: It is the desire to show the differences between the amounts issued PWs and Italian soldiers.

Defense: If there is a showing that these Italian soldiers here were in a base area because that is the test. Are the prisoners receiving an amount equal to Italian soldiers in a base area? If this is not a base area, the figures are irregular.

President: The members of the Commission can draw their own conclusion, unless definition of the camp can be made clear as to whether or not it is a base camp?

A. About five hundred grams.

Q. Was there a difference in color of the bread issued to the Italian soldiers and the prisoners of war?
A. Yes.

Q. What was that difference?
A. The Italian loaf was of a much lighter texture and the texture was much better.

Q. Do you know why each prisoner of war received two two hundred - two loaves of two hundred grams each, or why they made bread of two hundred grams to issue?
A. Because if they were not working they were supposed to receive only one loaf of two hundred grams.

Q. In your previous testimony you stated that you heard of a commotion down at the gate and, following that report, you went to the gate, is that correct?
A. Yes.

Q. Did you have a conference with the accused, Colonel Oldani, or did you talk to him at that time?
A. Yes.

Q. What, if anything, in substance did he say to you?
A. He was very agitated and I asked him what had happened and he said that a prisoner of war had called him a bad name, as if he didn't understand it, and he had understood it, and he had struck him with a riding whip. They had a fight over it. The prisoner of war tried to strike him with his fist.

Defense: What was that answer? I did not hear it.

President: Repeat it from the record now.

The reporter repeated the answer.

Q. Did Colonel Oldani customarily carry something in his hand?
A. Yes.

Q. What?
A. A riding whip.

Q. Were you at Camp PG 98 at Easter time?
A. No.

Q. When did you return, if you recall?
A. About a week after Easter.

Q. Was there an incident among the prisoners of war that was related to you, following your return?
A. Yes.

Q. What was that, if you know?
A. At that time there was a Medical Corps Captain of the American Army and about seven lieutenants, or second lieutenants, and they were all very angry about an incident that had happened right after Easter. They told me that two prisoners of war had escaped from the camp, had been caught and tied to the flagpole that was outside the kitchen, handcuffed to the flagpole and they were very angry about it and they told me to go up to the Colonel and speak to him.

Q. And did you speak to him?
A. Yes.

Q. And what, if anything, did he say?
A. I told him that I thought it was not nice that they should be tied to the flagpole and also the American officers were angry about it, and he said he had put them there as an example for other prisoners of war not to escape from the camp.

Q. In your previous testimony you stated that you heard of a commotion down at the gate and, following that report, you went to the gate, is that correct?
A. Yes.

Q. Did you have a conference with the accused, Colonel Oldani, or did you talk to him at that time?
A. Yes.

Q. What, if anything, in substance did he say to you?
A. He was very agitated and I asked him what had happened and he said that a prisoner of war had called him a bad name, as if he didn't understand it, and he had understood it, and he had struck him with a riding whip. They had a fight over it. The prisoner of war tried to strike him with his fist.

Defense: What was that answer? I did not hear it.

President: Repeat it from the record now.

The reporter repeated the answer.

Q. Did Colonel Oldani customarily carry something in his hand?
A. Yes.

Q. What?
A. A riding whip.

Q. Were you at Camp PO 98 at Easter time?
A. No.

Q. When did you return, if you recall?
A. About a week after Easter.

Q. Was there an incident among the prisoners of war that was related to you, following your return?
A. Yes.

Q. What was that, if you know?
A. At that time there was a Medical Corps Captain of the American Army and about seven lieutenants, or second lieutenants, and they were all very angry about an incident that had happened right after Easter. They told me that two prisoners of war had escaped from the camp, had been caught and tied to the flagpole that was outside the kitchen, handcuffed to the flagpole and they were very angry about it and they told me to go up to the Colonel and speak to him.

Q. And did you speak to him?
A. Yes.

Q. And what, if anything, did he say?
A. I told him that I thought it was not nice that they should be tied to the flagpole and also the American officers were angry about it, and he said he had put them there as an example for other prisoners of war not to escape from the camp.

Q. Do you know, or was it reported to you, whether their hands were in front or behind their back when they were fastened to the flagpole?
A. Yes, they were handcuffed with their backs to the flagpole and their hands behind them.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. Mr. Minardi, let's go back to the middle of July 1943. You testified about an incident which preceded the arrival of the American troops. Do you recall the date?
A. Of the arrival of the American troops?

Q. Yes.
A. It must have been only about four days after the invasion, not more.

Q. Was this in the north part of Sicily?
A. Yes, north west.

Q. You don't recall the exact date when the American troops arrived?
A. No, I don't recall.

Q. Could you take a guess, it being rather an important event?
A. About the 14th or 15th.

Prosecution: If the Commission please, we object to the witness giving a guess.

President: He has offered many approximate dates in his testimony. If he can offer one now, it is quite correct.

A. If I remember properly, the invasion started on July 10th and it must have been the 13th or 14th.

Q. Was this one of the big moments in your life, when they arrived?
A. Yes.

Q. Isee that letter is dated 24th July, is that true?
A. I don't remember.

Q. Does that help you place the date of the arrival of American troops?
A. No. That letter was written to me when that unit moved out to that vicinity.

Q. Now let's go back a bit before the arrival of the American troops. This letter states that the camp was evacuated by Italian officials and local vandals attempted to loot American Red Cross supplies. Is that a correct statement of what happened?

A. Local vandals, yes, because at that time a great number of people tried to get into that room. It was not just a small group.

Q. I see. I imagine - is it true that this was a general practice in Sicily after the departure of the Germans and Italians and before the arrival of the Americans?
A. I don't know. I was no other place.

Q. Where was Colonel Oldani at this time?
A. He had left the camp about two days before.

Q. Do you recall the date of his departure?
A. I remember distinctly that it was a day and a night before the Americans arrived.

Q. Was that - state whether or not Colonel Oldani had any part in this attempt to remove illegally these Red Cross parcels? Did he take any part in this attempt to remove these parcels?
A. I don't know.

Q. You didn't see him?
A. No, I heard that he was looking for me the night he left and I was not at the camp at that time.

Q. At the time Colonel Oldani left, were conditions, would conditions in Sicily have permitted him taking with him the Red Cross parcels?

Prosecution: If the Commission please, we object to that.

Defense: I will withdraw the question and lead up to it.

Q. In these days before the arrival of American troops, was there a great deal of confusion in this part of Sicily?
A. No, no movement at all.

Q. No movement at all. In view of this confusion - -

President: Did he answer your last question?

Q. In view of the fact that there was no movement at all, would it have been possible for Colonel Oldani to take these supplies with him?

Prosecution: If the Commission please, that calls for a conclusion on the part of this witness.

Defense: Well, he was there and in a pretty good position to observe. The purpose is this. They have implied that Colonel Oldani had something to do with the illegal use of these packages. We are trying to disprove that. He could not have. If that is not their purpose, why did they mention this incident?

President: Can you ask that in a simple way, such as - Did you see Colonel Oldani take any packages with him when he left?

Defense to witness: Will you answer that question?

A. No, I was not there at the camp when he left.

Q. Did the soldiers in Camp 98 rely upon the same water supply as the prisoners?
A. Yes.

Q. You drank that water?
A. Yes.

Q. Was there any objectionable quality about that water?
A. Not at the new camp.

Q. Would you consider it as potable, very good water?
A. Yes.

Q. Did you ever observe any shortage among the prisoners of water at the new camp?
A. I don't know what you mean by shortage.

Q. Did the prisoners have sufficient water normally?
A. The water was running all day long.

Q. Was this water ever polluted by the latrines?

Prosecution: If the Commission please, we object. We do not think that this man is in a position to state if it was polluted.

President: You can get that in another way by asking the position of the latrines in location to the water.

Defense: He has already testified to that, sir, on direct examination.

President: He has testified that the water came from a separate source; that there was a supppy of good water that came from outside the camp; that the latrines were in the camp; there were devices in the camp, and the members of the Commission assumed that there was no possibility of contamination.

Defense: Withdraw the question.

Q. You reported that there were two epidemics in the camp at San Giuseppe, one involving dysentery. Did most of the prisoners - do you know whether most of the prisoners were afflicted with this dysentery when they arrived from Africa?
A. A great number of them, yes.

Q. Were they afflicted when they arrived?
A. Yes, they were sick already.

Q. Was there a doctor in attendance at the camp at this time?
A. Yes.

Q. Was he on duty during the day?
A. Yes.

Q. Was he on duty during the night?
A. I think he slept outside the camp.

Q. I believe you stated you were assigned to the Medical Corps, is that true?
A. Yes.

Q. Were there other enlisted personnel at this camp assigned to the Medical Corps?
A. Yes.

Q. Do you recall how many?
A. Two.

Q. If patients, if the condition of patients became critical, were they ever removed to hospitals?
A. Yes.

Q. Where?
A. To the main hospital at Palermo.

Q. Did all medical personnel in this camp use their best efforts to prevent, to check these epidemics?
A. They helped the doctor.

Q. Did they use their best efforts? Did all medical personnel, I include the doctor?
A. Yes, the doctor did very much.

Q. Could you observe any laying down on the job on the part of the doctor or any other medical personnel?
A. No.

Prosecution: We object to that?

President: On what basis please?

Prosecution. It is repetition and repeating the same thing over. Let this man tell what he did but he does not know what everybody else did all the time.

President: Is there an objection to the answer that the medical men who were on duty in Camp 98 made reasonable efforts to prevent infectious sicknesses?

Prosecution: I believe the last question will cover that.

Defense: Laying down on the job is a condition which one observes. We know what it means and it is pretty vital on the question of whether - -

President: Why don't you ask if the medical people on duty at the camp took ample means to prevent sickness?

A. With the small quantities of medecine they received, they did their best to prevent sickness.

Q. As to the second epidemic, diptheria, do you recall the approximate number of patients who were afflicted with diptheria?

A. The isolation ward was completely full at that time. I don't know the number. It was serious enough that they thought it would spread to the nearby town.

Q. Was any investigation conducted to determine the reason for this epidemic of diptheria?

A. Yes.

Q. Do you know what the reason was as determined by this investigation?

A. It was spread from one person to another. That's what I gathered.

Q. Did the investigation show how it originally entered the camp?

A. No, I did not talk to the specialist about where it came from. A doctor can answer that.

Q. In connection with this diptheria epidemic, did all the medical personnel make reasonable efforts to control the epidemic and cure the individuals?

A. Yes.

Q. Do you know whether prisoners were compelled to work against their will?

A. I know that when workers were necessary, orders would be given by the officer of the day to the tent leaders to gather so many men.

Q. Was it the responsibility of the tent leaders to select the men?

A. No, just to take them up, to get them.

Q. Was it his responsibility to get the group together?

A. Yes.

Q. Did any Italian officer or soldier ever come in the tents and order specific individuals to work?

A. Sometimes, when they did not come out fast enough.

Q. Were these individuals who had previously been selected by the camp leader, I mean the tent leader?

A. The tent leader would tell the whole tent to file out for work and some would tarry, then the Italian soldiers would go in.

Q. Did you ever see a prisoner who obviously was very sick, obviously was ill, being required to go to work by an Italian guard?
A. Did I ever see it?

Q. Yes.
A. No, I never saw it.

Q. You stated that during these two epidemics, work at this camp continued. By that do you mean that the individuals who were well continued to carry on the work of the camp?
A. Yes.

Q. Do you know whether some of the prisoners had, in losing watches - withdraw that question - You stated that in February 1945, by order of the lieutenant interpreter, new prisoners were required to leave their watches and rings and personal valuables, as well as money. Prior to that time had there been, to your knowledge, any cases of people losing their watches in the camp?
A. Not losing them, selling them, yes.

Q. Did you hear in this camp the reason for this order of February, this order we are discussing requiring that watches be left, be checked so to speak?
A. It might have been a precaution in case the prisoners of war - I didn't hear anything - it might have been a precaution in case they escaped, to sell them for food or something like that, I don't know exactly why the order was given.

Q. Do you know whether the camp officials discouraged, before the order was in effect, discouraged prisoners from selling their personal belongings?
A. They could not stop them.

Q. But did they ever take measures to prevent it?
A. Yes.

Q. Do you know whether they ever punished Italian soldiers for buying these things?
A. Yes.

Q. Can you recall the number of instances when Italian soldiers were punished?
A. A few times. I don't remember.

Q. Do you know whether they were punished by the application of manacles?
A. I heard of one case where he was handcuffed for that reason.

Q. You have testified that when the prisoners entered the camp after February, they left their belongings in an envelope and got a receipt. When a prisoner departed from the camp, do you know whether there were any complaints about the items not being there?

A. No, because the prisoners did not check them, the articles in the envelopes. The envelopes were sealed.

Q. Do you mean to say that when the prisoners left the camp the articles were still sealed in the envelopes?
A. All their valuables would go where they went.

Q. You reported that, on occasions, water got in these tents along the ground. Do you know whether an attempt was made to prevent this by digging a ditch around the tent?
A. Yes, ditches were dug around each tent because they were always breaking down because the camp was on a steep slope.

Q. How often during the winter of 1942, 1943 would you estimate that water entered the tents? Was it on unusual occassions, unusual storms, or was it the average storm?
A. During every heavy rain.

Q. How many times during the winter would you estimate that water entered in that manner?
A. I don't remember how many times it happened. We would see to have it repaired.

Q. You would see to have it repaired? How?
A. If it broke down, it would be repaired up.

Q. Did water ever enter your barracks?
A. When I was living in the tent, yes.

Q. Did the wooden barracks on occasion leak through the roof?
A. Yes.

Q. Throug. the crevices, the cracks in the boards in the wall?
A. No only on the roofs.

Q. What was the floor like in your tent? Was it this earth?
A. At first I was living in a tent before the medical room barracks was built. It was earth.

Q. You lived in the medical room barracks?
A. Yes.

Q. Were they just earth, the medical room barracks?
A. No, wooden floor.

Q. Was that true of the other barracks for soldiers or only the medical barracks?
A. The Italian soldiers' barracks were the same, wooden floors.

Q. Are you sure of that?
A. In the new camp yes. In the old camp it was not. We were sleeping on the ground in the old camp.

Q. You said you believed that the loaf of bread received by the soldiers weighed five hundred grams. Is that just an estimate on your part, or did you know exactly?
A. No, I don't know exactly. It is an estimate.

Q. Now, as to prisoners who were not working, you stated that they were supposed to receive two hundred grams daily. When you used the word "supposed" what did you mean by that? Did you mean less or more.

President: Excuse me for interrupting. I thought you were about to confuse him by asking two questions when you wanted an answer to one.

The reporter repeated the question.

Prosecution: We object to that question. It is very ambiguous.

President: The question, as far as it has gone, seems to be proper, if you don't add another clause to it.

A. I said "supposed" because if they were not working, they should have received one loaf, but the commander of the camp had put the whole camp on two loaves of bread.

Q. Had he put the whole camp on workers' rations?
A. Yes.

Q. Now, in matters of discipline in the camp among the soldiers was the Colonel a severe man who demanded salutes and all of the formal formalities to which a commanding officer is entitled?
A. Well, the soldiers were supposed to salute him and they did every time they passed, but the Italian soldiers were not very attached to discipline, nonchalant.

Q. Would a soldier approaching the Colonel to speak to him, would he come to attention?
A. Yes.

Q. Would he sit down without the Colonel's permission?
A. No.

Q. Would a soldier in coming to the Colonel's office first have to ask permission from one of the other soldiers or officers in order to see the Colonel?
A. No, he must ask permission of the Colonel himself.

Q. In connection with this Easter incident, you stated that you went to the Colonel and you told him what you heard "was not nice." Did you normally conduct relations with the Colonel on a friendly informal basis?
A. Yes.

Q. What was your rank at the time?
A. Private first class.

Q. Was it customary, did you customarily go to the Colonel and tell him when some things were not nice?
A. No, but he always spoke to me differently from the Italian soldiers..

Q. Did the Colonel come to you for advice and guidance - advice before he would make a decision on punishment?
A. No.

Q. Did he invite your comments on the decisions he had already made?
A. No.

Q. When you came up to Colonel Oldani and told him that this was not nice, did he take offense?
A. No. He explained why he had put them on the flagpole, because they had escaped and to show that other prisoners should not escape.

Q. Did he on other occasions explain to you the reasons for his decisions?
A. Which decisions?

Q. Any decisions he made?
A. Not towards running the camp.

Q. Why, in this particular occasion, did he explain to you?
A. Because I asked him.

Q. Did other soldiers, privates first class, come up to the Colonel and say, "Colonel, why did you do this?" Do you know?
A. No.

Q. Were you an exception?
A. Yes.

Q. Why do you feel that you were an exception?
A. Because from the very first when the Colonel met me at the camp I had told him that I was an American, and I always felt like an American and he should always look to me as an enemy, he should never know when I might escape, and he said he admired my frankness instead of some Italians who think in two ways.

Q. Was Colonel Oldani sympathetic to the Americans?
A. To all the prisoners.

Q. Would you say that he, in general, liked Americans?
A. Not particularly Americans more than anybody else.

Q. Knowing him well, as you did, would you say that he had any hatred for prisoners?
A. No.

Q. Did he seem concerned with the welfare of the prisoners?
A. Yes.

Q. Do you know whether he did things to benefit the welfare of prisoners?
A. At one time he sent me home on leave to get my guitar, so we could have parties and singing with the prisoners, and he would attend it sometimes though it was against Italian regulations.

Q. Did he occasionally invite country people into the camp?
A. No, but the people of St. Joseph did come about three or four times to bring presents to the prisoners of war and the commander had to put a stop to that.

Q. By the commander who do you mean?
A. Colonel Oldani.

Q. Why did he have to put a stop to it?
A. It was against Italian regulations.

Q. Did you ever see Colonel Oldani swear or curse at a prisoner?
A. No.

Q. Was he always respectable in his treatment?
A. Yes, always smiling and joking with them.

Q. When you first heard of these charges, did it come as a surprise to you?
A. Yes, I am very surprised.

Q. You say you were surprised. Why were you surprised?

Prosecution: I'd like you to be specific on the charges here. I don't know what charges you refer to.

Defense: By charges I mean the charges of this trial. Does that change your answer?

Q. Why were you surprised?
A. Because I thought they were exaggerated.

Q. Based on your long knowledge and acquaintance with Colonel Oldani, would you appear on his behalf as a character witness?
A. Yes, I don't see why I would not.

Q. Going back to some of the things you related this afternoon, particularly the supply of Red Cross parcels, how often were supplies of Red Cross parcels received?

A. That is a very hard question to answer because at first they were given very scarcely, a doctor had to ask for them for the isolation ward.

Q. I mean how often were they received in the camp?
A. I think they only arrived two times.

Q. Can you recall approximately when they arrived?
A. About February 1945.

Q. Was that the first shipment?
A. Yes and the second came right after that.

Q. Prior to February 1945, there were no - were there no Red Cross packages in the camp?
A. There were not any.

Q. Had Red Cross parcels arrived at Boturro?
A. No.

Q. Do you recall whether any of the officers, Colonel Oldani included, expressed surprise or annoyance because Red Cross parcels had not arrived?
A. No, I cannot remember.

Q. Did anyone comment upon the fact that through 1942 and up until February 1945 this camp had not received Red Cross parcels?
A. I did not hear anybody.

Q. Did you, as an American, know, have any knowledge about the amounts of money people were contributing at home for Red Cross supplies?
A. I did not know exactly, but I was sure they were giving everything they could.

Q. Did it not surprise you that none of these supplies arrived until February 1945?
A. I just thought that the administration of them was not handled right.

Q. Administration where?
A. In Switzerland, in Geneva where the headquarters was.

Q. When these supplies did arrive, did a representative of the Swiss Government accompany them?
A. No.

Q. Do you know how many units of Red Cross supplies, how many boxes arrived the first time, the approximate number?
A. The first were medical supplies. They were very small parcels. Not a great number of them.

Q. Were those medical supplies used whenever needed in the infirmary?
A. Yes, the doctors specifically asked for them.

Q. Do you know whether the doctor was ever refused when he needed medicines? Was he ever refused?
A. No.

Q. The second shipment arrived in - -
A. A few weeks later.

Q. February or March?
A. I cannot remember definitely.

Q. Do you know what the contents of those parcels, these supplies were?
A. Food and books and cigarettes.

Q. Were the books in English?
A. Yes.

Q. Were they distributed?
A. Yes.

Q. All of them?
A. I don't know if all of them were distributed. I did not see how much arrived.

Q. Did anyone ever inform you that they were keeping some of these books in the storeroom?
A. No.

Q. Did cigarettes come in separate cartons or were they part of a general food parcel?
A. I didn't see in what form they arrived.

Q. Well, did you see them at any subsequent time?
A. I saw the cigarettes distributed in the parcels.

Q. To the prisoners?
A. Yes.

Q. Did you see members of the soldier staff smoking American cigarettes?
A. There were not any American cigarettes.

Q. What type of cigarettes were these?
A. As far as I know the only cigarettes I saw the prisoners issued were English cigarettes - Players.

Q. Did you see any of the Italian soldier personnel smoking Players cigarettes?
A. No.

Q. Did you see what types of food were in these parcels?
A. Yes.

Q. Can you tell us briefly?
A. Yes, there were cans of salmon, herring, cans of milk, different jams, butter, not butter margarine, bacon, food in general.

Q. The fact that they had no butter but instead had margarine would suggest that these parcels were British?
A. No, they were from the International Red Cross.

Q. They were not designated as for British or American?
A. They were given to all of the prisoners of war.

Q. Regardless of nationality?
A. Yes.

Q. Did the American soldiers complain about receiving Players cigarettes?
A. No, they were glad to have them.

Q. And when these items were distributed, take for example the canned goods you mention, the salmon and the herring, would that be added to the meal ration for a particular day? Would it be turned over to the cooks?
A. It would be turned over to the prisoners that were cooking for the whole camp.

Q. And would be served as part of the meal?
A. Yes.

Q. Would the same be done with the margarine and other items?
A. No. I think the margarine was distributed say one can among four or five prisoners and they had to return the empty cans.

Q. Why?
A. As a precaution.

Q. Did you ever see Italian soldiers eating these canned sardines or herring?
A. No.

Q. Did you ever see Italian soldiers using any of these supplies?
A. No.

Q. How many times a week was there a distribution of these supplies, say in March or April - any of these months after they came in?
A. Two or three times a week.

Q. Did you hear any prisoners complaining because there was not more frequent distribution?
A. Yes.

Q. You knew some of these prisoners pretty well, in your opinion, would they complain if supplies were distributed twice a day, some of them?
A. It is hard to answer that question. Do you mean that as individuals?

Q. Yes, some of these individuals are the type who would always complain.

Prosecution: If the Commission please, we object to that question.

President: That is improper questioning.

Defense: Strike that.

Q. Were you ever present when any of these supplies were distributed?
A. No, never.

Q. Was it the lieutenant interpreter who had one of the keys who was present?
A. He was the only one that distributed.

Q. Do you know whether the representative of the prisoners also was present at the time of distribution?
A. Yes, he would go up to the building to receive it.

Q. What type of key did the representative of the prisoners have?
A. I don't know if he had a key.

Q. You are not sure one way or the other whether he had a key?
A. I am not sure if he had one or not.

Q. Would the interpreter lieutenant permit Italian soldiers - would the interpreter lieutenant permit prisoners to go up into the storeroom where these parcels were kept?
A. Only when they were supposed to be issued as supplies. They could not go out of the camp when they pleased.

Q. Do you know whether Italian soldiers were permitted to go into the supply room?
A. I think some of them helped the lieutenant divide these parcels?

Q. By that you mean those who worked within the storeroom?
A. Yes, sort of warehousemen.

Q. Do you know whether the lieutenant took any precautions to see whether these workers you have described did not fill their pockets?
A. I don't know if he took any precautions. They must have been faithful men to select them.

Q. Were you on this detail?
A. Never.

Q. Under what circumstances did you gain admission to the storeroom?
A. I was there when they first arrived in cases and crates.

Q. When they first arrived. Do you mean the first shipment?
A. Both.

Q. Both shipments. Were you permitted to enter the storeroom?
A. I was permitted to go in the place.

Q. Were you permitted to enter the storeroom? By that you mean you were permitted to go in the storeroom any time you wished?
A. Any place to find out what was happening.

Q. If you wanted to go into the storeroom to find out what was happening, could you go there any time you wished?
A. I could have accompanied the prisoners when they were being issued something.

Q. You say prisoners were complaining because they were not issued often enough. Did the prisoners ever encourage you to come along with them when they got the supply so you could do something?
A. No, they would only receive what would be given to them and they never thought of objecting to what they received.

Q. During the months of March, April, May, were you in the camp all the time?
A. March, April and May, not all the time.

Q. Is it possible that supplies of Red Cross packages could have arrived when you were away from the camp?
A. I would have heard of it if they had arrived.

Q. Is it absolutely certain beyond a doubt that you would have heard about it?
A. Yes, I would have heard about it.

Q. Is there any possibility that you would not have heard about it?
A. If they arrived in May, I was not so often in the camp because I was engaged to my wife and I was AWOL two or three days. I was punished often for it out in the guard room and slept on the floor all night.

Defense: At this time, there is one part of the record, if the Commission please, I would like to check on his previous testimony.

President: Do you wish to check it now? Then you will probably require a little time to check it. We will take a five minute recess while you check the record.

The Commission then recessed at 1640 hours and was reopened at 1705 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the witness, the interpreter and reporter were also present.

Defense: The defense has no further questions.

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Prosecution: The prosecution has no further questions.

President: Any questions by members of the Commission?

Major Gambrill: I have a couple, Sir.

President: Go ahead.

EXAMINATION BY THE COMMISSION

Questions by Major Gambrill:

Q. Do you recall an incident where bedding was burned so the soldiers could keep warm?
A. Yes.

Q. Do you remember the names of anyone involved there?
A. No.

Q. Does the name Black mean anything to you?
A. No.

Q. Did you ever make the remark to the men that you would go to the United States after Italy had won the war?
A. No, sir.

Q. You were in the Medical Corps were you not?
A. Yes, sir.

Q. Did you at that time see any of the various injections being given?
A. Yes, sir.

Q. What was the sanitary condition or the sterilization condition of those needles?
A. Only at one time when there were a great number of prisoners of war who were sick, the doctor went down from one tent to the other in order to save them from walking to the medical room and the injections would be given one after the other and the cleaning of the needle would be done by alcohol.

Q. The needle was clean?
A. Yes.

Q. Did you ever know one of the prisoners by the name of Edward M. Greenberg?
A. I cannot remember him.

Q. Did you say there was another interpreter with the rank of corporal major?
A. Yes, and he also had an arm band because he had served in Africa.

Q. Did he ever live in the United States?
A. Yes, about four or five years.

Q. He had previously lived there. What would be his rank insignia? How many stripes?
A. Three stripes. Corporal major.

Q. Where did he live in the States?
A. I think in New York, or Brooklyn. I don't remember which. I know sometimes he had been in New York because he mentioned some streets.

Q. Did you ever hear of a Robert F. Lamney?
A. I cannot recall the names distinctly. There were so many prisoners.

Q. Did you at any time yourself, or upon the direction of anyone else, order a man put in chains?
A. Never, sir.

Q. How many blankets were issued to Italian soldiers. I think you made the statement a while ago?
A. Two.

Q. Was there any heat in the quarters of the Italian soldiers?
A. Not that I remember. I didn't live there, that's why I don't remember.

Major Gambrill: That's all I have, sir.

President: Anybody else?

Questions by Lt. Colonel OKeefe:

Q. These men that burned the blankets, was any punishment meted out to them?
A. Yes.

Q. What was it?
A. They were whipped by leather belts. That they told me.

Q. How do you know that?
A. I talked to them as they were going out.

Q. Do you believe that?
A. Yes, I do.

Questions by the President:

Q. Did you see it yourself?
A. No, sir.

Q. Did you hear it?
A. I heard of it.

Q. You heard of it from someone else?
A. From those prisoners who were whipped.

Q. How many were there in the group?
A. About ten.

Q. How many of them told you about it?
A. I asked them all in a group what had happened and they were laughing at it; that they had been punished so for it. It really did not hurt them.

Q. What did they use for whipping?
A. They said leather belts such as Carabinieri had.

Q. Did they just stand there and get whipped or what?
A. I don't know, sir. They took it as a joke. They said, "we didn't get punished much for what we did."

Q. What was the usual type of work prisoners of war were given to do in Camp 98?
A. The main work was helping construction of camp paths and roads and then there were other little jobs to do, such as carpentery.

Q. Was it hard work?
A. Carrying rocks, it might have been hard work if the man was very weak.

Q. How far did they have to carry the rocks?
A. There was a cave about half a mile up the hill and they had to carry it from that cave where it was blasted from the mountainside towards the camp.

Q. Did you ever see, did you frequently observe them at their work?
A. Yes.

Q. Did you ever see a person whom you thought was sick engaged in that kind of work?
A. In the wintertime it was very cold and they covered their heads with handkerchiefs and their faces and it was not very nice to work in that weather, rain.

Q. Did you ever see a man who you thought was sick engaged in that type of work?
A. No, not exactly sick. If he felt sick afterwards he was supposed to report not to work.

Q. I ask you that question believing you to be qualified because you are a Medical Corps man?
A. Yes, sir.

Q. You never did see any person whom you thought was very sick being made to work at this type of work?
A. Not very sick, sir.

President: Any other questions?

Questions by Lt. Colonel OKeefe:

Q. Where did you live when you were in the States?
A. 202 Avenue A, New York City, Manhattan.

Q. Are you married?
A. Now here.

Q. You were not married in the States?
A. No, sir.

Q. Where is your family now?
A. In Sicily.

Q. Have they ever been in the States?
A. Yes thirty-five years.

Q. I mean your wife?
A. Yes.

Q. Your wife has been in the States?
A. Yes.

Q. Have you any children?
A. Yes, sir, twins.

Q. Were they in the States?
A. No, sir. They were born last year.

Questions by Major Williams:

Q. Did you know of an incident that was supposed to have taken place at a retreat formation? Were you at the camp then?
A. Yes, retreat from the African front.

Q. No, when they were taking the flag down?
A. Yes.

Q. The flag was supposed to become entangled and some soldiers were standing there. There was an incident. Were you at that camp then?
A. I was at the camp from the time it started.

Q. You never heard about that incident?
A. When the flag was lowered?

Q. Yes, some PWs were standing around when the flag became entangled and there was a little incident out there?
A. I don't remember.

President: There appear to be no further questions.

Questions by Lt. Colonel Borndahl:

Q. Do you know of any time when the withholding of food was used as a punishment against the prisoners as a group?
A. As a group? Only in the old camp. The whole tent refused to work and they were put on half rations.

Q. That was before this camp. Anything like that happen at this camp?
A. At the new site, no. I think they all went to work.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

Prosecution: If the Commission please, I suggest adjournment at this time.

President: Could we ask what your plans are for the next session of the Commission, without disclosing anything? Any more witnesses?

Prosecution: Yes, sir.

President: The Commission will take a recess until tomorrow morning at 9 o'clock.

The Commission then at 1720 hours on 6 November 1946, adjourned to meet at 0900 hours on 7 November 1946.

Clyde W. Wellen
CLYDE W. WELLEN
Lt. Colonel, INF
Judge Advocate

The Military Commission met pursuant to adjournment, at 0905 hours, 7 November 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused, the interpreter and the reporter were also present.

Prosecution: May it please the Commission, the prosecution was asked to furnish certain information in regard to distribution of Red Cross parcels and the conditions thereof. The best available witness that we have been able to secure, and who had in his possession at one time two hundred and sixty six thousand boxes of Red Cross supplies at his disposal, is Colonel Holder, if the Commission desires to question Colonel Holder. The prosecution is not interested in Red Cross supplies. There is no specification dealing with Red Cross supplies, but, if the Commission desires information, Colonel Holder is here at the disposal of the Commission.

President: I don't think the evidence you speak of, introduced by the witness you mention, would add any great value to the testimony on that already gathered. His information will be on the contents of packages?

Prosecution: Contents of the packages and distribution within the theater.

President: Do you wish to introduce him as a witness?

Prosecution: Not as to Red Cross supplies mostly.

President: The members of the Commission have no desire to put him on the stand, unless the judge advocate thinks he would be a good witness for the matters mentioned in the specifications.

Prosecution: Yes, sir. We desire to put him on the stand for some other matters but not dealing with Red Cross, because there is no specification dealing with distribution or handling of Red Cross supplies.

President: You can put him on the stand, if you wish.

Philip V. Holder, an American citizen, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Philip V. Holder, A.C., 0-901582.

Q. Rank?
A. Lieutenant Colonel, Air Corps.

Q. What is your organization?
A. I am head of the Investigation Branch of the War Crimes Commission.

Q. Where are you stationed?
A. In Florence at the moment.

Q. What was your assignment or organization during hostilities?
A. I was head of a division of MIS - Military Intelligence Service - in the Mediterranean Theater.

Q. Describe your duties as chief of Military Intelligence Service?
A. There is a security ban still existing on the bulk of my duties that I would not be at liberty to disclose in open court. However, I think I can disclose enough to satisfy this case - the Commission in this case. I was responsible

for prisoners of war, all Allied personnel, in Italian prison camps and all Allied military personnel who were in enemy territory, that included Italy, Austria, Greece, Southern France, all the Balkans and as far east as the war was and as far south. I was responsible for their maintenance, their well being, rescuing them and, in general, I was concerned with Allied personnel in enemy territory, whether or not they were in prison camps or outside.

Q. Did your duties require you to make a detailed study of all prison camps in the European and Mediterranean theater of operations?
A. Yes.

Q. Did your duties require you to have more knowledge of the prison camps and the conditions that existed therein than any other Army officer?
A. I should think so, yes, in this theater.

Q. Did you have particular knowledge of PG 98, located near Palermo, Sicily?
A. Yes.

Q. Did you have a particular interest in that camp?
A. Yes.

Q. Why?
A. It was the only camp in Italy on which I did not have complete information. I first got interested in it in March of 1943 when I moved my unit over from Cairo to Algiers, and that was one of the main reasons why we moved to Africa or to Algiers because our work was about finished and we were starting to work in Italy at that time. We knew all about the prison camps in Italy, excepting PG 98.

Q. Did you get any information concerning PG 98?
A. Not immediately. It was very difficult to organize, it being a sort of a transient camp. We would put a man into it and he would be moved out immediately and it was not until after the Italian Armistice that we were able to get any real factual information concerning the camp and then we got some information through men who had been in this camp.

Q. From whom and how did you get your information?
A. From prisoners of war who had escaped and whom we brought through the lines.

Q. Do you know or have you met a staff sergeant Greenberg?
A. Yes.

Q. Do you remember when he was returned to Allied control?
A. It was sometime in October 1943.

Q. Why do you remember him particularly?
A. He was the first man we brought out who had actually been in PG 98.

Q. Tell the Commission what you remember of staff sergeant Greenberg and what he told you regarding conditions in PG 98.

Defense: If it please the Commission, the defense at this time is required to make a most positive objection to this line of questioning, a procedure which is in any court of justice shockingly irregular. This man, Colonel Holder, is in charge of investigating of war crimes and bringing them on for trial; in fact he is the prosecuting agency. To put the prosecuting agency on the stand and permit that agency to give information, hearsay information, as to conditions, is to defy everything fundamental that we have ever learned about justice and the proper trial of cases. It is practically the same as if we would put Colonel Wellen on the stand and say, "What do you think of these conditions?" or put me on the stand and ask me what I think about conditions. I have an interest in this case on one side. He has an interest on the other side, and we have had the witnesses here. The prosecution has had a couple of years to bring witnesses or get credible statements. For some reason, they have preferred to use indirect statements. This is going a step beyond.

Prosecution: If it please the Commission, Colonel Holder is a lieutenant colonel in the Army of the United States. It was his particular job and duty at that time to know about prison camps and their conditions, etc. He was not head of the War Crimes Investigation Branch at that time. He was dealing particularly with prisoner of war camps. Now why defense counsel takes the attitude he does in regard to Colonel Holder, when he is the best available witness in the whole theater in regard to prisoner of war camps, I don't know, but this Commission is composed of experienced Army officers, all of you perfectly capable and competent to judge the evidence.

Defense: It is hardly the appropriate time to ask the prosecution to clarify Colonel Holder's exact status, but I wonder, if this issue is raised, if it would not be well for the Colonel to bring out his part in bringing these cases on for trial; whether or not they come out on his recommendation or not, and his part as a prosecutor, so that the court can determine whether he has an interest in this case.

President: I presume you will be free to do that on cross-examination, if this question is allowed.

Defense: I am asking now for a ruling before we hear the testimony.

Prosecution: It is quite permissible to ask the witness.

President: Under the conditions of paragraph 10a., Circular 114, which says, "If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the President of the Commission, unable to attend without undue delay, the Commission may receive secondary evidence or statements made by or attributed to such witness." the Commission takes cognizance of the fact that Sergeant Greenberg has submitted statements in affidavit form, a sworn statement which is part of the exhibit of the judge advocate, and the Commission is not able to determine why he himself has not been placed in front of the Commission to give testimony. It assumes that for reasons beyond the knowledge of the Commission at the present time it has been impossible to secure his attendance at this hearing.

Prosecution: Greenberg has returned to civilian life. He is in the United States. The Army has no jurisdiction over him and it would delay the trial for quite some time if we got him back here, if we were able to get him back at all.

President: The Commission, of course, would like to hear the best evidence and that is from Sergeant Greenberg, if he could be obtained, but since he is not available, for the reason you state, the objection of the defense is not allowed and the Commission will take cognizance of the fact that the evidence about to be given by the present witness is hearsay testimony and will give it such weight as it deserves.

A. I had Greenberg brought over to Algiers by air from Italy for the purpose of interrogating him on conditions in PG 98. For the reasons I stated before, we had a very incomplete knowledge of this camp. He told me that it was a hell-hole and that he himself had been chained up to a flagpole and that Colonel Oldani had hit him in the mouth with a riding crop and knocked out a few of his teeth, which were still missing at that time. He described the conditions under which the prisoners lived, how they were overcrowded at all times and that the floors were mud and that their beds were a little bale of straw with one blanket on them. The food was absolutely inadequate. He received twice a day a bowl of approximately one pint of soup, that was made of cabbage and other vegetables and not at any time while he was in the camp did he see any meat or Red Cross parcels.

Q. Did you in the course of your investigation have other names of prisoners of war who had been in PG 98?

A. As I remember, we had about three others. I don't remember their names. I spoke to one who had about the same experience as Greenberg, but at that time I was not interested in war crimes and I made no record of these people. I despatched them on to Washington by air, and they were there interrogated by an MIS detachment in Washington. One of these mentold me that he was stripped and wired up to the post.

CONFIDENTIAL

Q. Do you know the action taken in Washington when a former prisoner of war returned to the United States?

A. Yes. Prisoners of war at that time were interrogated here by my people or myself and if they had any information of importance, they were despatched to Washington, by air on the highest priority, and were then interrogated in detail. We were interested primarily in the experience of the man himself; if he was rescued and brought through the lines we were interested in that ourselves. He was also interrogated as to other Americans whom he had seen in enemy territory, whether he knew of any who died or were shot or anything like that. He was also interrogated on violations of the rules of warfare and the Geneva Convention, and then for Americans who were helping the enemy. We did that in a rough form and if the man had any real information, we despatched him by air and he was interrogated in detail in Washington. At the end of the war, every returned prisoner was given four forms that asked for information along the lines that I have just mentioned. We studied them here and, if a man had any important information, he was despatched on by air and the same procedure was carried out. After they arrived in Washington, they were given three days temporary duty at MIS, after which they returned home. In a number of instances a complete interrogation was not carried out immediately after their arrival. If that happened a member of the SIC - Security Intelligence Corps - went to his home or wherever he was and made the interrogation there. After the war all of those interrogation reports were returned here and we studied them from the war crimes viewpoint. I suppose I have read ten thousand interrogation reports of Americans.

Q. From the information which you obtained regarding various prison camps, in comparison with camps in Germany, Italy and Greece, how would you rate PG 98?

A. With one other it was the worst camp in Italy. It was worse, by far, than any of the German camps, even the working camps. We got reports not only from Austria and Germany, we had reports in our office from all prisoner of war camps all over the world, even prisoners of war in Japan or wherever they happened to be and we were in a position to know and judge any prison camp. Our work had some angles through which we were able to help in certain instances and hinder in others. When the Allies moved up the Italian peninsula, we had to watch out for Oldani all the time because we wanted him very badly for his actions in this PG 98.

Prosecution: I have here two letters from Amerigo Chiarotti and request that they be marked for identification Prosecution's Exhibit No. 30.

Q. Colonel Holder did you make an effort to ascertain the basic food ration or rather the food ration for troops of the Italian Army in base camps?

A. Yes.

Q. During December 1942 and January, February, March, April, May 1943?
A. Yes.

Q. I hand you herewith two letters from Amerigo Chiarotti and ask if you can identify those papers marked for identification Prosecution's Exhibit No. 30?
A. These were letters that were obtained by one of my investigators, on my instructions, from the District Command of the Italian Infantry Division. I believe it is here in Florence. I asked for a statement of the base rations of the Italian Army in 1942 and 1943 and this is what I got.

Q. When did you receive the letter on the top, the first letter of the exhibit, identified as Prosecution's Exhibit No. 30?
A. I received it yesterday or the day before. I have forgotten which.

Prosecution: If the Commission please, I desire to introduce these letters marked Prosecution's Exhibit No. 30 for the consideration of the Commission. I presume that the counsel for the defense will have no objection to reading the first letter. The ration is already in evidence. By the first letter I mean the first letter in the file, the last letter received which is somewhat explanatory of the previous letter.

The judge advocate read Prosecution's Exhibit No. 30.

Prosecution: Now, as I have stated, this form was not read as an exhibit. It was read to a witness showing the food ration as issued in 1943 up to September 8, so I do not think it is necessary to repeat that.

Defense: We have no objection to the former reading having been considered as evidence in this case.

President: It is introduced then.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. Colonel Holder, explain to the court your duties as chief of the War Crimes Investigation Branch, in brief summary.
A. When a report of an alleged war crime is received at the Theater Judge Advocate's office, it is turned over to me for investigation. I read it and plan the investigation. Then I assign an investigator to the job and he goes out and completes it. He gets the evidence, brings it in, translates it, puts it into filing form and sends it back to the Judge Advocate.

Q. When the case, the investigation has been completed, do you review the case?
A. No.

Q. Do you make a recommendation that steps be taken to try it?
A. I review it as to the completeness of the investigation, that is all. I am not an attorney. I only pass an opinion as to whether or not it is a case, not whether it should be tried.

Q. But when you forward on a case, it is then your opinion that the investigation has been sufficiently completed, is it then your opinion that it is worthy of the consideration of the Judge Advocate for trial?
A. No, we often spend months investigating a case and then afterwards decide that there was no war crime. The accused may be dead.

Q. You initially decide that?
A. I investigate the thing and send it down.

Q. But do you make the decision that there is a prima facie war crime?
A. That is not what I mean. I mean that the man may be back in the States alive and that there is no war crime.

Q. To whom do you forward these completed cases?
A. To the Judge Advocate.

Q. Colonel Barratt. When you forward that completed case do you accompany that file with a report or forwarding letter?
A. Oh yes, of course.

Q. What is the content of that forwarding letter?
A. Herewith the completed investigation report on war crimes file so and so. Please acknowledge receipt, and stuff like that.

Q. And in other documents, do you make a recommendation to the Theater Judge Advocate as to the disposition?
A. No.

Q. If, after investigation, it is obvious to you that there are no facts developed which would constitute a war crime, what do you do with that file?
A. I send it to him.

Q. Do you, when you send it to the Theater Judge Advocate, make any report that the facts developed show that there was no war crime involved?
A. If there is obviously no war crime why we state, "You will note that the victim has returned to military control," or that he died in the hospital, or something like that.

Q. So, if there is not any note stating that there is no war crime, if there is nothing at all, is it not a fair assumption that your staff feels that there is a prima facie war crime?

A. I don't think I understand that.

Q. A file is forwarded to Colonel Barratt. There is no reference one way or the other, nothing is said as to whether there is a war crime involved. In a case like that, because there is nothing in the report stating that there is no war crime involved, the facts developed do show a war crime, the fact that nothing is said and it is forwarded to Colonel Barratt, is this not, in effect, your recommendation?

Prosecution: If the Commission please, we object to that question.

President: I can understand the point that the defense is pointing at, but it is a little obscure. I think you can bring it out if you think about it for a moment and ask it again.

Q. You have testified that where the facts you and your staff have developed show clearly that there is no war crime involved, when you forward the file to the Theater Judge Advocate you will call attention, his attention, to the fact that there is no war crime involved. Is that right?

A. Yes.

Q. And that is so he does not have to waste his time in reading the whole file to show that. Surely, Colonel Barratt is a busy man. Now, if a file is forwarded and if there is no negative report stating that no war crime has been developed, does not that mean that there is a prima facie case?

A. It means that it is worth his study.

Q. It means it is worth his study?

Prosecution: We object. The witness is not a lawyer and he sends it down to the judge advocate to make a decision.

Defense: He has testified now it means it is worth a study. I will rephrase the question to bring out that answer.

President: So far you have shown that when a case is sent to the Theater Judge Advocate's office with a recommendation that no war crime appears to be involved, the Theater Judge Advocate takes no action. Now, do you want to bring out something in addition to that?

Q. Now where there is no negative recommendation, that is where there is no statement that no war crime is involved, what does that signify to the Theater Judge Advocate?

Prosecution: If the Commission please, that is a conclusion that the Theater Judge Advocate must arrive at.

Defense: On this matter they must have some established policies for expediting. Obviously, the Theater Judge Advocate is not investigating. Only he must rely on his investigation for advice.

President: The witness has said that his agency is the investigating agency and that the Theater Judge Advocate accepts his, or his office's, recommendation in the case. Am I correct in that?

Prosecution: I believe only in cases where it is absolutely clear, where no war crime can be charged, where a murder is alleged and the man is alive and there is no war crime; where it is a case of establishing a prima facie case, then it is up to the Theater Judge Advocate to establish the testimony.

President: Try your question again please?

Q. If the file is forwarded without this recommendation that no war crime is involved, does that, by agreement between you and Colonel Barratt, have any significance?
A. No particular significance. Only we are under the strictest instructions up here not to make legal reviews of war crimes cases, war crimes investigations, so we express no opinion as to whether it is a good case or not; in fact, often-times after they have been down there in the Judge Advocate's office, they are returned for additional evidence and for other purposes.

Q. Did your office investigate the Oldani case?
A. No.

Q. Where was it investigated?
A. There was no investigation made on it.

Q. Did the Oldani file ever pass through your office?
A. It was in my office for a year.

Q. Did you know in Sicily and elsewhere in Italy, there were scores of people who had working appointments and knowledge of conditions in this camp?
A. I presume so. I had a list of all the Italian soldiers in the camp, all personnel.

Q. Was any attempt ever made to contact them, Colonel?
A. No. Not by my office.

Q. Would it have been - was it the function of your office, the responsibility of your office to complete the investigation within the theater, if an investigation within the theater was needed?
A. Yes, but there was no investigation necessary in this case.

Q. Why?
A. Because we had the statements from all those men who had been through the camp and we accepted them, because they were made under oath, and that was our complete file in the case. We found Oldani afterwards. That is the only part we had in this.

Q. You found him after nine months search. Was he attempting to evade?
A. Evidently. The Italian Government, Italian Army did not know where he was so we had to find him ourselves.

Q. Did you find him in Italy?
A. No.

Q. Did you know he - whether he was in Italy?
A. No.

Q. Did you know he had been tried by Italian courts?
A. That was afterwards.

Q. At what time were you looking for Colonel Oldani?
A. We started looking for him immediately on the organization of the War Crimes Investigation Branch.

Q. When was that?
A. 1st July 1945.

Q. Do you know the date of his trial by the Italian court?
A. No.

Lt. Colonel OKeefe: What was the date?

Defense: 9th May 1946.

Q. Was it the practice in investigating these war crimes to investigate only one side of the story?
A. I don't understand what you mean.

Q. In this case you have testified that, to your knowledge, no attempt was made to investigate and get statements from the scores of people in Italy who might have had knowledge of conditions within this camp?
A. If you mean do I go and build up a case for a defendant, no, certainly not.

Q. In other words, it is your duty to build up a case for the prosecution only, is that right?
A. That's right.

Q. Whether there are compensating facts on the other side is not within the scope of your duties?
A. That's right.

Q. Was any attempt ever made to get depositions from these witnesses?
A. Not by my office. In America.

Q. These witnesses in America?
A. What do you mean by depositions?

Q. Depositions, as we understand them in military justice, where a form goes out stating a long list of questions and then the accused will give his cross questions or cross interrogatories.
A. No, not as far as I know.

Q. Do you know why that was never done?
A. No.

Q. Was it because you were rushed for time?
A. It is never the practice to do that.

Q. In other words, your office in no case is interested in getting the other side of the story, even from the witnesses for the prosecution. Is that true?

Prosecution: If it please the Commission, we object to that question.

President: On what grounds?

Prosecution: In the first place the Investigating Branch has nothing to do with securing depositions from the United States or elsewhere. They merely investigate the facts within the theater, and this argument here with the witness - -

President: The viewpoint that has been expressed so far is that the particular office of the witness is interested only in obtaining evidence for the prosecution. That has been mentioned. That statement has been made and is in the record. There was no objection made to that. Do you wish to pursue that particular subject further?

Defense: Yes, with just the answer to this question because this is explanatory to that question. We want to find out precisely what this investigating office did in regard to this case.

President: The objection is overruled. The question may be answered.

A. The witnesses are available for examination at the trial.

Q. Are they, are these witnesses available at this trial?
A. These witnesses are not. You were not speaking about this trial, you were speaking about trials in general.

Q. In other words, is it a fair statement that these statements are taken in the anticipation that at the actual trial the witnesses shall be available, so that both sides can be brought out?
A. I don't decide that.

Q. You have testified that these letters were received at the request of your office, is that right, sir?
A. Yes.

Q. I see that this second letter, in effect, modifies the first letter, is that true?
A. Yes.

Prosecution: If the Commission please, the letters speak for themselves. It is for the Commission to decide.

President: You are objecting to some statement he is making about the Exhibit 30?

Prosecution: Yes, sir.

President: Your exhibit, of course, is in the record and can be subjected to any credency.

Defense: I will withdraw the question.

President: The question is withdrawn.

Q. May I call your attention to the fact that the second letter modifies the statements of the first letter?

Prosecution: If the Commission please, that is the same question.

Defense: It is not a question. It is an introductory statement so I can ask the next question.

President: Whether or not it modifies the first one, that may be so or it may not be so. Do you wish to have the witness examine the letter and determine for himself if it does modify?

Prosecution: This document is before the Commission. The Commission can read it and make their own deductions.

Defense: The purpose of this will come out later. The Commission can make its own deduction from the letter. All right, to avoid further argument, I will withdraw that question too,

Q. May I call your attention to the second letter. Did you receive any explanation from Colonel Chiarotti why the second letter was written?
A. No.

Q. Did any member of the staff request a clarification of the first letter?
A. Not on my instructions.

Q. Now, sir, you report, you stated that you examined a Greenberg?
A. Yes.

Q. Is that a Sergeant Edward M. Greenberg of Brooklyn, do you know?
A. I presume so.

Q. Do you recall the exact date?
A. No.

Q. Why take a statement from him?
A. I did not but it was taken by my office.

Q. Do you have a copy of that statement?
A. No.

Q. Have you at any time seen the statement which Edward Greenberg gave to investigators in the United States?
A. Yes.

Q. When did you last see that statement?
A. Yesterday.

Q. In what year was it you examined - what year, what month, approximately, did you examine Greenberg?
A. It was about October 1945.

Q. Do you have any notes that would permit you to refresh your memory?
A. No, but I received the statement of Greenberg and I immediately recognized the story and the name.

Q. After reading this statement, this affidavit which he gave in the States, is that right?
A. Yes.

Q. You stated that you recall his saying that he was hit with a riding crop and two teeth were knocked out?
A. I said a few teeth.

Q. A few. Did he say how large a riding crop was used?
A. No.

Q. Did you, when you were questioning him, ask whether a riding crop is large enough to knock out teeth?
A. No.

Q. You stated that Greenberg, in complaining about the food, said that twice a day a bowl, bowls of soup made with cabbage constituted the diet?
A. Yes.

Q. Did Greenberg tell you whether anything else was given, any other food was given?
A. He probably mentioned bread, I don't remember now. He said though that he never saw meat all the time he was in the camp.

Q. Did you ask whether they ever departed from the diet of cabbage soup every day?
A. I don't remember that, but I do know that it was so.

Q. What was so?
A. They never departed from the steady diet of soup.

Q. From your investigation, you believe that every day, twice a day, they had cabbage soup and nothing else?
A. I don't know whether they had it three hundred and sixty five days a year but it was a very steady diet.

Q. In the evidence which was collected in this case, did your office bring out facts implicating any other person besides Colonel Oldani in the management of this camp?
A. We made no investigation of this case. We did ask, however, whether any other officers in the camp were wanted. That was our only interest.

Q. Did you ever question Mario Minardi?
A. Only to identify him as the interpreter in this camp.

Q. Was your office ever interested in building up a case against Mario Minardi?
A. I don't decide those things.

Q. Did your office ever conduct an investigation with that in mind?
A. No.

Q. Who decides which individuals are to be investigated?
A. I don't understand what you mean. I have said that we have not investigated this case. These reports were brought, were received from the War Department and that was the case. We were instructed to find Oldani, which we did. We already knew where Minardi was.

Q. Did the War Department instruct you to in any way check into the activities or conduct of Oldani?
A. The War Department would not instruct me in anything.

Q. Did the War Department give you any instructions regarding Oldani?
A. The War Department does not give me instructions.

Q. On whose initiative was this file involving Oldani assembled and forwarded to the Theater Judge Advocate?
A. It was in the Theater Judge Advocate's Office. It was never in my investigating branch office.

Q. When Greenberg told you his story, did he tell you that the person who ordered him chained to the pole was a guard named Mario?
A. I don't remember.

Q. Did he tell you anything about an American who was in this camp?
A. Yes.

Q. What did he tell you?
A. That there was an interpreter there who claimed to be an American.

Q. Did he tell you anything beyond this?
A. No, not that I remember.

Q. For the record, have you been in this court room during this trial?
A. Yes.

Q. Have you heard the witnesses testify in this case?
A. Some of them.

Q. How long has Mario Minardi been in Florence?
A. Since 5th September.

Q. Is he accompanied by wife and child?
A. Yes.

Q. Do you know whether the Government is paying the expense?

Prosecution: We object to that question. I don't see where it applies to any specification.

Defense: It will become very relevant later.

President: Do you wish to know if the Government is paying Minardi's expenses while he remains here?

Defense: Yes, sir.

Prosecution: I don't see that it is a relevant question.

President: It appears irrelevant. However, if you can show that it is relevant.

Defense: It becomes relevant in a question outside this case, that is the witnesses' fees. We are going to have to deal with it, all of us.

President: Will it have any bearing on the allegations of the specifications?

Defense: No.

President: I cannot see, unless you can give a better reason for including the question, that it should be answered. As far as the trial is concerned, whatever is relevant, of course, there can be no objection to. Regarding the expense of a witness, I cannot see how that can be relevant and possibly should not be answered.

Defense: Well, we will withdraw the question at this time.

Defense: Your witness.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. In order to clarify the record as to the movement of the papers in this case, do you know who received the file in this theater?
A. The file, the individual reports were received addressed to the Theater Judge Advocate, War Crimes Branch.

Q. From where, if you know?
A. From the War Department, originally they were in the Judge Advocate's Section in the War Department, now it is Civil Affairs Commission.

Q. And when the file was sent to your office, if it was, your instructions were simply to aprehend the accused, is that correct?
A. Yes.

Q. I believe it is clear the only time that you make a recommendation to the Theater Judge Advocate is when the accused is dead, or the man or men who are supposed to have been murdered have been discovered, so that there is clearly no evidence of war crimes, is that correct?
A. We make a statement, not a recommendation.

RECROSS-EXAMINATION

Questions by the Defense:

Q. During the course of this trial, you assisted the prosecution in the steps of this case?
A. No, I have given no assistance.

Q. Have you appeared at the table with the counsel for the prosecution from time to time?
A. Yes.

Q. Why did you go there to the prosecution's table instead of taking a place among the spectators?
A. For no particular reason. I always do at a war crimes trial.

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Q. Do you have any interest in seeing that the trial develops?
A. Yes, normal interest. My instructions are to place my section and myself at the disposal of the Trial Judge Advocate. If I can help him, I do so.

Q. In other words, your office and you are closely allied with the prosecution in each of these cases, is that not true?
A. If they need something, we get it for them.

Q. During the trials your branch serves as an investigating agency to obtain whatever is needed, isn't that true?
A. That's right.

Q. Is Captain Ashcraft, the assistant defense counsel, a member of your branch?
A. Yes.

Q. Is it not a fair statement that you and your branch are interested in seeing that these cases come to a satisfactory conclusion for the prosecution?

Prosecution: If the Commission please, we object to that question.

President: I think he has answered that question. Quite possibly, not the same question, but one similar to it. Do you wish to withdraw it?

Defense: If you think a sufficiently similar question has been answered, I will withdraw it. Withdraw that question.

Q. In the trial of these war crimes, are witnesses normally excluded from the court room until it is their time to testify?
A. Normally, yes.

Q. Do you know whether exceptions have been made?
A. Yes, after a witness has testified, I have seen them in the court room.

Q. But before a witness has testified, normally, there is a rule - -

Prosecution: If the Commission please, there was no objection raised by the defense in this case to Colonel Holder testifying. I see no purpose and no relevancy in these questions.

Defense: At this time we move that his testimony be stricken from the record. It has been brought out in this court room that he has been in the court room and it is a violation of military justice that witnesses be admitted to the court room until they testify.

President: The members of the Commission have noted the witness' presence in the court room during the testimony on other points. The Commission is able to give proper weight to the testimony he is now offering. He was placed on the stand to give specific information on a special point. It is a question in the minds of the members of the Commission, whether those questions were influenced by previous testimony that he might have heard.

Defense: I think it is perhaps appropriate that he come in on a special point, but he went beyond that and started going into the testimony of the witnesses, such as Greenberg.

President: Do you wish to ask any more questions of the witness?

Defense: No.

Prosecution: No further questions.

President: I would like to ask a question of the witness.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. In your original interviews with Sergeant Greenberg, you said that he told you that several teeth - -
A. A few teeth.

Q. A few teeth had been - he had lost a few teeth through mistreatment?
A. Yes, sir.

Q. Did you - how much credit did you give that statement?
A. Well, sir, it was obvious that he was lacking the teeth because he was lacking them at the time I saw him.

Q. Have you read his affidavit?
A. Yes, sir.

Q. Have you noted in that affidavit any statement as to the loss of teeth?
A. No, sir.

Q. By that you mean there is no statement made to that effect?
A. I do not recall that it is in his statement.

Q. It is a fact though that there is no statement in here as to the loss of teeth?
A. Yes, sir. I also noticed when I received that statement, or when I read it, that it was not nearly as lengthy as the story he had given me back in October 1945, and that statement was made - I don't know the date - but I presume it was August 1945 or sometime about then.

Q. Do you recall, in your original interview with Sergeant Greenberg, of his telling you he had been chained to a flagpole?
A. Yes, sir, I think he used the expression "wired" but I would not be certain of it.

Q. Did he tell you how long he had been chained there?
A. He said two days.

Q. How much credit did you give that statement?
A. At the time I just accepted it but afterwards, after interviewing other men who had been in this camp, I believed it because I heard the same sort of story from other people.

Q. Have you been in the position, at any time in your military career, of receiving complaints from soldiers?
A. Many, many years ago, yes, sir, in the first war.

Q. Have you at any time investigated such complaints?
A. Yes, sir, many times.

Q. Did you find them frequently misleading?
A. Enlarged upon, yes, sir, exaggerated.

Questions by Major Williams:

Q. Colonel, in the story told to you by Sergeant Greenberg, how many camps did he mention having been in?
A. I think he escaped from Chieto, but I don't know, I don't remember that. We were interested in his movements at the time and it would have been recorded, but I don't remember that.

Q. He was in several camps, more than one?
A. Yes, undoubtedly, more than one.

Q. Did he complain concerning any other camp?
A. I didn't ask him about the other camps because, as I said before, I was interested in this 98 because we knew nothing about it.

Questions by Lt. Colonel OKeefe:

Q. Did you specifically question him about 98?
A. Yes, sir.

Q. In other words, you brought him in for the purpose of asking him about 98?
A. Yes, sir. I had him brought by air from Italy.

Q. He did not go to you voluntarily?
A. No, sir.

Q. Not for a general questioning, but specifically on 99?
A. Yes, sir, and I had about maybe four or five others brought in for the same purpose.

Questions by the President:

Q. Do you know of a First Sergeant Serrano?
A. No, sir.

Q. If, in the pursuance of a so-called war crimes case, I understand you number them, it becomes known that a certain individual has suffered mistreatment of a severe nature while a prisoner of war, what steps would your office take to obtain such information from him?
A. If the individual were here, he would be interrogated. If he were in the United States or in India or some place like that, well, we would send for a statement from him.

Q. Would you relax in your efforts to obtain such statements - if such a person were a civilian and in the United States would you continue to be active until such a statement were obtained?
A. Yes, sir.

Q. And you stated you do not recall a First Sergeant Serrano?
A. I do not recall his name, Colonel.

President: I have no further questions. There appear to be none and the witness is excused.

There being no further questions, the witness was excused and withdrew.

Prosecution: The prosecution rests.

Defense: The defense would like to have a recess, if it please the Commission, for about five minutes.

President: Yes, the Commission will take a recess.

The Commission then recessed at 1035 hours and was reopened at 1100 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

President: The Commission would like to have the last witness recalled for a couple of questions.

Philip V. Holder, a witness for the prosecution, was recalled by the Commission, reminded he was still under oath, and testified as follows:

EXAMINATION BY THE COMMISSION

Questions by the Prosecution:

Q. You are the same Colonel Holder who previously testified in this case?
A. Yes.

Questions by the President:

Q. What is the part your office plays in the securing of witnesses for a case similar to this?
A. We find them and transport them.

Q. Is yours the only office that secures witnesses?
A. Well the defense usually finds its own. We will transport them.

Q. Does the fact that a possible witness is no longer a member of the military establishment of the United States preclude him being called as a witness?
A. Not as far as I know, sir.

Q. Was any effort made by anyone, to your knowledge, to secure the attendance of witnesses or depositions from them?
A. I know that the Judge Advocate asked that these witnesses, whose affidavits are here, be brought over from America and the answer was "No."

Q. Did you make inquiry as to whether - inquiry as to why the answer was "No."
A. A matter of expense and time I presume.

Q. You are familiar with the meaning of the word "deposition?"
A. Very vaguely, sir. I know affidavit much better.

Q. For your information, a deposition is simply a series of questions and answers in which cross-examination through question and answer is allowed.
A. We have never used them.

President: That's all I have to ask.

Questions by Lt. Colonel Lucree:

Q. Colonel Holder upon whose orders do you go out and round up these witnesses?
A. The Trial Judge Advocate.

Q. That's the Theater Judge Advocate?
A. No, the Trial Judge Advocate. We have blanket instructions as to that from the Theater Judge Advocate, and the Trial Judge Advocate tells us who he wants, then we find them and move them in here.

Q. Would you render the same assistance to the defense counsel?
A. We did in other trials.

Defense: Had we requested it, the same would have been done here too.

Questions by the President:

Q. Again then, a request was made for the attendance of specific witnesses mentioned in these specifications, is that so?
A. Yes, sir.

Q. And the answer to that was, "No, they could not attend?"
A. Colonel Wellen can answer that better than I can, sir.

Q. You have testified, however, they could not attend?
A. Yes, sir.

Q. The expense and time involved was prohibitive.

President: I have no further questions.

Questions by Lt. Colonel O'Keefe:

Q. Was that request made before or after it was decided the case was ready for trial?
A. After.

Q. In other words, it was decided that the case was ready for trial even though the witnesses were not present?
A. Yes, sir.

Questions by Major Williams:

Q. I am not quite clear on that point still. Do you mean to state that the decision to try the case, regardless of the fact that the witnesses could not be sent, was made by higher authority, from the Judge Advocate Section in Washington?
A. Of the theater.

Q. The theater.

President: Any further questions. Apparently not. The witness is excused.

There being no further questions, the witness was excused and withdrew.

Prosecution: May I make a statement at this time relative to the procurement of witnesses in this case. The men whose affidavits we have are out of the service. They are no longer in the military service and, therefore, not within the jurisdiction of the Army and, if they came back, they would have to come back voluntarily and, naturally their expenses would have to be paid.

Defense: In answer to this, if it please the Commission, may I point out that a military court-martial has the authority to procure and bring here, any place in the world, civilians who have knowledge. The fact that these individuals are out of the military service does not deprive the court of the opportunity of bringing them here. A court-martial has the same authority as a Federal court.

President: The Commission presumes from what has been said from the witness stand that those witnesses whose presence would be desirable here to offer personal testimony have been prohibited from coming by action of higher authority, the Theater Judge Advocate.

Defense: We will agree to that. It has been my point all along that these individuals have no part in the responsibility, but I made the further point that there is no regulation of law which prevented the Army from bringing these individuals here just because they are civilians.

Prosecution: I'd like to ask to what section you are referring?

Defense: It will take time. If the court wishes this argument from the legal question, I suggest we drop it now and during the noon hour we can look up the applicable law, if there is any doubt.

President: There is no doubt. The Commission presumes that any person, be he either military or civilian, that is an American, United States citizen, can, through due process of law, be subpoenad and made to appear in front of a military commission. Unless the contrary can be shown, the Commission will assume that to be true.

Prosecution: May the Commission please, I'd like to have time to read this section here pertinent to that. I will give the Commission the law in court-martial.

Defense: I think Article of War 23 covers your point, sir. If the court wishes, while Colonel Wellen is reading this matter, I'd like to read Article of War 23 on this subject, if the court desires.

President; Does it have reference to the question on hand?

Defense: Yes, sir, I think it is determinative.

Prosecution: If the Commission please, Article of War 23 provides methods of obtaining witnesses within the territorial limits of the United States. I don't believe it would extend to a foreign country. Of course, in addition to getting the witnesses here, there is another very valid objection to getting these witnesses, the time and trouble involved. In other words,

it would delay this court, probably for six months, to determine where all these witnesses are at the present time, prepare the necessary vouchers, send them up for their fares from the United States here and return, together with the witnesses' fees filed here, if this article also applies to Military Commissions held in foreign countries, which I doubt very seriously and which I am advised it does not.

Defense: As far as expenses are concerned, I'd like to point out that this proceeding has already cost the Government many thousands of dollars, counting up our respective salaries which have accumulated during the two weeks or so we have been around here.

President: That is beside the point. The point is made in regard to the attendance of the civilian witnesses that the matter was brought to the attention of higher authorities and a negative answer was given, as testified to by the last witness. The Commission does not feel it is qualified to question this judgment of higher authorities in denying the attendance of witnesses, but it does take cognizance of the fact that the conditions of the manual in regard to that matter, possibly do authorize their attendance. The fact that they are not here, however, as evidenced by the last witness, is a matter that higher headquarters has already decided on in the negative and I think that is as far as we need pursue the matter.

Defense: Except I still believe no reason has been shown why depositions were not used as a substitute. That is the normal procedure. I have a case as Trial Judge Advocate of a General Court-Martial in Rome. All of our witnesses are in America. We have had to prepare depositions, it having been ruled that the cost of bringing them here would be too great. I point out for the court's guidance that is the normal procedure of a Trial Judge Advocate in a case.

Prosecution: This is not a court-martial. This is a Military Commission. The duties of a judge advocate of a Military Commission and a trial judge advocate of a court-martial are different. Likewise, the rules of evidence are different. It is a summary proceeding. As a matter of fact, no record is required to be kept; that is, a record of testimony, except a context, if the court or the Commission would so wish. There are many differences between a Military Commission and a court-martial.

President: The Commission acknowledges that there is a difference in the procedure of the usual courts-martial and that of a Military Commission. It also feels that in this particular trial, it was believed by higher authority that it was ready for trial and trial was so ordered.

Prosecution: That is true, sir.

President: Is there anything further. Any further witness?

Prosecution: No further witness for the prosecution

Defense: The defense offers as its next witness Colonel Lafayette.

Kenneth F. Lafayette, an American citizen, a witness for the defense, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. Please state your name?
A. Kenneth F. Lafayette.

Q. Your rank?
A. Lieutenant Colonel, Cavalry.

Q. Station and organization?
A. 61st Quartermaster Base Depot, Leghorn, Italy.

Q. You are the defense counsel in the case on hearing?
A. I am.

Questions by the Defense (Captain Burek):

Q. In connection with your duties as defense counsel, have you conducted investigations in this case?
A. I have.

Q. In connection with such investigations have you interviewed witnesses, have you informally questioned witnesses?
A. I have informally and formally.

Q. Approximately how many?
A. Approximately thirteen.

Q. Have you on various occasions questioned the accused Colonel Oldani?
A. I have.

Q. In connection with your questioning, did you make a great effort to bring out facts, if any, which were unfavorable to the accused?

Prosecution: If the Commission please, we object to this question. It is leading and I don't know what we are leading up to here.

President: Can you ask the question so it shall not be leading please? It is a leading question.

Defense: Intentionally so. There is not much purpose in dragging out.

Q. What were your purposes in questioning these witnesses?
A. As a matter of duty and conscience to see, in presenting the defense, if there were any evidence that might affect the defense - derogatory or of any nature against the accused.

Q. Did you ask the witnesses to give you any unfavorable incidents?
A. I did.

Prosecution: If the Commission please, we object to this line of questioning. It is irrelevant and immaterial.

President: Why didn't he ask the witness what he asked?

Q. What did you ask?
A. I asked specifically each and everyone carefully and diligently if there was any truth, to the best of their knowledge, in these allegations and they answered "No."

Prosecution: If the Commission please, this is designed for the purpose of testifying for the witnesses who have been brought here for that purpose. They are here and clearly that would be the best evidence.

Defense: The other side has furnished an example. This witness in connection with his duties has had to do a lot of informal questioning on the side, questioning on subjects, many of which normally could not get into the evidence. Circular 114 authorizes, as I have pointed out on several occasions, the testimony of anybody who made an investigation.

President: If the defense wishes to disclose to the Commission the steps they have taken to question their witnesses and disclose the processes whereby that was attained, the Commission can see no harm in disclosing those points.

Prosecution: It appears irrelevant. I see no reason for bringing it out. The prosecution was asked by the Commission how the evidence was obtained - that particular reference to the affidavits in this case, that have been filed in this case, but here the witnesses are present. They are able to testify themselves and that is the best evidence, particularly when the witnesses are present here. In the case of Sergeant Greenberg we could not get him here, secondly, it would be admissible in that case.

Defense: The last witness, Colonel Holder, testified as to conditions in the camp and gave his conclusions, his conclusions as an investigator. I want this man to do likewise, to give his conclusions as a man who talked to all these witnesses. I think he will be able to point out that there has not been an unfavorable thing said. He is under oath, remember.

President: The Commission will take a five minute recess.

The Commission then recessed at 1125 hours and was reopened at 1135 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the witness, the interpreter and reporter were also present.

President: The Commission is of the opinion that since the former witness was allowed to take the stand and, as a witness, expressed certain conclusions that he had come by through the interviewing of witnesses for the judge advocate, that it is proper for the defense to introduce a witness who has himself, like the previous witness, interviewed witnesses pertinent to this case, with the purpose of the present witness expressing his conclusions. However, the Commission would like the defense to limit his questioning to that field. Consequently, the objection to this present witness is not allowed.

Prosecution: If the Commission please, at the present time, the judge advocate desires to enter an objection to any evidence that may be introduced, obtained from witnesses who are present and who are competent to testify.

President: Can your questioning proceed without violating the objection that has been entered?

Defense: We will try and when they disagree with a particular question, then we will let them renew this objection, that might be better.

Prosecution: If the Commission please, I'd like to have a ruling on my objection at this time.

President: The ruling, as given by the Commission that the present witness may be questioned as to what conclusions he has drawn from an investigation of certain witnesses, still stands, and so the present witness may be allowed to continue to testify.

Prosecution: Is that the ruling on my objection?

President: That is the ruling, yes.

Prosecution: Is it overruled?

President: Your objection is overruled.

Prosecution: If the Commission please, I desire to enter another objection. The witnesses are present. If this man has made any investigation other than of the witnesses present that is one thing, but the witnesses are present, the Commission has heard them testify and any conclusions that this witness may draw are a function of this Commission.

Defense: In rebuttal, I'd like to point out that in the last trial, the prosecution produced fifteen witnesses. When the witnesses failed to carry on for the prosecution, the prosecution then brought in the investigator, an English Sergeant Reat and had him testify as to what the prisoners, the witnesses said. The witnesses were there and the court overruled my objection. What served them at one time should serve them again.

Prosecution: We are trying this case now but in explanation of the last case the same conditions did not prevail. In that case every witness we had was a former member of the Fascist National Guard; they were buddies of the man being accused. They were very reluctant to testify on the witness stand and it is always perfectly admissible and proper when you have a reluctant witness on the witness stand to cross-examine him in regard to what facts he knows, in order to testify to previous statements he had made.

Defense: I want to correct previous misstatements.

Prosecution: What are they?

Defense: "All of his buddies were Fascist guards." There was one Fascist guard.

President: The Commission made a ruling that the present witness may express his conclusions that he has drawn from investigation of witnesses in this or in other cases, as did the previous witness in regard to testimony that was offered by the judge advocate, and so the objection is overruled. It seems fair that this witness should be allowed to testify as to his conclusions as did the last witness.

Prosecution: If the Commission please, for the purpose of the record I desire to enter a very strenuous objection to the ruling of the Commission. The conclusions arrived at by the last witness were made in an official capacity during an official investigation. He was an expert on prisons. He was fully acquainted with the facts secured by his office on all prisons and he made that statement as an expert on prisoner of war camps. In the present case, if I may point out, all the witnesses are present. They are competent to testify. They have testified before this Commission and any conclusions drawn by those witnesses is a function of the court, after having heard those witnesses.

President: If the defense will confine its questions to the limits indicated, the objection is overruled, with the presumption that the present witness is being introduced as an expert who has made many investigations.

Q. Colonel, when you interviewed these witnesses, did you give them any instructions, if any?
A. I am not quite clear on the question.

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Prosecution: We object to that question. This witness has not shown that he is an expert.

President: I think it would be well for you to qualify your witness as an expert.

Defense: I think he has already testified that he conducted these investigations in connection with his duties as defense counsel. That is his qualification for this case.

President: Objection overruled. Continue.

Q. By that is meant did you state whether or not you told them to tell everything they knew, yes or no?
A. Yes, I told them that. I wanted the truth and nothing but the truth, to the best of their knowledge and belief.

Q. As the questioning developed, did you, from time to time repeat this request?
A. Emphatically yes.

Q. Did you explain at any time to the witnesses why you wanted to know everything?
A. The first part of the answer is yes. The explanation was that if there was any truth to these allegations the defense could properly prepare as a matter of duty, and so that they would understand on the stand that they would be under oath and that they must tell the truth.

Q. When you interviewed the accused, Colonel Oldani, did you give him similar instructions?
A. I did.

Q. On various occasions since then, have you repeated those instructions?
A. I believe it has been twice since then.

President: Is there an objection?

Prosecution: There is an objection, if the Commission please. The prosecution objects to this entire line of questioning, and I don't believe that the defense counsel understands the Commission's instructions.

Defense: We will get to the conclusion. We have to build up to the conclusion.

President: The witness has so far not offered any evidence in the case. The Commission would like the questioning confined to what the witness has to do with the previous witnesses or other witnesses, previous investigations.

Prosecution: I desire to call the Commission's attention to the fact that this witness has not yet qualified as an expert.

Defense: The court has overruled you already on that.

Q. Colonel, will you describe any further efforts you might have made?

President to reporter: Were the previous questions answered?

Reporter: Yes.

President: The Commission would like the question in regard to - the previous question deleted from the record.

Prosecution: If the Commission please, that is already a part of the record.

President: The members of the Commission will take no cognizance if they did hear the answer.

Q. Did any of these witnesses give you facts supporting the first specification?

Defense: The court has asked that I get a conclusion from him. I don't exactly understand what is meant by that. That's why - -

President: The defense should be cognizant of the fact that testimony from many witnesses has been heard up to the present time. The credibility of those witnesses has not in any way been attacked by anyone. The testimony is in the minds of the members of the Commission and if any further light can be thrown on their testimony, it would be acceptable. Their testimony is a matter of record. It has not been attacked and there is some question as to whether your present line of questioning will bring further light on the allegations made in the specification.

Defense: The purpose of this line of questioning is to show how all these witnesses have been here before the court - the purpose is to show that the Colonel is in possession of no facts to which they did not testify in this court, which support any of these accusations. That is to be specific.

President: Just what do you wish to show by the present witness?

Defense: To be specific, that after interviewing on many occasions these thirteen witnesses that not one told us of any example of beatings, for example.

President: That has been brought in front of the Commission with their testimony.

Defense: Quite true, sir, but this man went at it from a different angle. He said, "Now please tell us the whole story,

good or bad, and that was the angle from which we approached it, and yet we want to bring out that none of these witnesses could tell even their defense counsel anything bad.

President: Well, the members of the Commission have heard their testimony. If you can bring something in front of the Commission of a general nature, such as the previous witness has placed before us, we believe it would be acceptable, but as to specific things, each specific thing alleged in the specification, the members of the Commission do not believe it necessary since they have already testified.

Defense: If the members of the Commission believe it not necessary, then we will withdraw this line of questioning and ask no further questions. Your witness.

Prosecution: The prosecution has no questions.

President: The Commission again expresses the viewpoint that if further light can be thrown on the allegations, truth or falsity of the allegations, as specified in the charge, we think such evidence would be proper, but the witnesses that have been produced by the defense have all appeared before the court and, it is repeated, their testimony has not in any way, shape or form been attacked as to its credibility.

Defense: This line of questioning was not intended to bring out further facts. Obviously, the witnesses would be better to testify to specific facts. It had only one purpose.

President: Do you wish to bring one of the witnesses back and reveal to the Commission the nature of the interrogation? The fact that the present witness did caution them that they should tell the truth, the whole truth and nothing but the truth - that would seem proper.

Defense: Our only purpose was with our informal investigation, we were in a much better position to get at the unpleasant facts, if there were any, than the court.

President: The Commission presumes, from what the witness has already said, that each one of them, when interviewed by either the defense counsel or assistant defense counsel, were all cautioned to tell the truth, the whole truth and nothing but the truth.

Defense: That's right, sir.

President: And if there is anything further to be brought before the court by this witness all right; otherwise, it would seem he should be withdrawn.

Defense: We will withdraw him then.

President: The witness is excused.

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There being no further questions, the witness was excused and resumed his seat.

Defense: If it please the Commission, the defense has a witness at this time to present. He will be just a few minutes.

President: It is now 12 o'clock. Have you any idea how much time this next witness will require?

Defense: As far as the defense is concerned not more than ten minutes. We have approximately twelve questions to ask.

President: The Commission will adjourn until 1.30.

The Commission then recessed at 1200 hours and was reopened at 1335 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Defense: If it please the Commission, the defense desires to introduce at this time the next witness Lieutenant Colonel Leone Armando, who just arrived.

Leone Armando, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Leone Armando.

Q. Your rank?
A. Lieutenant Colonel in active service.

Q. What is your organization?
A. Infantry.

Q. What is your station?
A. Florence.

Questions by the Defense:

Q. Colonel, how did you find out about this trial?
A. From the newspapers.

Q. Why did you appear to the defense counsel?
A. I thought it was my duty to enlighten, to give enlightenment for the defense, if needed.

Q. Colonel, when did you enter the Italian military service?
A. 1911.

Q. Are you a graduate of the military school or college, Italian military school or college?
A. Yes, Military Academy of Modena.

Q. Are you a regular Army officer?
A. Yes.

Q. Have you ever been in jail or prison?
A. Yes.

Q. Why?
A. I was arrested by the Nazi Fascists because I refused to serve in the Fascist Republican Army?

Q. How long were you in jail?
A. Three months.

Q. Who effected your release?
A. I think it was a false order of release issued by the National Committee of Liberation.

Q. Were you a member of the Italian military service in 1942, 1943?
A. Yes.

Q. Between the periods of September 1942 and May 1943 where were you stationed?
A. At Palermo.

Q. What were your duties?
A. I was office head of the defense services at the defense headquarters of Sicily.

Q. Who was your immediate commanding officer?
A. General Perugi.

Q. What were some of the units in your command?
A. It was the defense command of Sicily.

Q. Was prisoner of war inclosure No. 98 a part of this command?
A. Yes, it depended on this command.

Q. Did you receive in the course of your duty all reports prepared by the commanding officer of prisoner of war camp No. 98?

Prosecution: Objection, if the Commission please. This is rebuttal testimony and the only evidence that can be introduced at this time is testimony rebutting evidence the prosecution brought in in rebuttal.

Defense: We have not introduced this witness as a rebuttal witness.

President: The witness has been produced in front of the Commission as a new witness. We do not know at the present time what testimony is expected to be drawn from him. Your contention is that it should be only evidence in rebuttal?

Prosecution: That's right, rebuttal of what we have offered by our recalled witness.

Defense: This man appeared as a matter of duty and has been in the place only the last few hours. This is the first opportunity we have had to present him to the Commission, and we did not introduce him as a rebuttal witness.

President: In paragraph 8. of Circular 114 it says: "Military commissions may conduct their proceedings as may be deemed necessary for a full and fair trial, having regard for but not being bound by, the rules of procedure prescribed for general courts-martial." If the defense hopes to bring up new matter with regard to the allegations of the specifications, it would seem proper that it can be done by this witness.

Prosecution: Then the case is reopened?

President: Do you wish to offer evidence? If you can offer evidence, you are free to do so, in rebuttal of the testimony this witness gives. Objection overruled.

A. All reports came to my office of the defense command.

Q. Were reports of punishments of prisoners of war or Italian soldiers included in these reports?
A. Yes.

Q. Do you recall any of these reports on punishments of prisoners, if any?
A. I remember some punishments of a few days of prison only given to prisoners who tried to escape and punishment was also given to Italian soldiers or guards who were responsible for this escape.

Q. Do you recall if there were any punishments of beatings, whippings, manacling or depriving of food?

Prosecution: If the court please, we object to that question. It is a leading question. There is nothing new being brought out here. It is just a repetition of testimony we have had for the last several days.

Defense: The defense believes that there is a new angle because this man was the officer to whom all reports came in from the various installations, units, within that command.

President: If you will frame your questions please so that they will not be leading. You object to it on the grounds that it is a leading question. It is not new evidence. It is evidence that has been offered here for the last week. If the defense counsel will specify what specifications this witness is going to testify to or what the new evidence is, we probably could agree. The Commission seems duty bound to listen to whatever pertinent evidence the witness may offer. If it is a repetition of evidence that has been offered previously, we trust that the questions will not devote too much time to it. If you have new evidence, we would like to hear that.

Defense: If the prosecution will stipulate to this previous testimony. If he will stipulate to the fact - -

Prosecution: We want to know what it is first. We don't know.

President: Do counsels wish to make a stipulation together and take sometime to do that rather than have the witness introduce the testimony directly in front of the commission?

Defense: This will take a few minutes, sir.

President: I think we will save time if we allow the witness to continue to answer questions, if you will please try to confine your questions to new matter.

Defense: Strike that last question.

President: Be careful that your questions are not leading.

Q. To the best of your knowledge, were any of the punishments other than authorized punishments?

Prosecution: If the Commission please, I object.

President: Why don't you ask him if any unauthorized punishments were described in the reports that he received?

Q. Were any unauthorized punishments described in any of these reports?
A. No.

Q. Did you receive any reports by telephone?
A. Every day.

Q. What were these reports?
A. Colonel Oldani called me very often asking me for materials, either office material or tables, furniture, everything which could improve conditions in his camp.

Q. Did you ever - -

Defense to interpreter: I think he said "every day" and you said "very often."

Interpreter: First he said "every day" and then he said "very often."

Q. Did you ever officially visit Camp 98 in the course of your duties?
A. One time.

Q. When was this?
A. 9th May 1943 and I remember this date very well.

Q. Why do you remember this date very well?
A. Because it was a terrific bombardment of Palermo.

Q. Did you, in the course of your duties, talk to the camp commander?
A. Yes.

Q. Did he at any time during the conversation show you anything?
A. He showed me some letters left by prisoners who departed from the camp in which they thanked him for the good paternal treatment they have received there.

Prosecution: If the Commission please, I move to strike out the answer. That is not new evidence. It is evidence that has been in for the last week.

Defense: The witness is yours.

President: The answer indicates that the witness, in his capacity as defense commander stationed at Palermo, and having some control of the activities of Camp 98, received from this commander letters from departed American prisoners of war, of appreciation for the treatment they had received from him in that camp.

Defense: Sir, I don't think he stated American prisoners of war.

President: There have been other similar statements to be sure, but not statements from witnesses who themselves had received such letters, so it appears to be new evidence and acceptable to the Commission.

Defense: The witness is yours.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. Were you in this court room this morning?
A. No. I was outside.

Q. You were not at the counsel's desk here this morning?
A. I only came to ask whether I was to be interrogated in the morning or afternoon for one minute.

Prosecution: No further questions.

Defense to witness: That was after the Commission had closed, recessed for noon?

Witness: Yes.

Defense: Does the Commission have any questions?

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Albin:

Q. When did you first know or meet Colonel Oldani?
A. I met him at Palermo in October 1942.

Questions by Lt. Colonel Horndahl:

Q. Do you know what branch of the service Colonel Oldani belongs to?
A. Infantry.

Questions by Lt. Colonel Albin:

Q. Do you know, is Colonel Oldani a regular Army officer or reserve officer?
A. I don't know.

Q. Do you know how long Colonel Oldani has been in the Army?
A. I don't know. I never asked him.

Q. You never knew of Colonel Oldani until you met him in October 1942?
A. Never.

Q. When did you last see Colonel Oldani?
A. It was either the end of May or beginning of June 1943, when we left, when the command left Palermo.

Q. You only visited the camp one time while you were there?
A. One time.

Q. Did Colonel Oldani ever visit you at your headquarters?
A. Several times. Many times.

Questions by Lt. Colonel OKeefe:

Q. You don't know Colonel Oldani very well or do you?
A. I only know him officially through my duties.

Q. You said before, the reason for coming here was because you thought it was your duty?
A. Yes.

Q. Duty to who or to what?
A. It was a duty to justice because if I could give any enlightenments, I was at justice's disposal.

Questions by the President:

Q. When the command that he had reference to, the command with which he was on duty, left Palermo, was there a great deal of confusion?
A. No, we first went inland in Sicily and then later we went to the Continent and this was on the 25th July. In June we went inland and in July 25th we went on the Continent to Camp Basso.

Q. Which of the two commands was evacuated first? His headquarters or PG Camp 98?
A. I don't know because when we left our command went inland. We did not know anything about the camp and I think the camp passed under the orders of the city command of Palermo.

Questions by Major Cambrill:

Q. How well did you know General Perugi?
A. He was my commander.

Q. Were you familiar with his various visits of inspection?
A. Not always because the General did not tell me where he was going.

Q. Do you know how often General Perugi visited Camp 98?
A. I don't know how many times, but I think several times, quite a few times.

President: Any more questions by the judge advocate?

Prosecution: No, sir.

President: Any more questions by the defense?

Defense: No, sir. May the witness be excused.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

President: Does the judge advocate wish to introduce a witness or any number of witnesses in rebuttal of the testimony just offered by this witness?

Prosecution: I am not sure that the defense is through with their rebuttal testimony.

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Defense: At this time the defense would like to read a brief statement of the service of the accused.

President: I am not sure that this is the proper time for that. However, I'd like to be guided by the judge advocate in this matter.

Prosecution: If the Commission please, we have not seen this statement of service and do not believe this is the proper time to introduce it.

President: It would seem appropriate to be the last thing to be introduced. However, I am not sure of my grounds and I would like your advice on the matter.

President to Defense: Will you delay the introduction of that?

Defense: At this time the defense rests. The accused has been advised of his rights and desires at the instance of the defense counsel to remain silent.

President: It is the duty of the Commission to inform the accused of his rights, so if he will rise, I will read them to him. I understand that is correct now?

Prosecution: Yes, sir.

Interpreter to the accused: The accused states that the defense counsel has advised against his appearing as a witness.

Prosecution: If the Commission please, it is suggested the accused be advised of his rights and he at that time can determine.

President: Need this be interpreted to him through his own interpreter, or through the court interpreter.

Prosecution: Through the court interpreter.

President (to court interpreter): Translate this to him: You, Colonel Oldani, the accused, are advised that you have the right as to each of the specifications: first, to remain silent, in which case the Commission can hold no prejudice against you and no inference adverse to you can be drawn if you choose to remain silent, and will not be construed as an admission of guilt, or, second, you may testify under oath as a witness in your own defense, subject, however, to cross-examination on the subject of your direct examination or upon any matter bearing thereon, or, third, to make a statement, oral or written, not under oath, in denial or defense, or in excuse or mitigation, or your counsel may make the statement in your behalf and the Commission will give the statement such weight and value as the Commission believes it is entitled to receive. Do you understand your rights as they are explained to you?

Accused: I choose to remain silent.

President: He chooses to remain silent and that is all that is necessary.

Defense: The defense at this time desires to read a statement of the military service of the accused.

President: Is that acceptable to the judge advocate?

Prosecution: The accused has elected to remain silent. This is his statement, well - -

The defense counsel handed the statement to the judge advocate to read.

Prosecution: If the Commission please, we started to read this statement, but we were not privileged to finish it.

Defense: It is purely a statement of his military service.

President: Under the rights explained to the accused, he is free to make a statement himself, or you can make it for him. It is acceptable under his rights, either sworn or unsworn. He has chosen to remain silent and since you wish to make this statement, it seems it would be acceptable to him as a statement not given under oath. Do you wish to give it that way?

Defense: Yes, sir.

President: I presume there is to be nothing further in the case by the judge advocate or defense counsel?

Prosecution: There will be argument, yes, sir.

President: Do you wish to introduce that statement now?

Defense: Yes, sir.

President: Then it comes under the third right of the accused: An unsworn statement by his counsel of his military service. Is there any objection by the judge advocate?

Prosecution: No, sir.

President: Does the accused know what you are doing?

Defense: Yes, sir.

President: And he does choose to make an unsworn statement of his - -

Defense: Of his military service, yes, sir.

Prosecution: The record should be corrected to show that he is making an unsworn statement.

Defense: Of his military service.

President: Not subject to cross-examination. Are you prepared to make the statement now?

Defense: Yes, sir.

President: The Commission will now receive the statement to be read in evidence.

The defense counsel then read the following statement:

Born 29 December 1891, Milano

1 January 1912	Officer candidate, 84th Infantry, Milano
1 February 1913	2nd Lieutenant, 7th Regiment Infantry, Milano
31 August 1913	Discharged
15 July 1914	Called to Arms.
1 February 1915	Discharged (made application to re-enlist to fight World War I)
24 May 1915	Sent to the front line (Stelvio), 5th Infantry, Commanding Officer of a platoon.
31 October 1915	Promoted to 1st Lieutenant in combat (Stelvio)
1 March 1916	1st Lieutenant, sent to Albania and remained until the first days of June 1916.
1 May 1916	1st Lieutenant, designated career officer.
4 August 1916	Seriously injured in combat and wounded (poison gas) eight months in military hospitals (field hospitals and military hospitals in Belluno)
May 1917	Convalescence leave for six months.
23 August 1917	Promoted to Captain.
March 1918	Returned to combat with 266 Infantry Regiment (front line Altipiani Di Asiago)
15 June 1918	At Monte Valbello, again injured from gas and taken prisoner by the Austrian troops. Later taken to Austrian Military Hospitals in Trento, Insbrug, Kassa, Sopranek and in Hungary, Lake Balator).
10 August 1918	Escaped from field hospital at Sopranek and recovered Tiflis.
5 October 1918	Arrested by Germans for espionage.
25 October 1918	Liberated by Georgians. Collaborated with Americans and British against Bolsheviks.
1 February 1919	Repatriated to Italy (Rome - War Ministry).
1 April 1919	Sent to Tiflis as a member of the Italian Military Commission.
November 1919	Repatriated to Italy.
November 1919 until May 1924	On leave.

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From 1924 to 1931 ... Captain of the following regiments: 32nd Infantry, 49th Infantry, 8th Infantry.
From 1931 to 1941 .... Sent as Captain to Messina Military District and Military zone.
1938 ..... Promoted to Major (staff duty)
1941 ..... As Major and Commanding Officer of Transportation Units.
January 1942 ..... Commanding Officer of Camp 98 in Boturro.
June 1942 ..... Promoted to Lieutenant Colonel at Camp No. 98.
20 July 1943 ..... Last day in Camp 98 in San Giuseppe Jato.
22 July 1943 to
26 August 1943 ..... Attached to 6th Army in Sicily and Calabria.
27 August 1943 ..... Ordered by War Ministry to reach Monza.
20 November 1943 to
20 April 1945 ..... Commanding Officer of Military District in Monza.

Degrees ..... Doctor of Economy and Commerce.

Decorations in the War The Bronze Medal
Bronze Star for Combat at Carso 4 July 1916
War Cross for Good Military Service during 1915, 1916, 1917 and 1918.
Gold Cross for Long Service 1941, 1942, 1943.
Wounded Twice in Action

Defense: If it please the Commission, the defense rests.

Lt. Colonel OKeefe: One question on that. That Bronze Star is not the American Bronze Star, is it?

Defense: No. There is a correction there. That Bronze Star is 7 July 1916.

Prosecution: The prosecution has nothing further. Does the Commission desire any witnesses called or recalled, or any other evidence produced at this time?

President: The Commission desires no further evidence.

Prosecution: The prosecution does not desire to make an opening statement, but reserves the right for a closing argument.

Defense: Before the defense starts its closing argument, there is one thing I would like to have clarified; whether it is the desire of the court to have the final argument recorded by the stenographer. As I understand it, in the previous courts, it has not been done.

Prosecution: In some it has been done and in some it has not.

Defense: Does the prosecution have any wish in the matter?

Prosecution: Personally, I believe it is preferable not to do it. It is a lot of additional work for the court reporter.

Defense: We have the same feeling about this.

President: You do not wish to record the arguments?

Defense: Well, it was not done on the last trial and the record is really found in the testimony. It is really up to the court. We have no wishes one way or the other.

President: We will take a few minutes recess.

The Commission then recessed at 1425 hours and was reopened at 1445 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

President: Will the reporter please record the closing statements of both sides.

Prosecution: It is stipulated and agreed by and between the judge advocate and the defense counsel that the statement of service read by the defense counsel is a statement prepared by the accused as to his military service and is not to be construed as an unsworn statement introduced in evidence in the case.

President: Does the accused know what has been done now?

Defense: Yes, sir.

Captain Arthur A. Burck, Assistant Defense Counsel, presented the following argument:

The issues raised by the specifications are seemingly complex and many but, in effect, all of these issues can be boiled down into one simple test, one simple standard, by which the guilt or innocence of Colonel Oldani can be gauged. A fair statement of this test is this. Was the conduct of Lieutenant Colonel Oldani, as Commanding Officer of Camp 98, appropriate in all of the circumstances, or, another way of stating that is: Did Colonel Oldani, as Commanding Officer, make every reasonable effort to comply with the regulations prescribed by the Geneva Convention. He was not required to do the impossible. The Geneva Convention rules lay down dual responsibilities. The first responsibility is on the State

which detains prisoners of war. In this case Italy. The Geneva Convention prescribed standards, exacting standards, which obligates Italy; for the present war the slightest infraction whether intentional or otherwise, was a mishap on the part of Italy. The slightestbreach on the part of Italy of any of these regulations would entitle the other power, whose prisoners were involved, to take retaliatory measures. That must be kept clearly in mind - the dual responsibilities laid down. The other responsibility is that of the various individuals who administered prisoner of war camps, from small men all the way up to the top; anyone, having anything to do with the prisoners of war camp was obliged to comply with the provisions. However, when we stop at some intermediate echelon in this case, the commanding officer of the camp, we cannot impose upon him responsibilities which are above his office. We cannot hold him responsible for the impossible or miracles. That is pretty obvious, but a few illustrations may help. He cannot be expected to provide bread when bread was not there, if he himself did not receive it. He cannot be expected to turn wine into water or receive manna from heaven, when it was not there. He had his limitations. If, through an Act of God, the tents were blown down in a hurricane, in a tempest, the prisoners would be without shelter, but, obviously, even though the Geneva Convention provides they must have shelter, you cannot condemn a man because through the weather there was no shelter. Likewise, if there were no Red Cross parcels present, there is no fault or responsibility for not distributing. What I am trying to do is point out, make the court realize the difference between possibility and impossibility. The Geneva Convention requires only that Colonel Oldani, as commanding officer, do everything within his means, reasonable effort, within his means, to follow and comply with the provisions. Now, in determining whether Colonel Oldani used reasonable means, appropriate means, in complying with his obligations, we must forget that we are Americans, we must put ourselves in his shoes, we must go back four years, we must go to Sicily, we must forget about our fine American rations, our American equipment, we must look at his position and what he did from the standpoint of the circumstances at that time. In 1942 and 3, as we all know, conditions within Italy were chaotic. Armies were being divided, material was not at hand, the country, which had always been a poor country, was at one of its poorest moments. No-one in Italy ate well, Italian soldiers, Generals, prisoners, everyone. Particularly acute, was the problem in Sicily. At this time camps in North Africa were nearing conclusions. Sicily was already under constant aerial bombardment. Sicily was already marked as the next invasion point. This all created a condition of chaos, during which the obtaining of supplies, obviously, must have been difficult. Put yourselves in his position at that time and try to imagine the hazards which must have confronted this commanding officer in the execution of his duties. In this camp, camp No. 98, twenty thousand prisoners arrived, stayed some time, and passed on, twenty thousand. Twenty-one of those prisoners

have chosen to complain. Twenty-one out of twenty thousand, approximately, one out of one thousand, one-tenth of one per cent. It is quite amazing when you consider the conditions of that camp. I think we will all admit that conditions, generally, were bad. I cannot imagine that, to an American, who was accustomed to good food, good rations, that it was a pleasure to come to this camp, or any other prisoner of war camp, but the fact that the conditions were bad does not mean that it was his fault. We will come to that later however. The fact that only one out of one thousand of these prisoners have complained may be regarded by Colonel Oldani as a tribute. You officers who have had commands know the inclination of the American soldier, or the soldier of any land, to gripe. I am sure that if a check were made among those who passed through replacement depots here in Italy, or elsewhere, that you would get a figure of, at least, one out of one thousand complaints and some of them would be serious, imagined or real. It is apparent to you individuals who sit here as judges that, if a check were made among those who left our various prisoner of war camps, that you would find at least one out of one thousand complaints. We all know how well the Detention Center here is run, but I am sure they would have one out of one thousand complaints. If an effort were made, as Colonel Holder has testified here, a systematic program to uncover complaints, if that were conducted in any of our Army installations, I am sure that the figure of one out of one thousand would be met. Now let us turn to the case which the prosecution has presented. We admit that when you first read these statements, your blood begins to boil. That, frankly, was my experience before I had met Colonel Oldani, and a reasonable man might well say that where there is smoke, this much smoke, there is some fire. That is a reasonable approach to this whole problem. In studying the problem, that is the problem of these affidavits, one wants to know what were the conditions under which these affidavits were taken. What was the questioning like. We don't think efficiently. While we don't know for sure, we can exercise our intelligence and make a few hypothetical conclusions as to what went on in these investigations. Turn at random here to any of these statements. At the top of the statement, the court has probably observed there is a title, "In the matter of the failure of the Italians to provide so and so." "In the matter of the failure of Italian Military officials to adequately protect American Military personnel." "In the matter of chaining American prisoners of war to flagpole." The investigator captioned these, put a title on these. Sometimes you will remember there were three where statements were taken from one witness. That bothered me at first. Why, when one statement would have covered everything? Well, I think we can draw some conclusions. The investigator was given an assignment, was told on this subject matter, "Go out and find everything about the chaining of American prisoners," or whatever the subject might be. He was given the facts offhand. We can imagine him approaching the soldier and saying, "Now, first of all I have three things to question you on. I want to cover, first of all, the chaining

of American soldiers at Palermo. Now, it looks to us from what we have that this happened, is that true?" The fact that this must have been done is indicated by another clue. As this court will recall, almost all of these prisoners at home, all of these former prisoners, referred to Mario Minardi as Sergeant Mario. Apparently, the information at the central place must have been that he was a sergeant. That was given to the investigator and the investigator put Sergeant Mario into the mouths of each of them. Otherwise, how can you account for almost every one mentioning wrong rank? As a matter of fact, if you examine these statements, you can see the investigator led off with the question, "What do you know about Sergeant Mario?" All of this tends to explain why these statements are in their present form. I cannot be sure if that is true; the court cannot; we have to guess. It is through no fault of ours that we have to guess. We have already commented on the many inconsistencies in these statements, and we won't go over that again. There are many more, which I am sure the court has already observed. Now, how else might these things have been suggested to the minds of these former prisoners? Well, they all knew, as everyone else did, that Colonel Cidani always had a whip. It was a very easy thing for someone who had a little spite in his mind, maybe because he did not like the Italians, or because he did not like the conditions in the prisoner of war camp. I am sure they all had reasons not to have liked the conditions in the camp. I am sure if I had been there, I would not have liked it too. Some were not big enough to accept the conditions as they were, the conditions which were beyond the means of the accused to correct. I think it is a tribute to American sportsmanship, the fact that nine hundred and ninety nine out of one thousand of those who suffered similar experiences did not make any complaint. Beyond this, it is difficult to attack these statements. Difficult for us for the simple reason that this accused has been deprived by the system which has been chosen for the trial, bringing this matter to trial, deprived of some of his basic Constitutional rights, the rights guaranteed by the Fifth and Sixth Articles of our Constitution, the rights to have witnesses cross-examined and the rights of any person accused to be confronted by witnesses. These Constitutional provisions were put in our Constitution some one hundred and fifty years ago just to prevent such statements as these coming before tribunals. The accumulated history of civilian mankind has demonstrated that ex parte statements from one side is not a satisfactory means of determining whether a man should go to his death or to spend years in prison. It is true that, technically, these may be admissible under Circular 114. However, we pass over the problem of admissibility. We are now confronted with the problem of credibility. The problem before this court is how much credibility can be attached to these statements? The fact that these - such statements as these - normally do not come before courts is an indication of the caution with which we must approach them. Just one further thought. While we have the authority of Circular 114, we must remember that

Circular 114 is not substituted for the Commission. Now, checking up some of the thoughts in the prosecution's case, in this, as in all criminal proceedings, the prosecution has the burden of proof. That means that the prosecution must prove every essential element of every specification, beyond a reasonable doubt. That, in turn, means that if, in connection with any specification, this court has any doubt, any reasonable doubt, substantial doubt, even though they may think it tends towards establishing a certain fact, if that doubt exists, it is the duty of the court to acquit on that specification. Now, I am going to jump down to specification 4, because that specification and the proof offered in support thereof, brings out in full detail the incompetency of the evidence which the prosecution has offered. To sustain conviction on this offense, it would be necessary for this court to find that this Serrano actually was chained to a flagpole. If they have any reasonable doubt, even though there might be indications that he was so chained, it is the duty of this Commission to acquit. The court must find that he was chained and beaten. Now, to prove that Serrano was chained and beaten, the prosecution has five of these statements. Let's examine these five statements. Before we examine these five statements, it must be noted that there is no statement from Serrano himself; the man who was involved, allegedly involved, either did not chose to make a statement, or some official, remiss in his duties, failed to obtain it, which we don't know, but it is suspicious, very suspicious, that the man involved is not represented by a statement. Now as to the five statements, one of them purports to be an eye-witness, but the other four all admit that they heard from the others - hearsay, double hearsay, because the statement itself is hearsay, and the source of the statement is hearsay once removed. Well, let's see what these five affiants have to say about what happened that day. They all give a reason for Serrano being punished. There are five statements and there are five reasons, all different. Grillo states that Serrano was punished because he tried to protect a prisoner from being unjustly shot. I think the court will agree that it is not a very convincing reason, in view of the testimony of all these other witnesses. No-one has even suggested that a prisoner at this camp has ever been shot. This is the reason given by the alleged eye-witness. Proto states that Serrano was punished for having cursed the camp commander. The third, Freeman, gives two reasons - because Serrano was persuading Colonel Oldani to issue more food and, second, because Serrano was protesting the chaining of prisoners for refusing to work; now the fourth witness gives the fourth reason, Serrano had refused to obey orders from a guard regarding work he had to do. Rakow gives the fifth reason, because he was sticking up for his men because they were not getting enough food. It is hard to imagine greater confusion. If the court wishes to convict this man on this charge what - I will change that - how can, I am waiting for the prosecution to tell us, how can the court regard this, these statements as evidence? The prosecution wants a man to go to jail for that. Now, we find the same inconsistencies in the statements, extending to

all vital points. As to the manner of punishments, two of these people say that Ferrano was chained and beaten; two of them say that he was simply tied to the post and beaten; the fifth says he was chained and not beaten. Now let's examine these statements as to what instrument was used in effecting the beating. Freeman says that Ferrano was beaten with a riding whip; Grillo, beaten with a whip, 2 feet long, with leather straps; Rakow says he was beaten with chains; Jobusch, on the other hand, makes no mention of the beating at all. Now, there are other discrepancies on the point of who administered the beating and gave the orders. Let's hear from all. Freeman says Colonel Oldani did it; Grillo, only one Italian guard used the whip; Proto does not say; Jobusch just mentions chaining and says that the interpreter Mario was the culpable person here who gave the orders; and Rakow, Colonel Oldani gave the orders. Now, I think very little, in addition, need be said about that fourth specification. Undoubtedly, so far as we can determine, judging from the similarity of some of the incidents, this may have been the incident about which the priest comments in his report. The priest goes into great detail in that report about an incident involving the Colonel and a person the priest identified on the stand by the nick-name of Mulatto, and the priest, in his report, tells about the serious thing done by this prisoner; that Colonel Oldani was intent on having this man punished by a higher tribunal, turning him over for a formal trial, and he came to the priest and asked the priest's advice, and Colonel Oldani finally decided to give the customary punishment; I believe seven days and two hours of irons. Colonel Oldani thought that the man may have been influenced by too much Sicilian wine. I ask this Commission to compare these two versions - the confused version of the prosecution and the version given by the priest, and it must be remembered that his report was given shortly after the incident, because his report was made up on a monthly basis; it is not what he testifies now, but what he reported then. Now, I won't spend so much time on the other specifications, for the simple reason, well there are many inconsistencies which could be pointed out, but it is obvious that the court has been observing them. I will make a few remarks only about the others. Specification 1 - depriving prisoners of food as mass punishment. The facts as to food have been laid out before this court; the fact that there were two rations authorized by the high command in Rome; the ration for the non-workers and an increased ration for the workers, is not denied. The prosecution has not brought in any denial of that. It stands here as a matter of record. Obviously, if people did not work, they got a small ration and that was all they were entitled to. It is apparent that if these individuals were discontented with the food, it is because they did not chose to work. The testimony is clear that they all had the right to work, and if they were too sick or ill to work, they got an increased ration, but if they preferred to sit in the tent, they were not entitled to any increased ration. It would have been unfair to the prisoners who did work.

Specification 2, that's the incident involving, so it is alleged, a Sergeant Joseph Solon and another prisoner, who were handcuffed to the flagpole, and many other things allegedly done. Here again, the thing that strikes me, and I am sure the Commission, is the fact that the prosecution has notbrought Solon's story in here. If he was the one who was aggrieved, you would think they would get his statement. Maybe he explained it, well, on second thought, it was all nothing, everything was all right; I was just griping; I do not wish to make a statement. I don't know whether that is true, but you would think some effort would have been made to get a statement from this man Solon. As you will recall, some of the men referred the investigator to Solon and other witnesses, but the statement is not here. Now, as to the statements which are here, I think there are three or four. If the court examines these statements, they will see plenty of hearsay, not what people saw but what they heard. These camps must have been rumour factories. People did not have much to do; we all know that when American boys do not have much to do, no place to go at night, they sit around and gripe; that is about all they have to do after hours. Now, you will notice that Freeman mentions there were two people involved in this incident and one was British. The other witness saw two Americans. The witness themselves do not know many of these vital points. If they do, they don't tell. This alleged incident happened around Easter. It so happens that most of the prosecution witnesses, most of the defense witnesses who came here and testified, most of them recall the escape around Easter. It was clear in the minds of many of them. They told what happened. They told the punishment administered. Likewise, the Father, in his report, made a short time after this incident, told what had happened - an escape, recapture and punishment - the punishment authorized by the Italian Army; the punishment which we have all seen has been administered on many occasions to the Italian soldiers - seven days in prison, irons for a certain period, not exceeding two hours a day. There has not been a single witness who has come in here who ever recalls the application of irons for more than two hours, in accordance with the regulations. Likewise, this chaining to the flagpole business appears to be rather a preposterous story, in view of what all these witnesses have said, a large number of them were in that camp almost every day. Surely, if they had been tied to a flagpole, in a central point of a camp, this could not have escaped the notice of these witnesses. Now, we come to the story of Mr. Greenberg, Staff Sergeant Greenberg, on which Colonel Holder attempted to throw some light this morning. He does not say much, but what he does say is enough to show the impossibility of what he alleges. He says, you will recall, that "when I arrived at the camp, I saw certain American prisoners of war who were already there, crowded around, looking for friends among the new arrivals." This court has before it the unchallenged testimony as to what happened when prisoners arrived in the camp. The prisoners arrived, many of them dirty, filthy from weeks of travel. You will recall that first of all, they were searched , then if articles were discovered which should be checked, the articles were taken, put in an envelope and a receipt given, then after this they were given a physical inspection to see

whether they had any communicable disease. Then, apparently, they may have been disinfected, I do not recall this clearly. After all this was done, then, only then, for the first time were they permitted to go in the inclosure with the other prisoners. As you will recall, this area was closed off by a barbed wire, a separate inclosure for obvious reasons - obvious reasons, the camp did not want the old mingling with the new who may have had contageous diseases. Well then he says that when he arrived, he was searched. The old prisoners stormed around him looking for friends. Impossible, if the court has any doubt on this point, the rest of these witnesses are here to testify. We had only one witness testify, because we do not want to repeat it. They all can testify as to this. Now, what does Greenberg do? He says "he observed guards striking some soldiers who were milling around us." What does he do? He says he got mad and he tried to interfere. This statement seems to us as having been made for home town consumption, to show the boys back there in Brooklyn just what a hero he was; how he came to the rescue of those who were being beaten. Then he testified he was left there for forty-eight hours, apparently forty-eight continuous hours. Well, it is hard to believe. Specification 5 is next. In this someone by the name of Black, as far as I can see he is the only one who testifies about this incident, tells about being beaten for burning blankets, or a tent, or whatever it was. He gives the names of half a dozen other individuals. They were all, according to him, involved. Where are the statements from these others? We would like to know what they have to say about the incident. Now Mario Minardi may or may not have shed a little light. He says he heard these people say, "We were beaten; it was nothing considering what we did." And it was a perfectly ridiculous thing. I think we all have to admit if they did burn blankets when, as we all know, they were pretty valuable possessions in that camp, I think if those prisoners had been under the jurisdiction of any of us, they would have received some punishment. I don't think we would have beat them and I don't think anyone beat them. If they had, I think we would get other testimony. However, I don't preclude the possibility that someone in this camp may have been so incensed as to do it. There is always that possibility, then the question is is Colonel Oldani responsible for acts, contrary to orders, of some of his underlings? I say yes, if there is an established policy of these underlings to abuse these orders and it happens so often that it has come to the attention of the commanding officer, yes, he is responsible, but if it is an isolated instance where the underling has defied orders - -

The Commission then recessed at 1545 hours and was reopened at 1555 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

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We are on the fifth specification, beating, alleged beating, of this group who burned the blankets. I started to say several of the witnesses have established that no-one in this camp had authority to punish, except in cases of rebellion. Colonel Oldani had made his policies clear. If an individual guard, in the heat of the moment, chose to ignore those orders, it is hard to imagine how, by any standard of law, that Colonel Oldani could be held responsible for unauthorized acts, any more than each of us is responsible for the unauthorized doings of our subordinates in our commands. Specification 6: this appears to be that flagpole incident, the flag raising, entangling of the rope incident. According to Cochran, nine people were punished, yet we have only Cochran's statement, not the other nine, but to show that he might have been wrong, we will look at LaBella's statement. LaBella says only two were punished. None of these witnesses who were in the camp at that time recall any punishment similar to that charged. It is inconceivable. I won't say that, I will say that if that did happen, it has not been proved. Now Cochran again appears in Specification 7. Here again it is only his statement. He says that four others were involved in the punishment, but there is only his statement. And there are many inconsistencies in in Cochran's statement, only one of which will I mention at this time, although I think it is probably not necessary, because I think Colonel Falek has already observed the glaring inconsistency. Cochran reports that one of the lieutenants pulled off his riding boots and used them in administering the beating. I think it is obvious to this court already that pulling off a riding boot worn by an Italian officer is not a simple procedure, and not a likely way of administering a beating. Now on specification 8, accommodations and quarters, there have been many days of testimony on this point. The facts are clear, but it must be kept in mind on this point, as well as the others, that Colonel Oldani did not have unlimited means at his disposal, but had only those means authorized by the Italian Army. If the tents were not heated, well there is no coal in Sicily. There are very few stoves in Italy. The Italian troops themselves, as you heard, are not so fortunate as to have stoves. It can hardly be claimed that Colonel Oldani was required by the Geneva Convention, or any other law, to do the impossible. It is his duty only to use all reasonable means. That he did. The same can be said regarding Specification 9 - the feeding. We have all been involved in Army messes in some way or other. We all complain about food. I am sure most of us complained about today's luncheon. But the important point is not that there were complaints. Did the ration to which these prisoners were entitled, did it - was it actually distributed? The commandant could give them only such food as was delivered to him and authorized by pertinent regulations. If those regulations operated by discriminating against prisoners of war, and I don't think they did, the evidence does not say they did, the evidence says they were applied uniformly, but, if they did discriminate against prisoners of war, the Government of Italy, those who promulgated these regulations and established the rations, they should be made to answer, or should be on trial

not this man who had nothing to do with the establishment of rations. The testimony ofall the individuals here establishes there was no thievery, no looting of food from prisoners' supplies to the Italian larder. Incidentally, the court today received a further document on the food ration. Yesterday, the prosecution was so certain it had new information on the food ration. It read this as being the food ration for Italian soldiers. It was then pointed out to the court that this was not the basic ration. There are many rations, the basic ration, ration for workers and the ration for operational troops, the latter for combat troops is much greater. Well, the prosecution has now admitted that it is wrong by introducing the second letter. The second letter states, yes the previous letter that was for operational troops. As to what the basic ration was, the ration for depot troops, we don't know. We don't have that information in Florence, and it might be of interest to the court to know this correction, this later letter was occasioned by the activities of the defense in seeking information. The prosecution would have been content to go on with the first letter, I am sure. As to the working of physically unfit prisoners, the witnesses have told what the policies were and what the practices were. Specification 11 apparently deals with misappropriation of personal articles which were taken from the prisoners when they arrived in the camp. Well, I think that the evidence shows that reasonable methods were established by the camp commandant to safeguard this property. I don't think we do any more in our own camps than was done there, putting the property in envelopes. General Perugi remembers only one complaint that involved a small ring. This recollection is corroborated in the report of the priest. You will recall that in his report. I believe he spends much time in discussing this incident which had been reported to him and Colonel Oldani by this princess who was half American. Now no attempt will be made to review testimony of the defense witnesses. The court, I am sure, has in mind their story, the facts which they gave. It is to be expected, however, that the prosecution, in referring to some of these, will attempt to attack them because occasionally an unfortunate phrase or word was used - rosy cheeks or elegant dress, things like that, but, regardless of these little incidentals, I would like it to be perfectly clear that these witnesses told the truth on any point of fact. They were not broken down. They came in and told honestly, sincerely, what they knew. The defense may try to say, the prosecution may try to say, "Well, they were all defense witnesses. They came here to defend Colonel Oldani. What else could you expect?" True enough, they came to defend Colonel Oldani. We will all admit that. They came to defend him with the facts. They were confident that if the facts were known, that that would be the defense. They have given the court the facts. Earlier in this argument, I suggested that the individual members of the Commission forget that they were Americans and try to put themselves back in the shoes of Colonel Oldani, put themselves into his predicament, confronted by his problems and then judge the facts. Now, I am going to ask this court to remember that

they are Americans. You are Americans. War criminals must be punished. We all agree on that. It is equally important that innocent people be not punished by death or jail terms because they were the victims of unfortunate circumstances beyond their control, or because they were victims of gossip. A few weeks ago I did not know Colonel Oldani. Whether he is convicted or acquitted, I shall probably never see him again. If an innocent man is convicted, it won't disturb my conscience too much because we have all been conditioned, I think. In these past years there have been millions of innocent people who have lost their lives. The important thing I feel is the deeper issues involved in this trial. The prosecution has asked that this man be deprived of his liberty because of this. In the jurisprudence of all civilized countries, this is considered as paper and nothing more. This man is on trial, but, in a certain sense, this trial is in itself on trial. We came to Europe with the American Army for idealistic reasons. Most of us felt deeply that we had a system of government and certain principles and fundamental rights which we should teach to the world, which we should bring to Europe. We have told these people about our fundamental principles and yet, in a few moments, the prosecution will ask that someone should be imprisoned for this. Some may say that these arguments are technical, but, if the basic rights guaranteed by the Constitution are technical, then we can only say, what have we been fighting for? These graves between here and Bologna and Anzio and elsewhere, what were they fighting for? What did they die for - the preservation of these Constitutional rights?

Prosecution: May it please the Commission, do you desire to give the reporter a few minutes rest before - -

President: I think it would be a splendid idea.

The Commission then recessed at 1615 and was reopened at 1630 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Lt. Colonel Clyde W. Wellen, Judge Advocate, presented the following closing argument.

May it please the Commission, this case is now in its final stages. This Commission has shown an unusual interest in the proceedings and I am very much pleased that they have taken as much interest in the evidence as has been displayed by the members of this Commission. The prosecution feels that the accused has not only had his day in court, the fairness of this trial has been beyond question. As a matter of fact, the defense counsel has been given opportunities to speak on the evidence, such as I have never heard in any other case. Now I am sure that these opportunities were given to him, because this Commission desired to make this trial as fair as humanly possible. This particular case does have a peculiar interest in that it, apparently, will be the only prison camp case tried in this theater.

The United States Government is not interested in the accused as an individual. Its sole interest in this case is to punish if a crime has been committed. Likewise, the two members of the prosecution have no personal interest. We did not know Colonel Oldani. I never saw him until a few days before I served the charges upon him, and there is nothing personal, as far as the prosecution itself is concerned. It is a duty to be performed, the same as this Commission has a duty to be performed, and it is not a pleasant duty. The defense counsel has emphasized the fact that we have certain rights under the Constitution. I wish to assure this Commission that those Constitutional rights are being preserved in this proceeding. The first Military Commission was appointed in 1847 in G.O. 20, as of that date, February 19, 1847 - that was the date that the first Military Commission was appointed. General Scott, General Woods and General Taylor all appointed Military Commissions during that year. Their example has been followed down through history. The procedure is the same procedure outlined in General Order 20, generally speaking. I have not been able to trace the introduction of evidence, but I am convinced that about the same system was followed in introducing evidence as was followed back in 1847. Now, the Supreme Court has repeatedly approved decisions of Military Commissions. Winthrop cites many cases and I know this court will remember that just recently a case was appealed from the Far East, and that the decision of that Commission was approved by the Supreme Court of the United States. Now, at times, it is necessary to go beyond the Constitution in order to preserve our liberties. That has been done during this war and during this emergency and it is authorized. The President has implied powers to carry on the war and those implied powers continue to exist until peace treaties are signed, so there is nothing new in this procedure, absolutely nothing new. It has been going on now for ninety-nine years at least. I want to emphasize again that the manner of presenting evidence to a Military Commission, the procedure of a Military Commission is authorized and has been approved time and again by the Supreme Court of the United States. There is a particular reason for that. Most war crimes are committed behind enemy lines. It is impossible to get evidence and to present it to a Military Commission in the same manner that you would back in the United States, when everything is at peace and quiet reigns. One striking thing about this case is the fact that every witness, I believe, with the exception of Colonel Holder, has served with the accused, did serve with him in the Army, with the single exception, I should say, of the affidavits, which have been submitted in evidence in this case. Now, the defense counsel has stated that these men came here to defend the accused. I would say they came here to save him, not to defend him. Now our first witness, Mario Minardi, as this Commission undoubtedly observed, was a very reluctant witness for the prosecution. He is a friend of the accused, as he demonstrated on the witness stand. Well, when you look at his testimony, he states that the accused told him that he struck a Mulatto sergeant with his riding crop. Gentlemen, that has not been denied. He also told him that he had

two American soldiers handcuffed to the flagpole as an example; nor is there any denial of that; that ten American soldiers were beaten with belts for building a fire in their tents; again there is no denial; and what did he say about bread? The Italian soldiers in PG 98 received one large loaf of much finer texture. The prisoner of war received two loaves, approximately two hundred grams each. The large loaf that the Italians received weighed approximately five hundred grams, according to the best judgment of Minardi. Now, why did they make two loaves of two hundred grams each? The purpose is evident. If a man was not working he received one loaf, which was absolutely contrary to the Geneva Convention. According to Mario's statement, that bread was of a very inferior quality. When he was called to the witness stand the first time, he stated that the prisoners could not eat the inside of it. All they could eat was the outside crust. Just a few comments on the statement by the attorney for the defense and I must say that he has made a very valient fight; he has fought hard for the accused and should be commended for it. Is this conduct appropriate under all circumstances? I ask you is it appropriate to strike a prisoner of war with a riding crop? Is it appropriate to put prisoners of war in chains? Is it appropriate to handcuff them to a flagpole for a day or two days? Now again, there was no showing that these prisoners could not have had the rations that were authorized for them. There was no showing that the rations were not available, absolutely none, and, of course, like all defense attorneys when they are defending a criminal and if evidence faces them, try everybody else except the specifications and charges under which their client should have been tried. At first, we started out trying Minardi. Next, we tried the Red Cross. I will venture to say that one-third of our record here deals with Red Cross parcels, etcetera, and there is no specification charging any violation with regard to Red Cross parcels. Frankly, I thought this morning, we were going to try Colonel Holder. Finally, in the argument, we are getting down to the accused in this case. I mention the fact, the old adage, "where there is smoke, there is some fire." I didn't think it existed in this case. Gentlemen, there is nothing truer than that where there is smoke, there is always fire. There is bound to be fire, or you don't have the smoke. Now, we come to the ex parte statements - ex parte statements, that is true, these were ex parte statements. That is a system that has been followed during this war. Men return home. They take the statements and submit them, but the very fact that those statements do not agree on minor details makes them more conclusive on the basic matters contained therein. There was no effort to get those witnesses together. There was no effort to have each one tell exactly the same story, They were asked what their story was. They swore to that and, Gentlemen, they were there, they know what happened. Of course, after a lapse of time from 1943 - December 1942 to the Spring of 1943 - until the statements were taken in 1945, they may have forgotten some of the minor details, but they don't forget the main facts in the case. When a man has his teeth knocked out, he doesn't forget it; when he is kicked in the groin, he doesn't forget it; when he is chained to a flagpole, he doesn't forget it; when he is starved, when he lives on soup with probably

one bun a day, he doesn't forget. This information and the very fact that these statements do not agree on minor details is the best evidence in the world that the basic facts which these men have sworn to are true. All except two were American prisoners of war who went through that camp, who made these statements. I have no doubt that many more could be secured, but the authorities felt that there was sufficient evidence in this file. I will comment on specification 4. As a matter of fact, I don't believe the defense mentioned specification 1. He started out with specification 4. That is Sergeant Serrano did not make a statement. That's quite possible. I don't think there was any effort made to find all these men. They found what they considered sufficient to justify placing this case before a Military Commission for final determination. There was no effort made to find everybody. Serrano may be dead. I don't know where he is. However, five witnesses have testified, under oath, as to what happened to him. They were confused as to the reason, that's true, but that is understandable under the circumstances, and again, we must remember that Serrano was a First Sergeant and he may have called all these things, which these witnesses have testified to, to the attention of the accused. I cannot say that these men are wrong, or that anyone of them made a mistake. Serrano, being a First Sergeant, would probably object and object strenuously to anything he considered to be wrong at that time. That was part of his duties. Rations were mentioned a second time. Now, I ask this Commission, does an American soldier have to carry rocks up and down a hill in order to get his food. In other words, according to the testimony in this case, unless he carried rocks, he only got half of what the other people got. Clearly, to my mind, when you look at the bigger rations which were given to these men, that was effectually forcing a man in that camp to work, whether he was able to or not able to. He would work in order to get that little bit of extra ration, an extra crust of bread around the second loaf. I have been rather surprised at the defense in admitting that they placed prisoners in irons. Paragraph 127: "Maximum summary punishments.- Arrest is the most severe summary punishment which may be imposed on a prisoner of war." Not arrest in irons, but arrest is the most severe summary punishment which may be imposed on a prisoner of war. Now these men were not tried. The evidence of the defense says they were not tried. It was a summary punishment that was inflicted upon them and the defense admits they were placed in irons; clearly, a violation of the Geneva Convention admitted by the defense. They also admit there was no heat; possibly, they did have difficulty in getting it. There is no denial of the material allegations. The accused was an officer in the Army, the Italian Army, a belligerent enemy nation. He was in command of PG 98, that has not been denied. According to the testimony of his own witnesses, many of the things of which he is accused have been admitted by one or another. I don't like to take the time of the Commission to review that testimony, but feel that it is necessary to do so. First, we have General Perugi. Well, the General stated he visited the camp three times per week and there was no complaint from the American soldiers - Camp 98, a Paradise for prisoners,

rosy cheeks and happy and wanted to stay. I think that is enough to say about that testimony. Anybody who knows American soldiers and knows the conditions under which they live - that contradicts every statement that he made. But to go further, he commanded eighty to ninety thousand men at seventy parachute units scattered over Sicily, had training units scattered over Sicily, yet he remembers the keys to the storeroom for Red Cross parcels, three years later. He remembers that there were two keys to that storeroom, and he tells this Commission, and expects this Commission to believe, that he visited that camp, approximately, three times a week and yet Candido Assanelli, officer at PG 98, who was there, never saw the General. In other words, we have the star witness of this case testifying for one of his old officers. He came to do what he could to save him, regardless of the truth. But even he made the statement that those who did not work got smaller food rations - got smaller food rations, an admitted violation of the Geneva Convention. General Yengo did not refer to a single specification. He admitted the complaint of lack of food. He did make the statement that the food ration was fixed in Rome, but did not state that the American prisoners of war in PG 98 were getting that ration, and he did not know the gram content or calory content of the basic ration. He did state that prisoners working had an increase in ration, but again we have no clear testimony as to any specification charged against the accused. In other words in all the evidence before this Commission, there has been no clear-cut denial of a single specification alleged here. Now the chaplain, weather conditions bad, no heat, dysentery spread through men soon after arrival in March and April 1943. Something caused it. Specification 4 - he did testify about the time the American PW allegedly insulted Colonel Oldani. He said the prisoner of war was put in irons, put in irons - clearly a violation of the Geneva Convention. Also, personal items were impounded, and again he admits that, at one time, they had straw sacks for men to sleep on, but many of them were worn out, and states that it was easy work, carrying rocks down the hill. Also he heard about chaining to the flagpole, but did not see it, saw a negro in irons, but did not see anyone chained to the flagpole; spoke to prisoners about food again, remembered quantity, prisoners food was kept separate. He did emphasize the fact that the PW were searched and all items found handed in - all items found handed in. We have depositions before this Commission that personal effects were taken from these prisoners and they did not get them back. Now it is probably true that some of those men did trade what few personal belongings they had, or would have traded them for something to eat. That is quite possible, but those personal items were taken away from them and they were not given back, and if they violated a rule of the camp, it was because they were forced to by this accused, in order to get a little something to eat, to enhance the ration which they had. As one man stated, they had to go through the garbage to get cabbage leaves and anything they could find to live on. Now, Antonio Bisato, engineer sergeant, he frankly stated to this Commission that men received extra rations if they worked. His evidence was not clear. He was the

engineer in charge of the camp, but the important thing, I think, that was finally clear was that they had one latrine and that the others had not been completed. Then on cross-examination, Bisato stated those who did not work received only half of the ration - those who did not work received only half of the ration, and he also did not see our star witness, General Perugi, and his final concluding statement was - working prisoners received the same ration as Italian soldiers, non-workers received half as much. Baseis, Umberto stated that one day the commandant had informed him that he had ordered irons and seven days confinement, and stated, in explanation, irons were usually applied for half an hour, not more, but silent as to the other specifications, with the exception, he concluded, when the Colonel made a speech down at the gate and this man who was called Mulatto made a remark, this witness said Colonel Oldani had him arrested, put in irons and confined five or six days. That was his statement - put in irons and confined five or six days, and also that prisoners did not receive the rations shown on the memorandum which has been introduced in evidence. He definitely made the statement that no prisoner of war cases were ever referred to a military tribunal, so far as he knew. In other words, all summary punishment of American prisoners - put in irons by the accused. Assanelli does not remember, has not heard, states he has not heard or did not see any beatings or whippings, and never saw General Perugi. Bertuccio, clerk in the office, states an American prisoner punished two hours in irons per day for seven days, never heard of whipping or chaining. American prisoners were sentenced by Oldani, without trial. Di Marco confirmed the fact that the weather was very cold during December, January and February, few warm days, ten to fifteen days rain and wind. Now he goes a little further. The Italian troops had no shower baths, had to go to a stream in the field. Well, if the Italian troops had to do that, I bet my bottom dollar the American soldiers had to do the same thing, but, unfortunately, there was not any stream in that inclosure, and again we have prisoners of war confined in irons one or two hours. Finally, we come down to Colonel Lafayette. I had forgotten about Colonel Lafayette being a defense witness. In other words, the defense counsel definitely show a lack of faith in their witnesses and that was merely an attempt to bolster the testimony of the witnesses who had preceded the Colonel, on the stand. This last witness Lieutenant Colonel Leone Armando added nothing to the record one way or the other. The affidavits filed on behalf of the Government: I could take quite a lot of time going over these. I don't feel it is necessary. I feel the Commission has gone over these affidavits time and again, but here is one - Edward Ol Hirt swears that he saw the accused in this case, Colonel Oldani, beat two prisoners, chained to a flagpole. They were chained there for a day; that one of his men died, the men had dysentery; they lived in tents and that the men had to survive three days of a bread and water diet. This is specification No. 1, which was not mentioned by the defense counsel. Cochran, one of five beaten with a riding crop. Now does this Commission think for a minute that Alvie Cochran would not remember that-a man struck by the commanding

officer of the camp, with a riding crop, chained and given ten blows, so, he will never forget it. The second time he was beaten was for laughing at the lowering of the flag, and in the guard house seven days on bread and water and slept on boards. Things like that stick in a man's memory. He may not remember who was with him a year or two later, but those facts stick with a man. They never get away from him. Kirk saw American and British soldiers chained to a flagpole, without food or water, two days before Easter, and he lost his personal effects. O'Connell saw Private Colon and another beaten by Colonel Oldani while chained to flagpole. Used a blackjack. Undoubtedly, he referred to the riding crop. That was Friday following Easter Sunday which has been brought up in evidence several times. Freeman states that men were forced to work when they were sick and not able, had dysentery. Greenberg, I don't think it is necessary to comment further on the evidence that has been introduced in the case concerning him. Chained to a flagpole for forty-eight hours, bread and water diet, kicked and unconscious . After the kicking came to later, a spot, scar on his back, he did not know how he got it. Grillo, Rakow and Black - now Black's statement differs from Mario Minardi's in that he stated they burned the wooden bunks in order to get some heat in the tent, that they were taken into the guard house and beaten with fists and cartridge belts, after being chained; mud in the tents. Now here, we have Walter Phillips, a sergeant in the British Army, who describes the rations that the prisoners received: breakfast, one pint ersatz coffee, dinner, one pint soup and one ounce meat, supper, one pint soup and cabbage. That does not compare very favorably with the memorandum submitted as to the diet of Italians at that time. Reginald Lawson, also British: chained to flagpole for eight hours, nothing to eat or drink, in his shirt and trousers. That was on the 14th January 1945, very cold, difficult to think of a more severe punishment, sticking a man out with his hands behind his back, tied to a flagpole all day long without clothing to keep him warm. Stockwell: water flowed on the ground in tents, wooden bunks, no heat, no clothing, had no means of washing, medical attention not adequate, men fainted at work; breakfast, ersatz coffee, noon, half pint grass soup, supper half pint grass soup and with supper one bun size of biscuit. These stories agree on the essential details. They are not alike in minor details, of course. We would expect differences. Cooper: coffee for breakfast, soup and bread at noon, soup at night, no medical supplies, no heat in tents; mud, ankle deep in tents; wooden bunks and straw for sleeping; saw American prisoners in irons. Samuel Rosner: took his money, his jewelry, watches, rings, etcetera and from the others; soup and one bun for food; water on the floor of the tent, no heat, chained three times for four hours each. LaBella: states Colonel Oldani beat him across the face for laughing at retreat; slept on wooden floor; soup and one hundred grams of bread daily. Apparently, he is one of those who did not work. Locked in tent with seventy-five men; forced to relieve themselves in the tent. Prato: slept on slats, no mattress, one

blanket; food, one-sixth lb. bread (75 grams), soup and chicory daily; no, or practically no medical attention; men suffered from dysentery, trench foot, pneumonia; soldiers passed out and fainted while working; no heat, no washing or bathing facilities; personal effects, watches, jewelry taken. Yelloweloud: wooden bunks, slept on boards; breakfast, half pint watery coffee; noon, half canteen cup watery soup made of greens; night, three ounces cheese. Things were getting a little better. That was in March 1945 when Yelloweloud got some cheese, in March. Henry Gunther Perry, Jr., 1st Lieutenant: food bad, not sufficient; knew that they had Red Cross parcels and saw Italians eating food from them, but he does not go into details; very unfortunate. Thomas Corcoran, Captain, Medical Corps: food scarce, Italians used British Red Cross parcels; non-coms thrown into cell houses, feet and arms manacled; saw English and American soldiers chained to flagpole all day. Leroy Thurman: food again; no breakfast, noon meal, supper, soup and that watery, slice bread one and a half inches thick, if worked, and four inches in diameter, half an inch slice if no work; four men died, lack of medical attention. Jobusch: forced to work; improper clothing and lack of food. Lammy: chained seven hours for refusing to work; his personal effects taken, including a Hamilton wrist watch, $419.00 in U.S. currency and French francs, High School class ring, passport and pay book. Now our last witness was Colonel Holder. The Colonel had made a study of all prison camps in this theater. He had definite data and had made a very close and intensive study, and he has declared, under oath to this Commission, that PG 98 was the worst prison camp in the whole theater. The accused, as the commanding officer of that camp, is the man responsible for the conditions there. He is the man who is responsible for the food, for chaining prisoners, for putting them in irons, for beating them. I don't believe that this Commission can question the sworn affidavits of these American soldiers who have gone home, that the things they have testified to actually happened to them, and, if you believe those statements, then this man is guilty of one of the very worst crimes that could be imposed upon a man; sleeping on bare boards, not half enough to eat, their personal effects taken, teeth knocked out, spit upon, beaten with riding crop; in fact, according to these affidavits, every single article in the Rules of Land Warfare regarding prisoners of war has been violated, with the possible exception of murder. The counsel for the defense referred to the affidavits filed here as scraps of paper. We have heard that before. Other people have referred to scraps of paper. I refer, particularly, to the Geneva Convention and to the treaties made by certain powers. Their leaders referred to the Rules of Land Warfare and Rules of War, as developed by the Geneva Convention and the Hague Convention, as scraps of paper. Now, shall we profit by history? In the last war, World War I, it was proposed to try war criminals, but, I am sorry to say, our nation did not produce a single charge against any individual. However, the Allies did produce charges against eight hundred and ninety-seven men. They went to a great deal of effort to dig

up the information to perfect the case against those men, but the Treaty of Peace was signed before any of them were tried. At the time the Treaty of Peace was signed, it was agreed that Germany would try her own war criminals. Of the eight hundred and ninety seven, twelve were tried, six were convicted; the total punishment meted out to the six men was twelve years. No wonder the officers representing Germany and Italy in this war felt that they would be immune from punishment. They could rely on history. Nothing was done about it last time and they felt reasonably secure in thinking that nothing would be done this time. I would like to read one paragraph from Winthrop's Military Law. This is not a new book. It was reprinted in 1920. Page 791: "We have seen that the status of war justifies no violence against a prisoner of war as such, and subjects him to no penal consequence of the mere fact that he is an enemy. For a commander to disembarrass his army of the presence and charge of prisoners of war by taking their lives would be a barbarity which would be denounced by all civilized nations. Where a captive entitled to be treated as a prisoner of war is put to death, or where unlawful, unreasonably harsh, or cruel, treatment of prisoners is practised or permitted by one belligerent, the other may, as far as legally permissible, retaliate; and any individual officer resorting to or taking part in such act or treatment is guilty of a grave violation of the laws of war, for which, upon capture, he may be made criminally answerable." I wish to call your attention to paragraph 357, Field Manual 27-10: "War crimes subject to death penalty. - All war crimes are subject to the death penalty, although a lesser penalty may be imposed. The punishment should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not necessarily limit the imprisonment to be imposed." Gentlemen, if you believe from the evidence in this case, and I do not see how you can believe otherwise, that PO 98 was one of the worst camps, if not the worst in the whole theater; that the rules of the Geneva Convention were violated - practically every rule in the book - then I ask you for the sake of soldiers in the next war, maybe your son, maybe mine, in order to save them from going through the horror these men went through, that this man be given a sentence sufficient to be a warning to the others, and that he be given a life sentence in the penitentiary.

Defense: The defense has no further argument to make, unless the court wishes to ask any questions for clarification of any point.

President: The Commission has no questions to ask and believes it would be unnecessary to ask questions now. Does the defense have anything further to offer?

Defense: No.

Prosecution: The prosecution has nothing further to offer.

Neither the prosecution nor the defense having anything further to offer, the Commission was closed and upon secret written ballot finds the accused:

Of all the specifications of the charge and the charge:

Not Guilty

The Military Commission was opened and the President announced the findings.

The Military Commission then, at 1940 hours on 7 November 1946, adjourned to meet at the call of the President.

AUTHENTICATION:

Clyde W. Wellen
CLYDE W. WELLEN
Lt. Colonel, INF
Judge Advocate

Waldemar A. Falck
WALDEMAR A. FALCK,
Colonel, CAV
President

Examined by Defense Counsel before authentication:

Kenneth F. Lafayette
KENNETH F. LAFAYETTE
Lt. Colonel, CAV
Defense Counsel

16-33-24
Case #40

For the WAR CRIMES OFFICE

Judge Advocate General's Department - War Department

United States of America

In the matter of chaining and beating of Prisoners of War at Palermo, Sicily on or about 28 April 1942.	:	Perpetuation of testimony of Edward O. Hirt, 1st Lt. ASN 0-1290420.

Taken at: George Spies Industries, 4140 N. Kolmar, Chicago, Ill.

Date: 3 October 1945.

Questions by: Alfred W. Craven, Jr. Major, AC, 0902496.

In the Presence of: Alfred W. Craven, Jr. Major, AC, 0902496.

Q. State your name, rank, serial number and permanent home address.

A. Edward O. Hirt, 1st Lt. ASN 0-1290420, 4154 Spaulding Avenue, Chicago, Illinois.

Q. When and where were you born?

A. 9 June 1920, Chicago, Illinois.

Q. What was your civilian education?

A. I graduated from Lane Technical High School, Chicago, Illinois in June 1938. Then I attended evening college for 3½ years at the Schurz Evening College in Chicago, Illinois.

Q. What was your civilian occupation?

A. I was and am a jewelry stone setter at George Spies Industries, Chicago, Illinois.

Q. When did you enter the Army?

A. I entered the Army 25 November 1941. My terminal leave expires 11 December 1945.

Q. Did you go overseas?

A. Yes. I went overseas and was on duty with the 133rd Infantry Regiment of the 34th Division.

Q. Were you a Prisoner of War?

A. Yes. I was taken Prisoner 10 March 1942 in Tunisia.

Q. At what Prison camps were you held and state the approximate dates?

CONFIDENTIAL

Incl. #1. Prosecution's Exhibit No. 1.

A. I was held at various prison camps including P.G. 98 at Palermo, Sicily from 1 April 1942 to 15 May 1942.

Q. Did you witness any cruel conduct resulting in injury and humiliation to any Prisoner of War while at P.G. 98 at Palermo, Sicily?

A. Yes. About 28 April 1942 two American Prisoners of War attempted to escape but were caught by Italian guards. They were chained together by the wrists around the flag pole in the center of the camp for an entire day. They were not given food or water for that day. Colonel Julio Oldoni was the commanding officer of the camp. He struck the chained prisoners back and forth across the face with his riding quirt. They became weak and exhausted and were leaning against each other limply at the end of the day. I saw this take place from about 150' away. I did not see any bruises on them from where I was. I do not know the names of the American Prisoners of War who were chained together.

Colonel Julio Oldoni directed that plain water be substituted for soup in our rations for 3 days about the 3rd of May 1942 in an attempt to force our men to work on a rock pile at the top of the mountain at the location of the camp. This left as our daily diet only one bun per day with water.

Colonel Julio Oldoni was short, very stout, round faced, bald and always carried a riding quirt.

Sgt. Maria did not directly mistreat Prisoners of War in my presence. He had lived in New York City until 1939 at which time he moved to Italy with his family. He was in the Italian Army and acted as an interpreter for the Italians. He pretended to be friendly to us but in fact acted as a "stool pidgeon" for the Camp Commander, Colonel Julio Oldoni. The Sgt. was about 5'6" tall, thick, and dark complexioned. I do not know his first name.

This particular camp was the dirtiest, filthiest, lousiest place that I was ever in. The Prisoners were forced to live in tents on top of a mountain. The nights were cold. Each of us was given only one short blanket. The latrines drained into the well that was used for drinking water and for other purposes. The Prisoners had dysentery; one of my men died there from dysentery. I do not know the name of the man who died there but it can probably be secured from anyone of the following who were also at the prison camp during this period:

Capt. Garvin Fitton,
Company C,
133rd Infantry,
34th Division;

1st Lt. Chas. G. Eberle,
Permanent address: 521 Willow Ave.,
Roselle Park, New Jersey;

1st Lt. Curtis Jones,
Company C,
133rd Infantry,
34th Division.

Q. Have you anything further to say regarding these matters?

A. No.

/s/ Edward O. Hirt

Edward O. Hirt, 1st Lt.

CONFIDENTIAL

Prosecution's Exhibit No. 1.

State of Illinois }
County of Cook } ss

I, 1st Lt. Edward O. Hirt, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation consisting of two (2) pages, and all answers contained therein are true to the best of my knowledge and belief.

/s/ Edward O. Hirt

Edward O. Hirt, 1st Lt.

Subscribed and sworn to before me this 4th day of October 1945.

/s/ Alfred W. Craven, Jr.

(Notary Public)

My Commission expires: 27 September 1949.

C E R T I F I C A T E

I, Alfred W. Craven, Jr. Major, AC, ASN 0-0902496, certify that Edward O. Hirt, 1st Lt., ASN. 0-1290420, personally appeared before me on 3 October 1945 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Chicago, Illinois

/s/ Alfred W. Craven, Jr.
(Signature)

Date 4 October 1945.

Major, AC, 0-902496
(Rank and Organization)

C O N F I D E N T I A L

Prosecution's Exhibit No. [illegible]

For the WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

In the matter of the beating of five prisoners of war at Camp 98, near Palermo, Italy, by Italian soldiers on approximately 15 April 1943.	Perpetuation of Testimony of Alvie D. Cochran, civilian

Taken at:	North Tazewell, Virginia
Date:	3 September 1945
In the presence of:	Gerald E. Keightley, Agent, SIC, III SvC
Reporter:	Lucy Singleton, Clerk-Stenographer, Richmond Field Office, 1904th SCU, Richmond, Virginia
Questions by:	Gerald E. Keightley, Agent, SIC, III Sv C

Q. What is your name, address and occupation?

A. Alvie D. Cochran, R. D. #1, North Tazewell, Virginia, and I am a laborer in the coal mining industry.

Q. Did you serve in the United States Army during World War II?

A. Yes, I was discharged honorably on 2 July 1945.

Q. What was your rank and serial number?

A. I was a private, first class and my serial number was 15055130.

Q. Were you a prisoner of war?

A. Yes, I was a prisoner of war and held captive by the Italians from 28 March 1943 until 13 September 1943 when I escaped from the compound at Camp 99 and a month later rejoined our forces. I was returned to the United States in November 1943 and later returned to active duty and service in Europe.

Q. At what places were you held and state the approximate dates?

A. I was captured in Africa at El Gattar on 28 March 1943 and moved to a temporary camp in Tunis where I remained until about 14 April 1943. Then I was moved by plane to Camp 98, near Palermo, Italy, where I was kept until approximately 15 May 1943. We were moved by train to Camp 99, in Northern Italy where I arrived on approximately 18 May 1943 and remained until 13 September 1943 when I escaped. On 23 October 1943 I arrived at the British lines and was returned to our own forces about one week later. I was returned to the United States where I arrived sometime during November 1943.

CONFIDENTIAL

 Prosecution's Exhibit No. 2.

Q. During the time you were held prisoner of war did you witness or were you subject to any acts of brutality?

A. Yes. At Camp 98, near Palermo, Italy, I was one of a group of five prisoners of war who were beaten with a riding crop on the night of our arrival which was approximately 15 April 1943.

Q. What are the details of this incident?

A. It was on the night of 15 April 1943. A group of us had been brought to Camp 98 from Tunis and we were entering the compound when one of the Italian guards began to prod an American sergeant with a bayonet to speed up the sergeant's pace. The sergeant immediately turned and punched the guard with his fist. Other guards interfered and then they took the sergeant and four others including myself to the guard house. With the exception of the sergeant, the rest of us had committed no violations of rules. However, we were to all be punished. At the guard house we were met by the Camp Commandant, an Italian colonel and two lieutenants. In addition there were two Italian soldiers. There were five of us. Three American and two British soldiers, I believe. The commandant ordered us all whipped and his riding crop, a leather covered stick, was used. The sergeant who committed the offense was beaten first and then one of the others. Next, another American sergeant was selected as the victim and he turned and hit the Italian guard. As a result his hands were chained and so were those of the rest of us when our turn came. We were each struck about ten blows across the back with the riding crop and severe bruises were left. Some of us had shirts on and some were without shirts. The bruises were in evidence for several days and mine looked bad for at least three days. In addition, the second American sergeant was hit in the mouth with a boot which one of the Italian lieutenants removed from his foot and swung with his hand. After we were all beaten, we were placed in the guard house on bread and water for seven days. The bread amounted to about two small slices each day. At night we had to sleep on ordinary hard planks of wood.

Q. Was there any reason given for punishing five of you when only one was at fault?

A. No.

Q. Do you know the names of any of the victims?

A. No. It is a long time since the incident and I have forgotten. The best I can recall is that the second American sergeant I referred to came from South Dakota and had been serving with the 34th Division.

Q. Do you know the names of any of the Italian officers or soldiers who were guilty of these attacks?

A. No. I do not know any of their names. The Commandant ordered the beatings and he beat one prisoner himself. Each of the two lieutenants and the two guards, also beat one of us.

Q. Was there an Italian sergeant, whose christian name was Mario, involved in this incident?

C O N F I D E N T I A L

Prosecution's Exhibit No. 2.

A. No. This incident occurred on the day of our arrival and I saw nothing of Marie for a couple of weeks. I think he was on a leave or also had not been assigned to that camp at that time. Marie was an interpreter and I know that another person was acting as interpreter at the time of this incident.

Q. Do you know the names of any other prisoners of war who might have knowledge of this incident?

A. There was an American corporal named Alfred T. Yax, ASN 12029561 who might have seen some of the action leading up to the punishment. Also, some others might know of some information through hearsay as they were at the camp at the same time. They are: Private Edmund H. Patterson, Co F. 108th Infantry, 49th Division; Sergeant William H. Kirk, Co. K. 39th Infantry; 1st Sergeant Lee Cooper, Cannon Company, 39th Infantry and Private Joseph MacDougall, ASN 19088456.

/s/ Alvie D. Cochran
Alvie D. Cochran

CONFIDENTIAL

Prosecution's Exhibit No. 2.

State of: Virginia)
) SS
County of: Tazewell)

I, Alvie D. Cochran, of lawful age, being duly sworn on oath state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Alvie D. Cochran
Alvie D. Cochran

Subscribed and sworn to before me this 19 day of Sept 1945

/s/ Fred A. Wills
Notary Public

My Commission Expires August 7, 1948.

CERTIFICATE

I, Gerald E. Keightley, Agent, SIC, certify that Alvie D. Cochran, personally appeared before me on 3 September 1945 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Roanoke, Va. /s/ Gerald E. Keightley

Date: 22 September 1945 Agent, S.I.C.

CONFIDENTIAL

Prosecution's Exhibit No. 2.

For The [illegible]

Judge Advocate General's Department -- War Department

United States of America

In the matter of the beating of ten prisoners of war at Camp 98, near Palermo, Italy by Italian soldiers during May 1943.	Perpetuation of Testimony of Alvie D. Cochran, civilian

Taken at: North Tazewell, Virginia

Date: 3 September 1945

In the Presence of: Gerald E. Keightley, Agent, SIC, III SvC

Reporter: Lucy Singleton, Clerk-Stenographer, Richmond Field Office, 1304th SCU, Richmond, Virginia

Questions by: Gerald E. Keightley, Agent, SIC, III SvC

Q. What is your name, address and occupation?

A. Alvie D. Cochran, R. D. #1, North Tazewell, Virginia, and I am a laborer in the coal mining industry.

Q. Did you serve in the United States Army during World War II?

A. Yes, I was discharged honorably on 2 July 1945

Q. What was your rank and serial number?

15055130 U.D.C.

A. I was a private, first class and my serial number was 1404-130.

Q. Were you a prisoner of war?

A. Yes, I was a prisoner of war and held captive by the Italians from 28 March 1943 until 1[illegible] September 1943 when I escaped from the compound at Camp 59 and a month later rejoined our forces. I was returned to the United States in November 1943 and later returned to active duty and service in Europe.

Q. At what places were you held and state the approximate dates?

A. I was captured in Africa at El Gattar on 28 March 1943 and moved to a temporary camp in Tunis where I remained until about 14 April 1943. Then I was moved by plane to Camp 98, near Palermo, Italy, where I was kept until approximately 15 May 1943. We were moved by train to Camp 59, in Northern Italy where I arrived on approximately 18 May 1943 and remained until 13 September 1943 when I escaped. On 23 October 1943 I arrived at the British lines and was returned to our own forces about one week later. I was returned to the United States where I arrived sometime during November 1943.

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Q. During the time you were a prisoner of war did you witness or were you subjected to any brutality?

A. Yes. At Camp 98, during the month of May 1943 I witnessed ten prisoners of war who were beaten with a riding crop by Italian officers.

Q. What are the details of this incident?

A. During the second week of May 1943, a group of prisoners of war at Camp 98 were standing and observing the retreat ceremonies conducted by the Italians. As the Italian flag was being hoisted it became fouled in the ropes and a man was sent up the pole to correct the condition. The man became all mixed up with the flag and ropes and the scene was very amusing and several of us began to smile and grin. We were observed by the Italians and as a result 10 of us were taken to the guard house. The Italian Commandant, a Colonel, ordered us to be beaten for our actions and each of us were struck about ten blows with a riding crop, a leather covered stick. We all suffered severe bruises and they were evident for several days. The beatings were carried out by an Italian lieutenant and two guards. The lieutenant kicked one of the victims in the groin.

Q. Was there any other reason for your punishment than the fact that you seemed amused at the flag incident?

A. No.

Q. Do you know the names of any of the other victims?

A. No. There were about four Americans and the rest were Greeks or British.

Q. Do you know the names of any of the Italians who were guilty of these attacks?

A. No.

Q. Was there an Italian sergeant, whose christian name was Mario, involved in this incident?

A. Yes. The Italian sergeant to whom you refer was an interpreter and he had a nasty manner and bad reputation. He was raised or at least educated in Brooklyn, N. Y. He was about 23 to 24 years of age, 5' 10" to 6' 11" in height, about 150 pounds, slim build, typical black curly hair, and had a flat nose like a boxer. However, despite his bad reputation I don't recall an incident in which I could recall him being connected.

Q. Do you know the names of any other prisoners of war who might have additional information on this incident?

A. Private Edmond V. Patterson, Co. F. 108th Inf, 45th Div; Privet Jos. MacDougall, ASN 15086456, and Cpl Alfred T. Yax, ASN 12023561 were at Camp 98 at the same time and might have additional information.

Witness an

Alvie D. Cochran

State of: Virginia }
County of: Campbell } SS

I, Alvie D. Cochran, of [illegible] age, being duly [illegible]rn on oath [illegible] that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Alvie D. Cochran
Alvie D. Cochran

Subscribed and swo[illegible] before me this 19 day of Sept 1945.

[illegible]
Notary Public

My commission expires:
My Commission Expires August 7, 1948

CERTIFICATE

I, Harold E. Keightley, Agent, SIC, certify that Alvie D. Cochran personally appeared before me on 3 September 1945 and testified concerning war crimes; [illegible] the foregoing is an accurate transcription of [illegible] answers given by him to the several questions set forth.

Place: Roanoke, Va. [illegible]

Date: 19 September 1945 Agent SIC

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CONFIDENTIAL

For the War Crimes Office

Judge Advocate General's Department — War Department

United States of America

In the matter of the torturing of American and British soldiers about Easter Sunday, 1943 at Camp # 98, Palermo, Sicily.	Perpetuation of the Testimony of Willard Kirk (formerly Sgt., United States Army, SSN 15095123), Box 506, Kermit, West Virginia.

Taken at: Kermit, Mingo County, West Virginia.

Date: 5 September 1945.

In the Presence of: John E. Walker, Jr., Agent, Security and Intelligence Division, Fifth Service Command, Fort Hayes, Columbus, Ohio.

Reporter: John E. Walker, Jr., Agent, Security and Intelligence Division, Fifth Service Command, Fort Hayes, Columbus, Ohio.

Questions by: John E. Walker, Jr.,

Q. State your name, permanent home address and occupation.

A. Willard Kirk., P. O. Box, 506, Kermit, West Virginia and at the present time, I am not employed.

Q. State date of birth, place of birth, previous schooling and occupation, prior to entering the United States Army. Also, state your marital status.

A. I was born on 2nd of December 1920 at Kermit, West Virginia and attended local grade school, completing the 8th grade. Just prior to entering the Army, I had no regular employment and used to work at odd jobs around Kermit, West Virginia. I am single and at the present time, am making my home with my mother here.

Q. Have you recently been returned to the United States from overseas?

A. Yes, I have been discharged from the United States Army.

Q. Were you a prisoner of war?

A. Yes.

Q. At what places were you held and state the approximate dates?

A. I was captured on the 28th of March 1943 at Cassarine Pass, in Africa and was then taken to Palermo, Sicily, Camp # 98, arriving there on 1 April 1943. On or about 17 April 1943, I was taken to Camp # 59 in Italy, arriving there around the 1st of May 1943. I stayed there until 14 September 1943, at which time I escaped and walked across Italy, reporting into the British Troops, who were fighting at St. Salvo, Italy.

Q. Did you witness any atrocities or mistreatments of American soldiers at any time?

A. Yes.

Q. Give the details of this mistreatment and any other information which you have concerning same.

A. On or about two days prior to Easter Sunday 1943, after dark, an American prisoner of war at Camp # 98 located at Palermo, Sicily, escaped.

Prosecution Exhibit

They were [illegible] they were [illegible] approximately fifteen hours [illegible] guards [illegible] of these prisoners and [illegible] which they were chained to the flagpole; the guards did not give them any food or water to drink. At the end of this fifteen-hour period, they were unchained and placed in an old tool room under lock and key. They were given no food or water while in the tool room and they remained there for several days.

Q. Do you know the [illegible] or [illegible] any [illegible] German [illegible] men or officers, responsible for this torturing.

A. I do not know the names of the officers [illegible] enlisted men directly responsible for this treatment. However, I do know the Christian name of the Sgt. of the Guards at this camp at the time of this torturing.

Q. Give the name and description of this Sgt. of the Guards.

A. His Christian name was Mario. He was an Italian, about 25 years of age, 5'8" tall, medium build, weighed approximately 155 pounds, black hair and dark, swarthy facial features. He dressed inaa uniform at all times and was not at all, neat in appearence. The prisoners of war at this camp also hated Sgt. Mario due to the fact that he and other staff personnel of the camp, on numerous occasions, took shoes, other articles of clothing and American money away from the prisoners and used it for their personal benefit. Also they would take the American Red Cross parcels, which were supposed to have been issued to the American prisoners, and use them for themselves. They would also antagonize the prisoners by smoking American cigarettes or eating American candy in front of them and make some jeering remarks concerning the Americans.

Willard Kirk
Willard Kirk, Sgt., ASN 15055123.

State of: West Virginia }
County of: Mingo } SS

I, Willard Kirk, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Willard Kirk
Willard Kirk, Sgt., ASN 15055123.

Subscribed and sworn to before me this _____ day of Sept. 1945/

[illegible]
(Notary Public)

My commission [illegible] of Feb. 1955

CERTIFICATE

I, [illegible] SIC, 5th SvC., certify that Willard Kirk, Sgt., ASN [illegible] before me and testified concerning war crimes on 5 [illegible] accu[illegible] of the answers

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give [illegible] him [illegible] several questions [illegible]

Place: [illegible]

Date: 10 Sept [illegible] 1943

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[illegible] of America

In the matter of the beating of Pvt. Joseph Solon and another American soldier by Giulio Oldami, Italian Camp Commandant of Camp 98, Palermo, Sicily, in April 1943.

Perpetuation of Testimony of William P. O'Connell, Jr., 224 Third Street, Troy, N. Y.

Taken at: 224 Third Street, Troy, N. Y.

Date: 2 October 1945.

In the Presence of: Charles M. [illegible], [illegible] Sec. Agent S.I.C., [illegible]th SCU [illegible] Sec., Security [illegible] Sixth Ave., [illegible] York, [illegible]

Reporter: [illegible] U, Foreign [illegible] Div. [illegible]

Questions by [illegible]

Q. State your name and [illegible]

A. William P. O'Connell [illegible]

Q. Have you recently [illegible]

A. I was discharged on [illegible] a Pr[illegible] ASN 32293874.

Q. State your date and [illegible] status?

A. September [illegible] store; si[illegible]

Q. Have you recently returned [illegible]

A. Yes---I returned from Germany via France [illegible] at the New York Port of Embarkation on May 15, 19[illegible]

Q. Were you a prisoner of war?

A. Yes---in the hands of the Italians and the Germans.

Q. At what places were you held and state the approximate dates?

A. I was a member of Co. [illegible], 133rd Infantry, 34th Div., when I was captured on March 10, 1943, at Tunisia, North Africa. I was flown to Italy and interned at Camp 98, Palermo, Sicily, operated by the Italian Army, where I stayed from March 20, 1943, to About May 12, 1943. From there I was transported to Camp 59 at the Port of St. George, Italy, where I stayed until September 14, 1943. On that date I escaped and was recaptured on May 3, 1944, when I was turned over to the Germans and sent to a prison camp at Acquila, Italy, where I stayed from about twelve days. I was then [illegible] to a transit prison at Laterina, Italy, where I stayed until [illegible] From there I was sent to Stalag VII-A, Moosburg, [illegible] until about

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Q. [illegible] prisoner [illegible] war, [illegible] beating or torture of other [illegible] of war?

A. Yes. [illegible] I was at Camp 98, outside Palermo, Sicily, I observed the beating of two American soldiers by the Italian Camp Commandant. They were chained to posts and severely bludgeoned.

Q. Can you identify the two American soldiers who were beaten?

A. One was Pvt. Joseph Solon, formerly a member of the 26th Infantry, First Division. He presently resides in a town near Auburn, N. Y. I don't know anything about the other American except that he was a prisoner [illegible] Camp 98 when I was there.

Q. Can [illegible] details of the beating [illegible] two men?

A. [illegible] both [illegible] from Camp 98 [illegible] in 1943 [illegible] of Sicily [illegible] retur[illegible] int[illegible] they were taken [illegible] Saturday, about [illegible] Headquarters [illegible] an [illegible] handcuffed [illegible] in [illegible]

When the prisoners got to the [illegible], their hands [illegible] cuffed, but immediately they were made to put their hands behind their backs and around the poles. The hand cuffs were again [illegible] each with his hands [illegible]

The Italian Commandant [illegible] a Lieutenant Colonel named [illegible] Commandante, a few [illegible] after [illegible] with a couple of [illegible] MP's. I observed [illegible] of the camp kitchen, [illegible]

[illegible] men and started cursing them out. [illegible] to beat the men with a black-jack that he [illegible] It was a bludgeon about 8 inches long by I [illegible] covered with leather. He struck the Americans about ten [illegible] face, and shoulders. After the blows, he spit on the [illegible] kicked both of them in the groin once.

Q. Were the prisoners badly injured?

A. [illegible] to stand up during all the beatings and did not become unconscious. [illegible] wasn't allowed to go near them for about three days.

Q. Was the Colonel the only one who struck the Americans?

A. Yes.

Q. What happened after the beating and kicking?

A. The Colonel and his men walked away from the prisoners a few minutes later. One Italian soldier guard [illegible] beside the men.

Q. How long [illegible] the men [illegible] the poles?

A. [illegible] were

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[illegible] that day until about [illegible] P.M. [illegible] house and [illegible] in at [illegible] the [illegible] pole [illegible] were [illegible] returned to solitary confinement. The [illegible] day. On Tuesday, the men were released and returned to the [illegible].

Q. Did the men receive any food during the day while you observed them chained up?

A. They got nothing during the day. I tried to take something to them in the guardhouse but was ordered away by the guards. Solon told me after his release that the only food they got during the three days of their torture was a bowl of greens soup every night after they were released from their posts.

Q. Did you observe the injuries sufferred by the two Americans?

A. During the periods they were chained, they were not allowed to go to the laterine. After their release, Solon told me that both he and the other prisoner had contracted dysentary the second day of their mistreatment. Both sufferred greatly while chained because they were not allowed to visit a laterine. During their solitary confinement, they were provided with cans in their cells. This disease served to greatly weaken both men.

I observed that Solon had two black eyes, his mouth cut on the inside, two teeth missing, and bruises around the shoulders. The other American had a black eye, a broken nose, cuts around the face, and bruises around the shoulders. Both men sufferred no permanent injury as far as I know with the exception of the lost teeth that I mentioned.

Q. Can you further identify the Italian Colonel who was responsible for the mistreatment?

A. He was about 45 years of age; about 5 feet, 2 inches tall; weighed about 150 pounds; had a stocky build; was partly bald with a fringe of white hair.

Q. Can you name any other American prisoner of war who witnessed this treatment?

A. Pfc. Rocco Piampiano, now residing at 275 Sand Lane, Staten Island, N. Y. He resided in the same tent with me, Solon, and the other American.

Q. Have you any other pertinent information on war crimes?

A. No.

William P. O'Connell, Jr.
William P. O'Connell, Jr.

State of: New York)
) SS
County of: Rensselaer)

I, William P. O'Connell, Jr., of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all

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[illegible] contained therein are true to the best of my knowledge and belief.

William P. O'Connell, Jr.

Subscribed and sworn to before me this 16 day of October 1945.

Charles M. Matthews
Charles M. Matthews, 2nd Lt., Inf.,
Summary Court.

CERTIFICATE

I, Charles M. Matthews, 2nd Lt., Inf., certify that William P. O'Connell, Jr., 224 Third Street, Troy, N. Y., personally appeared before me on 2 October 1945, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Troy, N. Y.

Date: 16 OCT 45

Charles M. Matthews
Charles M. Matthews, 2nd Lt., Inf., Spec. Agent S.I.C., 1200th SCU, Foreign Positive Intelligence Sec., Security & Intelligence Division, Hqs., 2nd SC, 1270 Sixth Ave., New York, N. Y.

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For The War Crimes Office

State General's Department -- War Department

United States of America

In the matter of the mistreatment of American prisoners of war at Camp No. 98, Palerno, Sicily during the period of 20 February 1943 to 22 April 1943.	Perpetuation of Testimony of Paul F. Freeman, Sgt 20701693

Taken at: Office of Security and Intelligence Division (Room 508, Albion Hotel), AC & SF Redistribution Station, Miami Beach, Florida.

Date: 30 August 1945.

In the presence of: S/Sgt Neal W. Powell, 17002884, Intelligence MOS, Security and Intelligence Division, AC & SF Redistribution Station, Miami Beach, Florida.

Reporter: Ines S. Hester, Clerk-Stenographer, Security and Intelligence Division, AC & SF Redistribution Station, Miami Beach, Florida.

Questions by: S/Sgt Neal W. Powell, 17002884, Intelligence MOS.

Q. State your name, rank, serial number, marital status and permanent home address.

A. Paul F. Freeman, Sgt, 20701693. I am single and my permanent home address is 1740 Locke Ave, Waterloo, Iowa.

Q. When and where were you born?

A. I was born in Dubuque, Iowa on 5 July 1920.

Q. What is your education?

A. Seventh grade

Q. What was your civilian occupation?

A. Machinist and truck driver.

Q. Have you recently been returned to the United States from overseas?

A. Yes, I arrived in the United States on 15 April 1945.

Q. Were you a prisoner of war?

A. Yes.

Q. In what places were you held, and state the approximate dates?

A. At the time of capture I was serving as squad leader, Co. "B", 135th Infantry 34th Division. I was captured on 15 February 1943 at Tunisia, North Africa and was taken to Camp No. 98, Palerno, Sicily where I remained 20 February to 22 April 1943. I was then taken to Camp 59, Italy where I remained from 26 April until 14 September 1943 at which time the Italians capitulated. I was released at this time but was re-captured by the Germans at Pisoro, Italy on 14 November 1943 and taken to a transcient camp No. 103 at Aquila, Italy where I remained 15 November 1943 until 15 December 1943. I was then taken via transcient camps

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in Italy, Stalag VII-A, Moosburg, Germany where I remained from [illegible] to 27 January 1944, thence to Stalag II-B, Hammerstein, Germany from 30 January 1944 until 16 February 1944. At this time I was taken to Stalag III-B, Furstenburg, Germany where I remained from 16 February 1944 until 30 January 1945. I was then marched to Stalag III-A at Luckenwalde, Germany where I remained from 30 January 1945 until liberation on 3 April 1945.

Q. Do you have knowledge of the chaining and beating of American prisoners of war at Camp 98, Palermo, Italy for refusing to work?

A. Yes.

Q. Will you state all you know concerning such incidents?

A. It was almost a daily occurrence for me to have their hands chained behind their back for refusing to work. This refusal was brought about by the fact that we did not receive enough to eat to keep us in good enough physical condition to perform the assigned tasks. I never actually witnessed any beatings but a T/Sgt Manuel Sarano, of the 509th Parachute Infantry, told me that he had been chained and beaten in February before my arrival there. He said he was beaten by Col. Julio Oldoni, the camp commandant. Oldoni beat him with a riding whip. He was beaten as a result of an argument with Oldoni. He was attempting to persuade Oldoni to issue more food to the American prisoners of war there and also protesting the chaining of American prisoners of war for refusing to work.

Q. Will you describe Col. Oldoni?

A. He was about 5'8" tall, weighed about 220 pounds, had gray hair, dark complexion and was approximately 55 years old. He had a very military bearing and quick movements. He was very hot tempered.

Q. Did you know a Sgt Mario at Camp 98?

A. Yes, he was an Italian sergeant who was the Red Cross representative and was in charge of the compound office.

Q. Can you attribute any mistreatment of American prisoners of war or irregularities to Sgt Mario?

A. No, I cannot.

Q. Do you have knowledge of an incident wherein an American prisoner of war and a British prisoner of war were chained to flag poles for attempting to escape?

A. Yes, a Private Joe Solon and a British prisoner of war attempted to escape during the latter part of April. For this they were chained to two flag poles by placing their arms behind them around the flag pole and were left in that position for an entire day. I am not positive but I don't believe that they received food or water during this day. These men were chained to the flag poles by the Italian jailer whose name I cannot recall nor can I describe him. This incident occurred after my departure from Camp 98 but was related to me by Private Solon while we were at Camp 59.

Q. Did you receive Red Cross food parcels at Camp 98?

A. No.

Q. Do you have reason to believe that Red Cross food parcels were pilfered by the Italians?

A. Yes, because it was common to see the Italian guards smoking the American cigarettes and eating candy bars which we knew to be contained in Red Cross food parcels.

Q. Do you have knowledge of any other mistreatment at Camp 98?

A. Yes, American prisoners of war were forced to work when they were ill and should have been confined to their beds. About half of the men had dysentary and were terribly weak and therefore in no condition to work. Col. Oldoni was responsible for forcing these sick men to work. I would like, also, to note that the Italian mess sergeant and a British South African made it a practice to trade food to us American prisoners of war for our watches, jewelry and other valuables. I would describe this Italian mess sergeant as being 5'11", weighing about 200 pounds, approximately 30 years of age, black straight hair. He had a slow lazy appearance.

The British South African was about 5'11", weighing about 170 pounds, was approximately 25 years of age, had straight brown hair, neat appearance and spoke perfect Italian and German. This man was a prisoner of war and was supposed to have been in charge of the distribution of food to both the American and British prisoners of war in this compound.

Q. Can you offer anything further concerning mistreatment or irregularities at Camp 98, Palermo, Sicily?

A. Only that a S/Sgt Derringer, of the 6th Armored Infantry, was our American compound leader and would undoubtedly be able to furnish more details on the mistreatment and irregularities we have just examined.

Paul F. Freeman
Paul F. Freeman, Sgt

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, Sgt Paul F. Freeman, 20701693, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Paul F. Freeman
Paul F. Freeman, Sgt

Subscribed and sworn to before me this 30th day of August, 1945.

Thomas E. Anthony
THOMAS E. ANTHONY, Captain, MI
Summary Court

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C E R T I F I C A T E

I, Neal W. Powell, S/Sgt, 17002884, Intelligence NCO, Security and Intelligence Division, AG & SF Redistribution Station, Miami Beach, Florida, certify that Sgt Paul F. Freeman, 20701693, personally appeared before me on 30 August 1945 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Office of Security and Intelligence Division, AG & SF Redistribution Station, Miami Beach, Florida.

Date: 30 August 1945.

Neal W. Powell, S/Sgt
Intelligence NCO
Security and Intelligence Division

THE [illegible] OFFICES [illegible]

Judge Advocate General's Department [illegible] Department

United States of America

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In the matter of the beating of Edward M. Greenberg, formerly S/Sgt, U.S. Army at Prisoner of War Camp PG98, Sicily, on or about 26 January 1943.	Perpetuation of Testimony of Edward M. Greenberg (formerly S/Sgt., United States Army, ASN 12021601.)

Taken at: 616 Blake Avenue, Brooklyn, New York.

Date: 11 July 1945.

In the Presence of: Gerard Weinstock, Agent, S.I.D., F.P.I. Sect., Sec. & Intel. Div., Hqs., 2nd SC, 1270 Sixth Avenue, New York, New York.

Reporter: Gerard Weinstock.

Questions by: Gerard Weinstock.

Q. State your name, permanent home address and occupation.

A. Edward M. Greenberg, 442 Wyona Street, Brooklyn, New York. I am in the fish business. I was honorably discharged from the United States Army, where I was a S/Sgt. My serial number was 12021601.

Q. State the date and place of your birth.

A. I was born 13 August 1922 at Brooklyn, New York.

Q. What formal education have you had?

A. I went to Thomas Jefferson High School, Brooklyn, New York for two years.

Q. Are you married or single?

A. I am single.

Q. When did you return to the United States from overseas?

A. I landed at Newport News, Virginia on 14 November 1943 aboard the SS EMPRESS OF SCOTLAND.

Q. Were you a prisoner of war?

A. Yes.

Q. At what places were you held and state the approximate dates?

A. I was captured on 23 November 1942 at Medjez el Bab, Tunisia while with the First Infantry Division. I was taken to Tunis for three days and kept there in the hospital. From there I was sent to Palermo, Sicily, where I was in

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CONFIDENTIAL

WAR CRIMES OFFICE

Judge Advocate General's Department — War Department

United States of America

- - - - - - - - - - -

In the matter of the beating of Edward M. Greenberg, formerly S/Sgt, U.S. Army at Prisoner of War Camp P098, Sicily, on or about 26 January 1943.	Perpetuation of Testimony of Edward M. Greenberg (formerly S/Sgt., United States Army, ASN 12021601.)

Taken at: 616 Blake Avenue, Brooklyn, New York.

Date: 11 July 1945.

In the presence of: Gerard Weinstock, Agent, S.I.D., F.P.I. Sect., Sec. & Intel. Div., Hqs., 2nd SC, 1270 Sixth Avenue, New York, New York.

Reporter: Gerard Weinstock.

Questions by: Gerard Weinstock.

Q. State your name, permanent home address and occupation.

A. Edward M. Greenberg, 442 Wyona Street, Brooklyn, New York. I am in the fish business. I was honorably discharged from the United States Army, where I was a S/Sgt. My serial number was 12021601.

Q. State the date and place of your birth.

A. I was born 13 August 1922 at Brooklyn, New York.

Q. What formal education have you had?

A. I went to Thomas Jefferson High School, Brooklyn, New York for two years.

Q. Are you married or single?

A. I am single.

Q. When did you return to the United States from overseas?

A. I landed at Newport News, Virginia on 14 November 1943 aboard the SS EMPRESS OF SCOTLAND.

Q. Were you a prisoner of war?

A. Yes.

Q. At what places were you held and state the approximate dates?

A. I was captured on 23 November 1942 at Medjez el Bab, Tunisia while with the First Infantry Division. I was taken to Tunis for three days and kept there in the hospital. From there I was sent to Palermo, Sicily, where I was in

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the hospital from about 26 December 1942 to 26 January 1943. I was then taken to PO98 on the outskirts of Palermo, where I was held for thirty days. From there I was taken to PO59 at Civigliano, Italy, where I was until 13 October 1943, when I escaped to the British lines.

Q. Are you familiar with the circumstances surrounding your being beaten at Prisoner of War Camp PO98, Sicily, on or about 26 January 1943?

A. Yes.

Q. State what you know, of your own knowledge, about that incident.

A. I arrived at PO98 on or about 26 January 1943. I was brought there by truck from the hospital at Palermo. When I arrived at the Camp I was searched. The American prisoners of war who were already there crowded around looking for friends among the new arrivals. The guards were incensed and started to beat up one of the American soldiers who was an old occupant of the Camp. They kept kicking and slapping him around. I was mad and tried to interfere. The guards slapped me a few times and then chained me to a pole with my hands behind my back. I was left there about forty-eight hours with nothing but bread and water. The first night I was there the Colonel of the Camp, who was an Italian, smacked me across the face with a swagger stick and a Lieutenant, who was along with him, kicked me in the groin. I did not come to for the rest of the time I was chained to the pole. When I did regain consciousness, I had a big scar on my back, but I do not know how I got it.

Q. Could you identify the Colonel?

A. No, all I know was that he was in charge of the camp. I do remember the Lieutenant, however. He was about 5'3", or 5'4" tall. I also remember the person who ordered me chained to the pole. He was a guard named Mario. I do not know his rank. He spoke English in the American manner and stated that he had come to Italy in 1939 for a visit and was unable to get back to America. He claimed that he joined the American Red Cross and was in charge of helping the American prisoners at the Camp. He was about 5'5", or 5'6" tall, about twenty-eight years of age, weighed about 140 or 150 pounds, had black wavy hair, dark eyes and wore thick glasses. He said his wife and child still live in New York, somewhere on 14th Street, Manhattan.

Q. Is there anyone who witnessed your beating?

A. No.

Q. Is there anyone who could identify Mario?

A. Pfc. Dominic Maggio, who was with the First Battalion, Headquarters Company, 18th Infantry, First Division. He is from Brooklyn, New York and is said to know the address of Mario's wife.

Q. Is there anything further you would like to tell about this incident?

A. No.

Edward M. Greenberg, Civilian

CONFIDENTIAL

State of New York)
County of Kings) SS

I, Edward M. Greenberg, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation, and all answers contained therein are true to the best of my knowledge and beliefs.

Edward M. Greenberg, Civilian

Subscribed and sworn to before me this 10 day of October 1945.

ABRAHAM I. GROSS
NOTARY PUBLIC, Kings County
Kings Co. Clks. No. 454 Reg. No. 113-G-7
Commission Expires March 31, 1947

CERTIFICATE

I, Gerard Weinstock, Agent, 1251st SCU, FPI, SID, certify that Edward M. Greenberg, Civilian, personally appeared before me on 11 July 1945, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place:

Date:

Gerard Weinstock
Agent, 1251st SCU, Foreign Positive Intelligence Section, Security & Intelligence Division, Headquarters, Second Service Command, 1270 Sixth Avenue, New York, New York.

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[illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

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A. Yes, [illegible]

Q. [illegible]

A. Yes.

Q. When and where were you captured?

A. On December 25, 1942, at Medjez-el-Bab, Kasserine Pass, Tunisia.

Q. By whom were you [illegible]red?

A. German Light Inf[illegible]

Q. To what [illegible]fit w[illegible] attached at the [illegible] of your capture?

A. 1st [illegible], 15[illegible] [illegible]ntry, Company A.

Q. State [illegible] you were held [illegible] and the approximate dates.

A. After [illegible] hospital at Tunis, Tunisia, for three days [illegible] a broken jaw. I was then flown to Sicily, where I [illegible] in the Prison [illegible]al at Palermo. I was transferred [illegible] about [illegible] from Palermo, Sicily, where I [illegible] transferred to Prison Camp No. 59, Macerata, [illegible] moving north through hospitals [illegible] Italy, before being transferred [illegible] 1943. [illegible] remained at [illegible] Hammerstein, [illegible] marched for [illegible]. I remained [illegible] of [illegible] I performed [illegible] 1943, [illegible] liberated by elements of the 11th [illegible] of the [illegible] Army.

Q. While at Prison [illegible] 98, near Palermo, Sicily, did you ever witness the whipping of an [illegible] Prisoner of War?

A. Yes.

Q. Who was this American?

A. He was Sergeant Serrano, First Sergeant in a paratroop [illegible] I believe to be the [illegible] Paratroopers.

Q. When did this whipping take place?

A. About the [illegible] of March, 1943.

Q. Where did this whipping take place?

A. It was at the base of a flagpole in the Italian officers' section of Camp No. 98.

Q. Did you personally witness the beating?

A. Yes, [illegible] was sitting at a window in the Italian Intelligence Officer's office [illegible] yardsway.

Q. [illegible] remain in this position during the entire time of the whipping?

A. [illegible] at the window during the whole time but only observed the whipping [illegible].

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2

Q. [illegible] whipping?

A. Yes.

Q. How [illegible]

A. He [illegible] undershirt [illegible]

Q. About [illegible] times was he hit?

A. About [illegible]

Q. About how [illegible] Sergeant Serrano?

A. He was [illegible] half, during which time he received [illegible]

Q. How many men [illegible]

A. Only one Italian [illegible]

Q. Can you describe the [illegible]

A. It was about two feet long with [illegible] and one inch [illegible]

Q. Do you know the [illegible]

A. No.

Q. Do you know the [illegible] the whipping?

A. [illegible]

Q. [illegible]

[illegible] Sergeant Serrano [illegible]

A. He received [illegible]

Q. After the beating [illegible] unaided?

A. No, he was carried [illegible]

Q. Do you know whether [illegible]

A. No, he wasn't. [illegible] received [illegible] other [illegible]

Q. Do you know whe[illegible] then welts from [illegible]

A. [illegible] I don't.

Q. Do you know [illegible] of the whip[illegible] [illegible] unconscious as a [illegible]

A. I don't [illegible]

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[illegible]NTIAL

Q. Do you know the names of any other American Prisoners of [illegible] this village?

A. Corporal or Private First Class William Summers, 504th [illegible]

Q. Do you remember anything else about this incident which [illegible] stated?

A. No.

Peter C. Grillo Pvt. U.S.A.
Peter C. Grillo, Private, U.S.A.

Commonwealth of Massachusetts)
) Ss
County of Middlesex)

I, Peter C. Grillo, Private, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Peter C. Grillo Pvt. U.S.A.
Peter C. Grillo, Private, U.S.A.

Subscribed and sworn to before me this 29 day of Oct 1945.

[illegible]
Notary Public
My commission expires Oct. 23, 1952

CERTIFICATE

I, James L. Kenney, ASN 11052265, Special Agent, Security Intelligence Corps, certify that Peter C. Grillo, Private, ASN 12020395, personally appeared before me on 16 October 1945, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Boston, Mass.

James L. Kenney
Special Agent, SIC
First Service Command

Date: 26 October 1945

16-vol 3

[illegible] OFFICE

[illegible] /Sgt Roland

[illegible] Capt[illegible]

[illegible] rank, serial [illegible] ess and telephone

A. [illegible] 1600499[illegible] 306 [illegible] linois.

Q. [illegible] and [illegible] of you [illegible]

A. [illegible] at [illegible], Illi[illegible].

Q. [illegible]

[illegible] foreign [illegible]

[illegible] 15, 19[illegible]

[illegible] the ext[illegible]

[illegible] ook in [illegible]

[illegible] each job and the [illegible]

[illegible] Pott[illegible] for [illegible] It [illegible] nal labor mainly [illegible] ditions [illegible] and [illegible] outlook [illegible] tion so I quit [illegible] went with the [illegible] Company. [illegible] tured [illegible] itches for [illegible] and electric [illegible] there about [illegible].

Q. Were you a [illegible]

A. Yes, [illegible]

Q. What [illegible] you attached to Sergeant?

A. I [illegible] th Bomb Group, [illegible] Squadron [illegible] After I got back to [illegible] the 12[illegible] Air [illegible]

Q. [illegible] ary target the day you were [illegible]

A. [illegible] and motor transports in [illegible]

Q. [illegible] fighters or [illegible]?

A. [illegible] out.

Q. [illegible] you held and state the [illegible], Sergeant.

A. [illegible] September 1st, 1942, at the [illegible] and the Germans captured [illegible] me over to the Italians and they [illegible] Mercamaturah. From there [illegible] hospital [illegible] sent me to [illegible] I got there the 25th of

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Prosecution's Exhibit [illegible]

CONFIDE[illegible]

[illegible] to a hospital [illegible]
[illegible]
[illegible]
[illegible]
[illegible] there [illegible]
[illegible]
when [illegible]
hit [illegible]
hit.

Q. State [illegible]

A. While I was in [illegible] of [illegible]
started to [illegible]
paratroopers. [illegible]
with him said [illegible]
because they were [illegible]
know if he hit [illegible]
a post and be[illegible]
passing out [illegible]
dump out and [illegible]
I was there.

Q. Do you know the [illegible]

A. I have them [illegible]

Q. Do you know the [illegible]

A. He was a [illegible]
who about [illegible]
He didn't [illegible]
voice [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible] you know the names of [illegible]

A. No, I don't [illegible]

- - - - - - - - - -

State of: [illegible]

County of: [illegible]

I, [illegible] Roland [illegible]
have [illegible] the [illegible]
are true to the [illegible]

Subscribed and [illegible]

[illegible] contain[illegible]

pg 2

- - - - - - - - - -

I, Robert A. [illegible]
1600[illegible]7, personally [illegible]
Crimes; and [illegible]
to the [illegible]

Plac[illegible]

In the [illegible]
Pvt. [illegible]
other [illegible]
at Camp [illegible]
1943.

Taken at: AG & SF Redistribution [illegible]ville, N.C.

Date: 11 September 19[illegible]

In the Presence of: [illegible]

Recorder: [illegible] Division, AG & SF Redis[illegible]ville, N. C.

Questions by: 1st Lt. [illegible]

[illegible] address.

A. Mahlon J. Black, [illegible] permanent home address is Utahville, [illegible] #1, [illegible]

Q. Have you recently been [illegible] overseas?

A. Yes.

Q. Were you a prisoner of war?

A. Yes

If so, state your organization at time of capture and name the places [illegible] you were.

Q. [illegible] hold and state the approximate dates?

A. I was captured in Tunisia on [illegible] as a member of the [illegible]th Parachute Infantry. [illegible] Sicily in January 194[illegible] was put in Camp [illegible] Palermo for [illegible] days. We left Camp 98 on [illegible] January 194[illegible] at Camp 59 on 23 January 1943 [illegible] until [illegible], 1943. Escaped on 1[illegible] September 1943 [illegible] mountains for 4 months and picked up by Italian police [illegible] January 1944. I was kept in a civilian jail in Ascoli, [illegible] for 7 days. From there I was [illegible] over to the Germans. I was transferred to two different German camps within a period of a month but I do not remember the names of these camps. Went to Stalag 7A in Germany from there, arriving there on or about 1 February 19[illegible]. Was there 4 days, then to Stalag 2B, Germany. Evacuated [illegible] 2B on [illegible] January 1945. [illegible] were on the road in the process

P10
1

[illegible]

[illegible]

[illegible]lon [illegible] [illegible]49014) [illegible]

[illegible] from 29 January [illegible] 1 [illegible] about [illegible], the Russians overtook us and [illegible] were liberated [illegible] Germans.

[illegible] age, education, [illegible]ilian occupation and marital [illegible]

[illegible] years of age. Completed one year of high school. [illegible] occupation was a clay worker. I am single.

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2

a1

A: [illegible]

Q: State what you know [illegible]

A: [illegible] they allowed us no fi[illegible] us went into one tent a[illegible] cer [illegible] small [illegible] [illegible] they got [illegible] charge[illegible]

Q: When an[illegible]

A: It hap[illegible]

Q: What [illegible]

A: Appr[illegible]

Q: Had th[illegible] been [illegible]

A: We [illegible] days [illegible] of days [illegible] [illegible]mes.

Q: [illegible]lian [illegible]rds ref[illegible]

A: They j[illegible] didn't allow [illegible]

Q: Did this cause a great [illegible]

A: Yes, sir.

[illegible] American pr[illegible]

[illegible] I'd say about [illegible] at [illegible]

Q: Were you one of the [illegible]

A: Yes, sir.

Q: Do you know the name of [illegible] empty [illegible]ing?

A: [illegible]r, I do not.

Q: Can you describe him in [illegible]?

A: He wa[illegible]—suppose [illegible] about [illegible] abo[illegible] all, medium [illegible] ro[illegible] [illegible] had a [illegible] black [illegible] short [illegible] gloves [illegible] live co[illegible] regular heavy [illegible] and short arms. [illegible] higher [illegible] cers [illegible] 2 [illegible] and [illegible]

P10
3

Q: [illegible]

A: [illegible] of [illegible]

Q: Where did [illegible]

A: To a lar[illegible] the [illegible] left [illegible] awhile, [illegible] the other [illegible] they to[illegible]

Q: Were you the first one [illegible]

A: No, sir.

Q: Did you see these other [illegible]

A: No, sir.

Q: How do you know they got [illegible]

A: They told me.

Q: You were beat[illegible]

A: One guard beat me [illegible] me.

Q: Where was the [illegible] were being beat[illegible]

A: Standing about 5 feet to the left of me. The door was bolted and locked.

Q: Did this officer have [illegible] hand?

A: Yes, sir.

Q: After you were [illegible] did [illegible] with you?

A: After we came out of [illegible] until everyone had gone thr[illegible] over to the kitchen to sig[illegible] of [illegible] beds we had burned [illegible] whose given [illegible] was [illegible]

Q: [illegible] Mario [illegible]

A: No, [illegible] before [illegible]

Q: [illegible] ion [illegible]

A: Into[illegible]

Q: [illegible] Mario ins[illegible] Americans?

A: He di[illegible] do [illegible] ing [illegible] what [illegible] said. He was glad[illegible] lian [illegible] and said he [illegible] soon [illegible] the [illegible] ans [illegible] the [illegible] New Y[illegible] dity [illegible]

[illegible]

ca[illegible]

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[illegible] Acting [illegible] Plum
[illegible] and [illegible] was from

[illegible] other men?

[illegible] There was
[illegible] He was
[illegible] Harris,
[illegible] th Parachute In-
[illegible] 509th Proht. Inf.

[illegible] ned?

[illegible] a wooden frame
[illegible] the framework a-
[illegible] and burn it.

[illegible] in charge of

[illegible] anding officer of this [illegible] was?

[illegible] name.

[illegible] dence man?

[illegible] present. He was a first
[illegible]

[illegible] who were beaten are located
[illegible]

[illegible] nistered the

[illegible] rgeant named Marie did know
[illegible] was quite old, probably be-
[illegible] ard had a big mustache,
[illegible] I can say about him.

[illegible] on the uniforms of these
[illegible] ember?

[illegible] the uniform worn by these

[illegible] overcoats. [illegible] were sort of raggedy at
[illegible] regular guard coats.
[illegible] with a very heavy cap

[illegible] well?

[illegible] of this

[illegible] WAR [illegible] PRISONERS [illegible]

[illegible] IN [illegible]

[illegible] Nations For [illegible]

[illegible] with permanent [illegible] of Lancaster, make oath [illegible]

[illegible] in [illegible] Africa I was [illegible] to [illegible] [illegible] I [illegible] in a cell [illegible] I was [illegible] all we were [illegible] a sink [illegible] not allowed out. [illegible] 90 [illegible]

[illegible] I [illegible] Jersey and February 1945. The [illegible] in each of which [illegible] 70 prisoners [illegible] All [illegible] when it [illegible] of the [illegible] isolation [illegible] by [illegible]

3. [illegible] in the lower and higher [illegible] In [illegible] of [illegible] troubles [illegible] I [illegible] them to be [illegible] the wire fence at night.

4. [illegible] from dysentery and [illegible] the [illegible] whatsoever. I remember two prisoners [illegible] through [illegible] South African soldier named [illegible]

5. [illegible] without sugar or milk. [illegible] of meat [illegible] During the whole of my [illegible] I have there were plenty [illegible] a large number of them in a store [illegible]

[illegible] the [illegible] an Italian officer [illegible] He said that a [illegible] to a pole in the [illegible] in my tent, [illegible] a [illegible] for about [illegible] by the Italian officer. [illegible] interpreter. I told him I [illegible] with his [illegible] taken into [illegible] in [illegible] they were going to do [illegible] Italian guards began beating [illegible]

[illegible] No. 11

us with their ... under ...
Since I still had ...
cell. Five hours ...
cell.

7. The Colonel Commandant of the ... years of age, very ... and of dark ...

The Italian officer concerned ... I should think about 19 years of age ... build. He ... complexion ...

I should ... these two ... Italian interpreter ...

The Interpreter's ... of very dark complexion ... a black ... His rank was corporal and he ...

Sworn ... in the City of Washington this 10 day of June 1945

Before me

... Judge Advocate ... Military Department, Office of the Judge Advocate General

RECEIVED ... 1945

IN THE MATTER OF THE ILLEGAL [illegible] OF
BRITISH PRISONER OF WAR AT [illegible]
WAR CAMP [illegible] SAN [illegible]
JANUARY [illegible] CONTRARY TO THE [illegible]
CONVENTION 1929.

British National [illegible]

United Nations [illegible] Commission [illegible]

[illegible]

I, [illegible]
[illegible]
and [illegible]

1. In [illegible] I [illegible]
duly p[illegible] in the [illegible]
MICHAEL [illegible] and it was [illegible]
Battalion The Hampshire Regiment [illegible]

a 2. In that month I [illegible]
TEBOURBA in North [illegible]
Prison [illegible]
approx[illegible]

3. [illegible] I [illegible]
in ch[illegible]
and an I[illegible]
the men [illegible]
R.G. de C.W. Italian [illegible]
Italian [illegible]
room there was a priv[illegible]
hold of me and stuck [illegible]
the pole and then [illegible]
R.G. de C.W. [illegible] officer for an [illegible]
[illegible]lly speaking in [illegible]
[illegible] Italian officer [illegible]
explained to [illegible] that I [illegible]

4. I remained chained [illegible]
hours to 0130 hours during [illegible]
The weather was bitterly [illegible]
dressed in a shirt and [illegible]
three inches of mud.

5. The Commandant was of the rank of Colonel [illegible]
and had a middle-aged spread. He was of dark [illegible]
appearance, about 50 years of age with a hooked [illegible]
excitable nature and could not speak English but [illegible]
French. I do not know the [illegible] of this Commandant [illegible]
for the treatment noted [illegible]

SWORN by the above-named REGINALD LARSON
at 6 Spring Gardens in the City of Westminster
this twenty-sixth day of June 1945

Before me R.G. de C. [illegible]
Captain [illegible]

P12

40

[illegible] of America

[illegible] estimony of Walter
improper [illegible] Pr[illegible] [illegible]ll, [illegible]ral, ASN 12005316.
of War C[illegible] [illegible]ile [illegible]
Palmer [illegible] [illegible]ary [illegible]
to [illegible]

[illegible], Intelli[illegible]ce Divi[illegible], First [illegible]vice
[illegible] 13, P[illegible] Office [illegible]ing, Springfield,
[illegible]

[illegible] of: [illegible] R [illegible]horst, [illegible] 31140[illegible] Agent, [illegible]rity
[illegible] Intelligence Corp[illegible] First [illegible]ice Com[illegible]

Charles R Tatgenhorst

Charles R Tatgenhorst

[illegible] DULY

[illegible] and [illegible] address.

[illegible]ter J [illegible]ell, Corporal, [illegible], [illegible] 64, N[illegible] Pownal, Vermont.

Wher[illegible] were you born?

Nor[illegible] Vermont, 18 July 1921.

[illegible] was [illegible]tent [illegible]?

[illegible] the sigh[illegible]

Q. [illegible] your civi[illegible]

[illegible] Farmer.

Q. [illegible] you married?

A. [illegible] married recently.

[illegible] you recently returned from overseas?

A. [illegible]

Q. What was your combat [illegible]

[illegible]irst Infantry Division.

[illegible] you a prisoner of war?

Q. [illegible] when were you captured?

A. [illegible] Bab, Afri[illegible] Dec[illegible]2.

WAR CRIMES OFFICE

[illegible]

R13
1

[illegible]NFIDE[illegible]

13

Q. At [illegible] places [illegible]

A. They [illegible] by truck [illegible] Italian destroyer to Pal[illegible] where [illegible] we proceeded eight [illegible] mi[illegible] into [illegible] was [illegible]soned at this Italian camp from 1 [illegible] date I began a four day box car ride to [illegible], Italy, where I remained until [illegible] liberated [illegible] ember 1943. I remained free until 16 October 1943, when the German[illegible] soned me [illegible] Moosburg, Germany. On [illegible] December 1943, I left th[illegible] and a[illegible] our day box car ride, I arrived at Stalag 2B, Ham[illegible]tein, Ge[illegible] remained until 2 March 1944. On the latter date un[illegible] 26 Febru[illegible] a member of the Work [illegible]do as a farm labo[illegible] at Dra[illegible] I then was forced to march about [illegible] hundred an[illegible] miles [illegible] until liberated 1[illegible] April 1945 [illegible] Salzwedel b[illegible] 44th [illegible] Cavalry.

Q. Des[illegible] your [illegible] It[illegible] was eig[illegible]

A. The [illegible] thirty or [illegible]

Q. Wha[illegible]

A. We [illegible] tent where [illegible]

Q. [illegible] issued [illegible]

Q. Were [illegible]

A. [illegible] had [illegible] shoe[illegible] had [illegible]

Q. Di[illegible]

A. [illegible]

Q. De[illegible] lat[illegible]

A. It [illegible] tasto[illegible] [illegible]ding [illegible]

Q. [illegible] facil[illegible]

A. We had to get our [illegible] was always frozen. We were [illegible]

Q. Were [illegible]

A. No.

Q. Were there [illegible]

A. Yes. About fi[illegible] were ve[illegible] what we cal[illegible]

Q. Were these men [illegible]

A. Some [illegible]

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2

Q. Wh[illegible]

A. Italians.

Q. Describe the [illegible]

A. It was similar to a [illegible] barracks. Wooden bunks [illegible]

Q. Was there sufficient medicine provided?

A. In my opinion there was not. The infirmary was [illegible]

Q. Did anyone die at this camp?

A. Many English soldiers died. I saw them carry four corp[illegible] grounds.

Q. Could you remain in your tents all day?

A. No. Six or seven times a day they would order us out of our tents [illegible] call. We, therefore, [illegible] in the mud, icy slush and snow for sever[illegible] a day. I also had no [illegible] in this climate.

Q. Where did you work?

A. I carried stones which were [illegible] old a road near the camp.

Q. What did they i[illegible] clothi[illegible]

A. Nothing. [illegible] and no h[illegible] or co[illegible] many [illegible] caught cold and suffered w[illegible] frozen [illegible]

Q. Did it rain or snow [illegible] outside on this detail?

A. Yes.

Q. What pay did you rec[illegible]

A. I received four lira a[illegible] this camp.

Q. Describe the physical condition of those men on the work detail with you.

A. Some fainted on the work details. We all were very weak.

Q. Describe the rations you received.

A. At breakfast we received one small cup of chicory coffee. Sometimes there was sugar in it. At eleven o'clock in the morning and four thirty o'clock in the afternoon, we received a half pint of what appeared to be grass soup. It was merely colored water. We were also given half of an Italian bun which is comparable to the size of our biscuit. Meat was rationed twice a week. It was a piece about an inch and a half square.

Q. Did you receive Red Cross food parcels, medical parcels, or clothing?

A. No.

Q. Do you know if Red Cross parcels were sent to this camp?

A. It was general knowledge throughout the camp that Red Cross parcels had arrived. Our American cooks said that they had seen them. I [illegible] after I had left some of these parcels were distributed to the [illegible]

Q. Did the Italians provide a canteen?

A. Yes. Salted fish and figs were for sale, but we had no money with which to purchase these things.

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Q. [illegible] much weight did you lose at this camp?

A. I [illegible] about a pound a day.

Q. Was food available in that region?

A. Yes. When I was transported from Palermo to Camp 98, I saw fields of vegetables. This was early in the war, and I believe th[illegible] coul[illegible] supplied us with sufficient food.

Q. Did you ask for more food?

A. Yes.

Q. What was their reply?

A. They would not give it to us.

Q. Did you witness any cruelties such as beatings and torture of pri[illegible]rs?

A. Yes.

Q. Describe these incidents.

A. There were often threats of beating and bayoneting. Two American soldiers, one a Private in the Second Armored Division, and another of Italian descent, were chained. The chains were bound around their wrists which were behind their backs. These chains were fastened to the wall.

Q. Why were these men punished in this manner?

A. For no apparent reason. I believe they did not answer certain questions during their interrogation.

Q. How long did they remain in this chained position?

A. One I believe remained there for three days and the other for one day.

Q. Were these men beaten?

A. One was struck in the face with leather gloves. The door of the guard h[illegible] was open and I could see him being beaten.

Q. What did his face look like after this beating?

A. It was red all over, and there were l[illegible]h marks and black and blue spots.

Q. Name the victims and assailants.

A. I cannot remember the names of either. I believe the person who did the punishing was a member of the secret police.

Q. Did you witness any other atrocity?

A. No.

Q. Name all Italian personnel at this camp responsible for your mistreatment.

A. I know the name of none

Walter J. Stockwell

Walter J Stockwell, [illegible]l, A[illegible]

State of: Vermont)

County [illegible] Bennington)

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I, [illegible] state that [illegible]
I [illegible] read the foregoing [illegible] tion, and all answers [illegible]
contained therein are true to [illegible] and belief.

[illegible] Stockwell, [illegible]

Subscribed and sworn to before [illegible] 13th day [illegible] July 1945.

[illegible]

CERTIFICAT[illegible]

I, Charles R Tatgenhorst, 31140300, A[illegible]
First Service Command, certify that [illegible]
me Walter J Stockwell, Corporal, 1[illegible]
the several questions set forth; tha[illegible] tr[illegible]
the said [illegible]er J Stockwell read the [illegible] th[illegible]
in my pr[illegible].

Place: [illegible]

Date: July 13, 1945.

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[illegible]

[illegible] States of [illegible]

In the matter of mistreatment of prisoners of war confined at Camp P. G. 98 in Sicily February, March, 1943.	[illegible] of [illegible] Frank S. Cooper, Private, ASN 20148082, Anti-Tank [illegible] 39th Infantry, 9th Di[illegible]

****

Taken at:	Field Office, Security [illegible] Intelligence, 312 Water Street Augusta, Maine
Date:	21 June 1945
In the Presence of:	Ralph P. Pope, Major, [illegible] ASN 0172695, Asst. Inv. [illegible]
	[illegible] P. Hill, Special Agent, [illegible] ASN 36110779, Bangor, Maine
	David W. Fuller, Agent, SIC, ASN [illegible]146016, Augusta, Maine
Reporter:	[illegible] Virginia [illegible]. Lewis, Civilian Employee, SAI, HFSC
Questions by:	David W. Fuller

The deponent was duly sworn by RALPH P. POPE, Major, Inf., Summary Court

Q. What is your name, rank and serial number?

A. Frank S. Cooper, ASN 20148082, Private.

Q. What is your permanent home address?

A. 405 Sabattus Street, Lewiston, Maine, c/o Mrs. Theresa G. Cooper.

Q. Have you recently returned to the United States from overseas?

A. Yes.

Q. Were you a prisoner of war?

A. Yes.

Q. By whom were you captured?

A. The Germans.

Q. What was your organization?

A. Anti Tank Company, 39th Infantry, 9th Division.

Q. By what organization were you captured?

A. 10th Panzer (tanks) of the German Army.

WAR CRIMES OFFICE

Washington 25, D. C.

CONFIDENTIAL

Prosecution's [illegible] 14

[illegible] prisoner and during [illegible] periods

[illegible] February 19[illegible] to 15 March 1943; Camp P.G. 66, [illegible] from 15 March 1943 to 8 April 1943; Stalag VIIA, Moosburg, [illegible] 12 April 1943 to 1 September 1943; Stalag [illegible], [illegible]stein, [illegible] 5 September 1943 to 15 September 1944. I was at [illegible]lsburg [illegible] Germany from 15 September 1944 to 20 February [illegible]; this [illegible]lag [illegible].

[illegible] you get to Sicily?

A. [illegible] was captured in North Africa by the Germans and flown to Sicily.

Q. [illegible] was in charge of Camp P.G. 66 in Sicily?

A. The Italian Army.

Q. Do you know the names of any of the Italians connected with this camp or the names of their organizations?

A. No. We had an Italian Colonel in charge and two Italian Lieutenants but I do not know their names.

Q. Will you describe the quantity and quality of food issued to American prisoners of war at this camp?

A. About six o'clock in the morning, each man received a small cupful of black [illegible] coffee with no sugar. At noon each man received a small quantity of soup and a piece of bread about the size of a man's fist. At night, each man received a little soup and that is all.

Q. What was the effect of this diet upon you and the other American prisoners as you observed it?

A. I lost weight and strength and so did the other prisoners.

Q. Did the Italians have available food which they could have issued to American Prisoners?

A. Yes. The house where the Italian Colonel lived was filled with British Red Cross supplies including food parcels.

Q. How would you describe the colonel's residence as to size?

A. It was an Italian Castle. The prisoner of war camp was built on the grounds.

Q. While you were at this camp, did the Italians attempt to make you work?

A. Yes. They tried to make the American prisoners and a few British prisoners there carry stone for building purposes. They were trying to build up the camp.

Q. Did you and the other American prisoners of war receive any Red Cross Food packages at all while at this camp?

A. No.

Q. Did the British prisoners of war receive any Red Cross food packages?

A. The only [illegible] I ever saw the Italians issue any Red Cross food to the British [illegible] gave the seventeen British prisoners in the camp one Red Cross [illegible]kage; that is one package for the whole seventeen.

Q. [illegible] were any particular diseases common among the prisoners?

A. The principal disease was dysentery. But some prisoners also had sores on their hands and bodies.

Q. Did you have any American Medical Officers or Medical Corps men with you?

A. No.

Q. Did you have any other medical care?

A. [illegible] camp, we had one Italian Medical Officer but he had no supplies.

Q. Did you have first aid kits?

A. No. These were confiscated by the Germans at the time we were captured.

Q. Could the Italians have supplied the prisoners of war with medical supplies at no expense to themselves?

A. Yes. The castle where the Italian Colonel lived also contained British Red Cross medical supplies.

Q. Do you know about the British Red Cross food and medical supplies from seeing them yourself?

A. No. This was r[illegible] some of my buddies who did [illegible]

Q. Can you give us the names of [illegible] of them?

A. Pvt. Peter [illegible], 39th Cannon Company, 9th Division. He has [illegible]

Q. What was the weather like at this camp?

A. The weather was cold -- a damp cold. [illegible] there was no snow on the [illegible] It was very uncomfortable.

Q. Where was the camp located?

A. In the hills outside [illegible].

Q. What would you say about the clothing available to prisoners at this camp?

A. Many men did not have [illegible] clothing. Some of us had [illegible]. Some had no jackets.

Q. What effect did this have on the prisoners?

A. Many of them had colds.

Q. Did the Italians issue clothing to the prisoners?

A. In some cases they did on the day before we moved. But they took it all back on the day we moved from this camp. During the time we were at this camp the majority of the prisoners did not have enough clothing to keep them warm.

Q. What were the living accomodations at this camp?

A. We slept in tents with no heat.

Q. Were these tents made of canvas?

A. No. It was a very thin sleazy material. Rain would go through it so that inside the tents mud would be ankle deep.

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Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible] Italian [illegible] blo[illegible] [illegible] of a [illegible] together.

Q. How did you [illegible]?

A. Two and sometimes three prisoners in a b[illegible]

Q. Did you re[illegible] any [illegible] while you were i[illegible] prisoner[illegible]

A. As I recall it, we re[illegible] the [illegible] for [illegible] time. I [illegible] two [illegible]

Q. Can you [illegible] confinement of [illegible] prisoners i[illegible] Guard House at [illegible]?

A. If a prisoner [illegible] work, [illegible] put in [illegible] guard house for [illegible] hours or so. The [illegible] log [illegible] the prisoners [illegible] were in the guard house.

Q. Have you [illegible] in this [illegible]?

A. I have [illegible] their [illegible] and [illegible]

Q. [illegible] you [illegible] would have [illegible] other [illegible]

A. [illegible] observation [illegible] was [illegible] the [illegible] [illegible]ed.

Q. [illegible] ld y[illegible]

A. [illegible] was the [illegible] of [illegible] I [illegible] in.

Q. [illegible] connection with [illegible] this [illegible] you tell us anything about treatment of [illegible]

A. The Italians marched [illegible] the streets of Falsano. While [illegible] marching through the [illegible], there was an air raid so they put [illegible] air raid [illegible] while. After the air raid, the people [illegible] that we were [illegible] so they threw [illegible] fruit, celery [illegible] some cases, [illegible] They cursed us in [illegible] and sometimes [illegible]lish. The Italians [illegible] our rings, [illegible] money, and [illegible] personal effects.

[illegible]

Private

State of Maine

County of [illegible]

I, FRANK [illegible] lawful [illegible], bei[illegible] I have read [illegible] transcription of [illegible] contained [illegible] the [illegible] of [illegible]

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[illegible]

Private

CONFIDENT[illegible]

[illegible] me this 21 day of June 1946

DAVID W. FULLER, Notary Public
State of Maine. My commission
expires 2/20/46

I, DAVID W. FULLER, ASN [illegible]016, Agent, SIC, [illegible], certify that on 21 June 1946 personally appeared before me Frank S. Cooper, Private, United States Army, ASN 20[illegible]02 and gave the foregoing answers to the several questions set forth, and that after his testimony had been transcribed, the said Frank S. Cooper read the same and affixed his signature thereto.

Place: Lewiston, Maine

Date: 21 June 1946

DAVID W. FULLER

Agent, SIC, [illegible]

SECRET

Case #40

AFFIDAVIT

I, Samuel Rosner, Army Serial Number 32117011, Corporal, 3rd Battalion, 39th Infantry residing at 41-12 12th Street, Long Island City, New York, being first duly sworn upon oath does depose and say:

That he was captured by German troops on the 22nd of Feb[illegible] 1943 during the action at Kasserine Pass, [illegible]. Thereafter on 2 [illegible] I was evacuated to Palermo, Sicily by air. Upon [illegible]val in Palermo we were place on trucks, driven through the City of Palermo and then up a winding road to a camp on the mountain side above Palermo. (Camps were either PG 66 or PG 98). Upon arrival at the camp Italian personnel took our money, jewelry, pass-p[illegible] books for which no receipt was [illegible] for as I am aware. In the camp there were British and French Prisoners of War as well as American personnel. The camp was divided into two sections. One consisted of four large tents in which all newly arrived prisoners were placed. The tents always had a few inches of water [illegible] floor and each prisoner was given two thin blankets which were too small to cover [illegible]. While in the section of the camp we were on half rations which consisted of a warm colored drink in the morning, thin soup for dinner and thinner [illegible] a small Italian bun for supper and five cigarettes a day. During our stay [illegible] we were forced to work. The work consisted of going up to a higher part of [illegible] mountain and carrying rocks down on a board supported by two of us. [illegible] Italian Colonel in charge of the camp would stop us and force us to carry more [illegible] we were capable of carrying. At one time during our stay we were given [illegible] squares each of British chocolate and a few raisins. However, the Itali[illegible] constantly seen eating British chocolate taken from the bulk rations kept in the kitchens. Many times we were forced to dig for wild onions and had to grope [illegible] garbage looking for cabbage leaves and other things with which we might [illegible] ourselves. Many of the boys sold their personal belongings for a bun or a piece of cheese or sometimes for lire so they could buy oranges at the Canteen. At one time they called everyone out and required all people of the Jewish faith to [illegible] forward. No three Americans of which I was one and one South African stepped [illegible] We were immediately taken to one of the stone barracks located near the camp [illegible] told to strip. After doing so they searched our clothing and looked us over thoroughly for money and jewelry. They took my wrist watch and ring. Thereafter on three occasions I was taken to this stone barracks and put into chains for about four hours each time. These chains consisted of hand cuffs applied to wrists and ankles. Sanitary conditions in the camp were extremely poor and rain water continually flooded the tents. The Italian Colonel in charge of the camp lived in a house just above the camp. He was short and medium built, age about 45 years. It is possible that one of the medical personnel named Viccarro, of the 168th Infantry who lives in Philadelphia may be able to give more information regar[illegible] this officer since he spoke Italian and was able to understand the language. [illegible] was sent home in January by the Germans from Camp 3B, located at Furstenberg on the Oder with about 75 other medical men in the camp. I am not sure but I believe Ray and George Haben, Murray Prichard of the 168th Infantry, Thomas Kelly, 3rd Battalion, 39th Infantry, Meyerowitz, L Company, 39th Infantry of Cleveland, Ohio and West of M Company, 39th Infantry were in this camp. A Master Sergeant McMahon I believe his name was who was Senior non-com of the camp was later sent by the Germans to camp 2B at Hammerstein, Germany at which place he was confidence man. If I were to sit on a court and had before me the Italian Colonel responsible for the mistreatment I believe that a punishment of three years of imprisonment, doing the same kind of labor, eating the same kind of food as given to us would be ample.

Samuel Rosner
SAMUEL ROSNER, 32117011

Sworn and subscribed to before me this nineteenth day of May 1945.

Jack E. High
JACK E. HIGH, 0326958
Lt. Col. JAGD

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Case #40

Prosecution Exhibit No 75

SECRET

[illegible]-F-A-D-A-V-L-T

[illegible]rived in Sicily 2 March [illegible] after having flown from Tunis. We were put into trucks and driven through Plaerma and then to a camp somewhere on a side of a mountain. When we first came to this camp they took our money, jewelry and also our passports and paybooks. There were also British and French POW's at this camp. Left this camp March 23rd. The camp was divided into two sections. One section consisted of four large tents. In these tents were all of the [illegible]ly arrived prisoners. The tents always held a few inches of [illegible] given two thin blankets which were too small to cover you [illegible] we were in this section we were on half ration, which cons[illegible] in the morning. For dinner we received [illegible] tasted good but [illegible] thin, for supper we [illegible] a much thi[illegible] plus a very small It[illegible] bun. We remained in [illegible] for [illegible] five days. In the second section we were supposed to receive [illegible] the only thing that [illegible] increased was the size of the bun. I'm sure that this would be larger but did not weigh four ounces. In this section we had to work. The work consisted of [illegible] to a higher [illegible] the mountain and then carrying rocks down. [illegible] stop us and force us [illegible] then we [illegible] at this camp [illegible] and two and a half [illegible] British chocolate [illegible] raisins. We [illegible] counting them. [illegible] constantly [illegible]
We always dug for wil[illegible]
cabbage leaves. [illegible]
Lots of them forced th[illegible] hunger, [illegible]
bun or a piece of che[illegible] sometimes [illegible]
at the canteen. Once [illegible]
[illegible] Three [illegible]

[illegible]
[illegible]
[illegible]
[illegible]

before [illegible]

P16
1

40

[illegible] testimony of
[illegible] (Formerly Private,
[illegible])

[illegible] at: 66 [illegible], [illegible]yn, New York

[illegible]: 14 [illegible]

[illegible] of: [illegible] 1st [illegible],
[illegible] Inf. [illegible]
[illegible] 2nd [illegible]
[illegible] 20, N.Y.

[illegible] Ger[illegible]

[illegible] Ge[illegible]

Q. [illegible] and serial [illegible]

[illegible] Until I was [illegible] serial number is [illegible].

Q. [illegible] date [illegible] [illegible]

A. I was [illegible] on [illegible] and [illegible] clothes [illegible]

[illegible]

[illegible] for three years.

[illegible] Are [illegible] or [illegible]

[illegible]

Q. Have [illegible] recently been [illegible] to [illegible] United States from Overseas?

A. I [illegible] New York [illegible] 2[illegible] [illegible] the [illegible]

[illegible] Were you a prisoner of war?

[illegible] Yes.

[illegible] places were you held and [illegible] the [illegible] dates?

[illegible] I [illegible] at Field Base, Tunis [illegible] 1943 while serving with [illegible] Infantry of the [illegible] Divi[illegible] taken to Tunis where we were [illegible] school house [illegible] being [illegible], on or about 28 March 1943. [illegible] to Camp [illegible] is [illegible] we were kept there until [illegible] when we [illegible] for Camp [illegible], which is near Naples, Italy. We [illegible] Camp #66 until [illegible] end of August, when we were transferred to Camp #99 [illegible] near Sivigliano. After being there two weeks, we were released by the

P[illegible]

CONFIDEN[illegible]

Prosecution Exhibit No

F. L.
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[illegible] the [illegible] Camp [illegible] Palermo, [illegible], on or about 15 [illegible] 19[illegible]

a) Q. Are you [illegible] the [illegible] at Camp #92, Palermo, [illegible], on or about 15 [illegible] 19[illegible]

A. Yes.

Q. State of [illegible] own [illegible] incident.

A. On or about 15 May [illegible] in [illegible] in Camp #92, we had [illegible] to stand [illegible] soldier were standing and [illegible] when the [illegible] was hauled down. The Colonel in charge of [illegible] the face four or five times. He also [illegible] American prisoner [illegible] I don't know his name.

Q. Can you [illegible] the [illegible]?

b) A. He was in charge of the camp [illegible] don't [illegible] his [illegible]. He was about 5'2", dark skinned and about [illegible] 60 [illegible] old.

Q. Could you give the names of [illegible] the prisoners of war who witnessed this incident?

A. No.

Q. Is there anything further you [illegible] to [illegible]

A. No.

Q. Have you any further knowledge [illegible] have not mentioned?

A. No.

[illegible] LaBella
[illegible] LaBella, Civilian

State of: New York }
County of: New York } ss

I, FRANK [illegible] LaBella, of lawful age, [illegible] on oath, state that I have read the foregoing transcription of [illegible] and all answers contained therein are true to the best of my knowledge and belief.

[illegible] LaBella
[illegible] LaBella, Civilian

Subscribed [illegible] before me this [illegible] day of [illegible]

[illegible]
2nd LT. Chief
SUMMARY COURT

[illegible] of [illegible] June 1943.

66 [illegible]

14 [illegible]

Gen[illegible]
Fer[illegible]
Sec. [illegible]
1270 [illegible]

Agent [illegible]

Agent [illegible]

[illegible] and [illegible]

[illegible] civi[illegible]

[illegible] Novem[illegible] a cl[illegible]

[illegible] ation [illegible] you [illegible]

A. [illegible] East New York [illegible] High [illegible]

[illegible] single?

A. [illegible]

[illegible] recently been [illegible] to [illegible] ited [illegible] seas[illegible]

[illegible] New York on 23 May 1945 a[illegible] the SS BRAZIL.

[illegible] a prisoner of [illegible]

[illegible] places [illegible] you [illegible] and sta[illegible] appropriate d[illegible]

[illegible] Tunisia [illegible] February 1943 [illegible] with [illegible] Divi[illegible] We [illegible] taken to [illegible] on or [illegible] 194[illegible] [illegible] is [illegible] we were [illegible] for C[illegible] 66, [illegible] is near [illegible] We [illegible] and of A[illegible] t, when [illegible] were tra[illegible] Camp [illegible] After bein[illegible] there two [illegible], we were rele[illegible] by t[illegible]

CONFIDEN[illegible]

Prosecution's Exhibit [illegible]

F. 18

[illegible] of [illegible] Prisoner [illegible] to,
[illegible] 1943, [illegible]
[illegible] of other [illegible]
[illegible] June 1943.

66 [illegible]

14 [illegible]

[illegible] Ger[illegible]
[illegible]
Sec.
1270

[illegible] Agent

[illegible] Agent

[illegible] and

[illegible]

[illegible] Brooklyn, [illegible] a cl[illegible]

[illegible] cation [illegible] you [illegible]

A. I [illegible] East New York [illegible] High [illegible]

[illegible] or single?

A. [illegible]

[illegible] recently been re[illegible] to [illegible] United States [illegible]

[illegible] New York on 23 May 1945 ab[illegible] the SS BRAZIL.

[illegible] a [illegible] of [illegible]

[illegible] places [illegible] and sta[illegible] the approximate da[illegible]

[illegible] Mississippi [illegible] February 1943 [illegible] with
[illegible] Divi[illegible] We [illegible] taken to [illegible] wor[illegible]
[illegible] being [illegible] on or [illegible] 194[illegible]
[illegible] is [illegible] we were [illegible] until
[illegible] for C[illegible] 66, [illegible] is near [illegible] We
[illegible] until the end of A[illegible], when [illegible] were tra[illegible] Camp
[illegible] Miami. After bein[illegible] there two weeks, we were rele[illegible] by t[illegible]

CONFIDEN[illegible]

Prosecution's Exhibit [illegible]

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[illegible] February 1945, the Germans [illegible] on the third day because of my [illegible] sent me and a number of other [illegible] where we stayed at Stalag 2A for about ten [illegible] the middle [illegible] sent to Stalag 10B at San [illegible] and [illegible] to Stalag 11B [illegible] for [illegible]

Q. [illegible] you familiar with [illegible] of American prisoners [illegible] prisoner of [illegible] March 1945 [illegible]

A. Yes [illegible]

Q. [illegible] this [illegible]

a) A. The [illegible] more miserable. We [illegible] Thus we slept on a wooden [illegible] only [illegible] had two [illegible] cup [illegible] crests [illegible] more [illegible] of [illegible] first [illegible] to [illegible] an Italian [illegible] ived less food and water [illegible] and we were forced to [illegible] were so ill that they [illegible] near a [illegible] for [illegible] on the floor [illegible] everywhere. [illegible] injection [illegible] no [illegible] except [illegible] a quarter of a [illegible] cup of rice daily. I would guess [illegible] to about [illegible] during this attack of dysentery [illegible] Camp #66 near Naples [illegible] I [illegible] and recovered.

Q. Do you know the name of the [illegible] in charge of this camp?

A. No, I don't know his name but he was a very short man, probably 5'2" tall and he is about 55 or 60 years old and was dark skinned.

Q. Is there any other American soldier who could identify him?

b A. Yes, the other soldier was Private [illegible] who lives in Buffalo, New York and who was with the 26th Regiment of the [illegible] Infantry Division.

Q. Was any food withheld from you while you were at Camp #98?

A. I believe so because we used to see the Red Cross Invalid parcels come in but we never got any of them. Once an Italian doctor told the Colonel that

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the prisoners of war needed more food so for a couple [illegible] we got some jams, biscuits and cheese but we never saw the [illegible] except when they were emptied or when they were being carried into camp.

Q. Is there anything further we wish to relate concerning this incident?

A. No.

Frank P. LaBella
FRANK P. LaBELLA, Civilian

State of: New York
County of: New York } ss

I, FRANK P. LaBELLA, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Frank P. LaBella
FRANK P. LaBELLA, Civilian

Subscribed and sworn to before me this 14th day of November 1945.

James H. Leining
2nd Lt. CMP
SUMMARY COURT

CERTIFICATE

I, GERARD WEINSTOCK, Agent 1251st SCU, F.P.I., SID, certify that Frank P. LaBella, (formerly Pvt., AUS, ASN-12142211, personally appeared before me on 14 November 1945, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: 1270 Sixth Ave.
New York 20, N.Y.

Date: 14 November 1945

Gerard Weinstock
GERARD WEINSTOCK, Agent 1251st SCU
Foreign Positive Intelligence Sect.
Sec. & Intel. Div., Hqs., 2nd SvC
1270 Sixth Ave., N.Y. 20, N.Y.

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CONFIDENTIAL

For The WAR CRIMES OFFICE

Adjutant General's Department -- War Department

United States of America

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RESTRICTED

Classification changed - cancelled
Date-
By-

In the matter of treatment of Prisoners of War at PG # 98, Palermo, Sicily,	Perpetuation of Testimony of Anthony N. Proto, T/5, ASN 19012836.

Taken at: Fort Bragg, North Carolina.

Date: 20 June 1945

In the Presence of: Harold J. Daub, Capt., Inf., O-391126, Post Intelligence Officer, Fort Bragg, N.C.

Reporter: Agnes M. Webb, Confidential Stenographer, Post Intelligence Office, Fort Bragg, N. C.

Cpl. Anthony N. Proto, ASN 19012836, after having been duly sworn by Harold J. Daub, Capt., Inf., O-391126, Summary Court, was interrogated and answered as follows:

Questions By: Capt. H. J. Daub.

Q: State your name, rank, serial number and permanent home address?

A: Anthony N. Proto, T/5; ASN 19012836.

Q: Have you recently been returned to the United States from overseas?

A: I returned 8 December 1943.

Q: Were you a prisoner of war?

A: Yes, Sir.

Q: By what country's armed forces were you captured?

A: Germany.

Q: In whose custody were you held as a prisoner of war?

A: The Germans and the Italians.

Q: When and where you captured?

A: 23 December 1942 near Tunis.

Q: How long were you in custody of the German military authorities?

A: I was in custody of the Germans for about a week before being evacuated from Tunis to Sicily.

Q: What happened when you were taken from Tunis to Sicily?

A: We were turned over to Italian military forces and taken to Palermo, Sicily by an Italian destroyer or cruiser, and turned over to Italian guards and taken to PG #98, which was about 12 kilometers from Palermo.

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A: [illegible] two weeks.

Q: Is this the only place you were [illegible]

A: No, Sir. After two weeks I was [illegible] and was held about three weeks, [illegible] Italy, where I stayed until 13 September 1943.

Q: Did you witness or learn of any atrocities or mistreatments of prisoners of war at any time while held at PG [illegible]?

A: I did not witness any atrocities [illegible] treatment [illegible] the prisoners were not treated so well.

Q: In your opinion, were you treated in accordance with the rules of land-warfare, or treaties between the countries concerned in the handling of prisoners of war?

A: Well, Sir, I am not familiar with the rules of land-warfare and treaties. The only thing I know of is the treatment we [illegible].

Q: What conditions existed and what th[illegible] think was improper or inhuman?

0) A: We had improper bedding facilities [illegible] and an empty mattress covering, and [illegible] 11 into one tent, 120 men to a tent. Th[illegible] daily and a bowl of weak, watery soup, [illegible] and about 1-oz. of meat once a day, [illegible] of lukewarm chicory each day. We had [illegible] any. They had something similar to [illegible] which they had a little bulk [illegible] prices on these things were [illegible] and, or none at all. They [illegible] did not receive any treatm[illegible] were not properly treated, [illegible] foot, and pneumonia soul[illegible] damp and rainy and the [illegible] temperature at night was [illegible] in this mud at least six th[illegible] conditions. They exported [illegible] that they wouldn't feed [illegible] soldiers and a lot of [illegible] touch of trench foot [illegible] and dysentary from [illegible] carrying rocks down from the [illegible] the camp. The straddled tre[illegible] above our tents. These were always [illegible] overflow, and at night we had to [illegible] We had improper clothing. The [illegible] had the clothing [illegible] tured in, and some were issued [illegible] were there. [illegible] to have fires to keep warm [illegible] the men's clothing were insufficient to keep them warm. We had no changes in clothing, and when our clothes got wet, there was nothing for us but to wear wet clothes since there was no way to dry them. Many of the men got sick with colds and pneumonia as a result of exposure. Most of us lost a lot of weight from these conditions. They used to chase us at night by tapping us on the head, as some was a count or check-up, and we were awakened in this manner several times each night. We had no washing or bathing facilities. There were no Red Cross parcels.

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Q: Do you [illegible] any instances of mistreatment of [illegible] of individuals?

A: No, Sir, I did not see any such mistreatment on the [illegible] the camp guard personnel, except that when we [illegible] processed [illegible] the prisoners had personal belongings such as [illegible] rings and other [illegible] and valuables taken from them by guard [illegible], and later because of the lack of food and clothing, they got [illegible] of the remaining articles in possession of the prisoners by trading small amounts of bread or cigarettes for these items, or for large amounts of money which the prisoners happened to be able to keep.

I did not see any cases of brutal treatment or punishment while at PG #98, but after I got to Camp #60, I heard that 1st Sgt. Manuel Serrano had been chained and beaten allegedly for having cursed the camp commander who was an Italian colonel.

Q: Do you remember, or did you know the names of the Italian enlisted or officer guard personnel?

A: I knew of some of them, but I have forgotten it by now.

Q: Did the camp commander or his staff make any efforts to improve conditions at the camp?

A: No, Sir.

Q: Were you transferred out of Camp #98 before most of the other prisoners had left?

A: Yes, Sir.

Q: Was there any particular reason for your being transferred from this camp?

A: Yes, Sir. Twenty-five of us of American-Italian extraction were transferred to PG #60 in Rome, Italy, which was no more than a guardhouse, for the purpose of interrogation, concerning all phases of the activities of the Allied troops in North Africa, convoys, and the war effort on the home front.

Q: Was any force or coercion used on you during this time?

A: No, Sir. We were treated much better than before.

Q: Did you learn of any instructions that were issued by the camp commander or any of the administrative or guard personnel which would result in poor conditions or mistreatment?

A: No, Sir. I have told you about all the things I can remember.

Anthony N. Proto

Anthony N. Proto, T/5, ASN 19012836.

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RESTRICTED

State of North Carolina)
) ss
County of Cumberland)

I, Anthony N. Proto, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief. Each of the three pages of this transcription have been either signed or initialed by me.

Anthony N. Proto
Anthony N. Proto, T/5, ASN 19012836.

Subscribed and sworn to before me this 21st day of June 1945.

Arthur J. Gobbe
Arthur J. Gobbe, Capt., Inf., O-306313
Summary Court.

C E R T I F I C A T E

I, Harold J. Daub, Capt., Inf., O-391126, Post Intelligence Officer, Fort Bragg, N. C., certify that on 20th June 1945, personally appeared before me Anthony N. Proto, T/5, ASN 19012836, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said Anthony N. Proto read the same and affixed his signature thereto in my presence.

Harold J. Daub
HAROLD J. DAUB
Captain, Infantry
Post Intelligence Officer

Place: Fort Bragg, N. C.

Date : 21 June 1945

CONFIDENTIAL

For the War Crimes Office

Judge Advocate General's Department — War Department

United States of America

In the matter of the failure of the Italians to provide proper quarters, food, sanitation and medical care for Allied Prisoners of War at Prison Camp #98, Palermo, Sicily from 2 March 1943 to 22 March 1943	Perpetuation of Testimony of Melvin F. Yellowcloud, Private, ASN 37123778, Box 413, Rosebud, South Dakota.

TAKEN AT: Rosebud, South Dakota

DATE: 8 September 1945.

IN THE PRESENCE OF: John P. Burmeister, Special Agent, SIC, District Five, Seventh Service Command, Omaha, Nebraska.

REPORTER: John P. Burmeister, Special Agent, SIC, District Five, Seventh Service Command, Omaha, Nebraska.

QUESTIONS BY: John P. Burmeister, Special Agent, SIC, District Five, Seventh Service Command, Omaha, Nebraska.

Q. State your name, rank, serial number and permanent home address.

A. Melvin F. Yellowcloud, Private, ASN 37123778, Box 413, Rosebud, South Dakota.

Q. Are you an American citizen?

A. Yes.

Q. Where and when were you born?

A. I was born in Wood, South Dakota 21 April 1922.

Q. What education have you had?

A. I completed the ninth grade in the Rosebud Boarding School, Rosebud, South Dakota in May 1939.

Q. What was your civilian occupation?

A. I was a cattle rancher.

Q. What were your military duties?

A. I was No. 1 man on a 105-mm howitzer; I was assigned to "C" Battery, 33rd Battalio, First Division.

Q. Have you recently been returned to the United States from overseas?

A. Yes, I returned 15 May 1945 to Newport News, Virginia.

Q. Were you a Prisoner of War?

A. Yes.

Q. At what places were you held, and what were the approximate dates?

WAR CRIMES BRANCH

Prosecution's Exhibit No.

A. I was captured on 22 February 1943 in the Kasserine Pass, Tunisia by members of Rommel's Afrika Corps - I believe they were in one of the Panzer Divisions. I was taken to Prison Camp #98, Palermo, Sicily, where I remained from 2 March 1943 to 22 March 1943. I was then sent to Prison Camp #66, Capua, Italy, where I remained from 26 March 1943 to about 13 April 1943. I was then sent to Stalag VII-A, Moosburg, Germany, where I remained from 16 April 1943 to 2 May 1943. I next was taken to Stalag III-B, Furstenburg, Germany, where I remained from 6 May 1943 to 28 April 1944; I then was taken to Stalag IL-B, Hammerstein, Germany, where I remained from about 2 May 1944 to about 18 February 1945, when we began marching away from the Russians. We marched until 11 April 1945, when we were liberated by the 102nd Field Artillery, at Oebisfelde, Germany, about 25 Kilometers northeast of Braunschweig, Germany.

Q. Are you familiar with the failure of the Italians to provide proper quarters, food, sanitation and medical care for Allied Prisoners of War at Prison Camp #98, Palermo, Sicily from 2 March 1943 to 22 March 1943?

A. Yes, I am.

Q. State what you know concerning the above failure.

A. There were about 800 Americans, 100 British, and 100 French quartered at this camp in tents. They were placed about forty men to a tent about twelve feet wide and about thirty-six feet long. We had wooden bunks two tiers high, and nothing but the bare boards to sleep on. We had two cotton blankets, and had to sleep together to try to keep warm. Even then we were very uncomfortable.

Q. How about the food at this camp?

A. For breakfast we would get about one-half pint of barley coffee. At noon we got about one-half a canteen-cupful of a thin watery soup made from greens. About six o'clock in the evening we got about three ounces of cheese per man.

Q. Did you get any Red Cross parcels?

A. None at all.

Q. What were the water conditions at this camp?

A. We got plenty of water.

Q. How about the sanitation?

A. We had to use slit trenches which we dug. We had no paper, but the trenches met our needs.

Q. Did you have any vermin in this camp?

A. No.

Q. Did you receive any medical care?

A. No.

Q. Did any of the prisoners need medical care?

A. I saw several of the Americans and British who had dysentary, but nothing was ever done about it.

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Q. Did you have a man of confidence in this camp?

A. The Americans did not have, but the British had one. He was working for better conditions all the time, but nothing was ever done.

Q. Do you know who was in charge of the camp?

A. I believe the guards were in charge. They were Italians, and all privates. I do not know their unit or branch of service. They were constantly changing, and I do not know where they came from or where they went.

Q. Do you know anyone else who can give information about the above camp?

A. Pfc Dewey Youngbear, who I believe came from Tama, Iowa.

Q. Do you have any further information regarding Prison Camp #98?

A. No.

Melvin F. Yellowcloud
Melvin F. Yellowcloud, Pvt, AUS

State of South Dakota)
) ss
County of Todd)

I, Melvin F. Yellowcloud, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Melvin F. Yellowcloud
Melvin F. Yellowcloud, Pvt, AUS

Subscribed and sworn to before me this ninth day of September 1945.

Clyde W. Fleming
(Notary Public)

My commission expires: 4/23/47

CERTIFICATE

I, John P. Burmeister, Special Agent, SIC, District Five, Seventh Service Command, certify that Melvin F. Yellowcloud, Pvt, ASN 37123778, personally appeared before me on 8 September 1945 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Mission, South Dakota

Date: 9 September 1945

John P. Burmeister
Special Agent, SIC
Seventh Service Command

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For The WAR CRIMES OFFICE

Judge Advocate General's Department — War Department

United States of America

In the matter of the failure of Italian Military officials to adequately protect American Military prisoners of war at Palermo, Sicily, March 4, 1943	Perpetuation of Testimony of Henry Gaither Ferry, Jr., 1st Lieutenant, O-436222

Taken at: Miami, Florida

Date: 15 May 1945

In the Presence of: Meyer Sugarman, Special Agent, Security Intelligence Corps, Fourth Service Command

Reporter: Jo Kate Annis, clerk-stenographer, Miami Field Office, SIC, Fourth Service Command

Questions by: Meyer Sugarman

Q. State your name, rank, serial number and permanent home address.

A. Henry Gaither Ferry, Jr., 1st Lieutenant, O-436222, 1123 S. W. 19th Avenue, Miami, Florida.

Q. At what places were you held as a prisoner of war and state the approximate dates.

A. P.G. 98, Palermo, Sicily, March 2, 1943 to March 18, 1943; Capua, Italy, March 22, 1943; Moosburg, Germany, April; Elchstatt, Germany, April to June 1, 1943; Oflag 64, Schubin, Poland, June 6, 1943, to January 24, 1945.

Q. Do you recall any incident occurring in Palermo, Sicily, while you were a prisoner of war?

A. We were taken from the airport to the community of Palermo where some of the men were subjected to indignities about 2 or 3 March when we were coming into Palermo. At the station we were put in trucks and the trucks made two or three different stops on the route, and at almost every stop we were stoned by the civilian populace. There were guards on the trucks, and no attempt was made on the part of the guards to keep them from stoning us and intimidating us.

Q. Do you recall the nationality of the guards?

A. The guards were Italian.

Q. Who was the commanding officer at the camp?

A. The commanding officer was Lieutenant Colonel Julio Oldani.

Q. Was he with the group at the time?

A. He was not with us at the time.

Prosecution's Exhibit

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Q. Approximately what distance from Palermo to P.G. 98?

A. A lot of the trip was made at night; fifteen or twenty miles.

Q. When did the stoning occur?

A. Occurred during the late evening hours.

Q. How many American soldiers in the party?

A. There were 175 or 180. There were a few British soldiers.

Q. Was anyone injured?

A. Not seriously, just bruises or cuts.

Q. Was any complaint made to the commanding officer at P.G. 98?

A. A complaint was made.

Q. What was the reaction to this complaint?

A. It was that military had no jurisdiction over the civilian populace at Palermo and that they were sorry it occurred.

Q. Were there any Italian Axis soldiers in Palermo at this time?

A. Yes, and Germans too.

Q. Were they involved?

A. No, sir.

Q. Did any other instance of that type occur to your knowledge?

A. No, sir.

Q. Was there, in your opinion, any direct participation on the part of Colonel Oldani in this incident?

A. No, sir, he appeared totally indifferent.

Q. This group was sent from Palermo to camp?

A. We were flown into Palermo by Germans and transported to camp.

Q. Do you recall the name of any officer who met you at Palermo?

A. No, sir.

Q. Transportation was furnished by Colonel Oldani's command?

A. Yes, sir. It was not sifficient and was overcrowded. No specific provision was made for any of the wounded with us.

Q. Were the wounded subjected to this stoning?

A. Yes.

Q. What was the rank of the Italian officer who accompanied your party from the air field to P.G. 98?

A. I believe he was a Captain.

Q. Do you recall any identifying data that may aid the allied government in establishing the identity of that officer?

A. No.

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Henry Gaither Perry, Jr., 1st Lt., Inf.

State of: Florida
County of: Dade } SS

I, Henry Gaither Perry, Jr., of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Henry Gaither Perry, Jr., 1st Lt., Inf.

Subscribed and sworn to before me this 17 day of May 1945.

Robert W. Thompson

CONFIDENTIAL

CERTIFICATE

I, Meyer Sugarman, Special Agent, Security Intelligence Corps, certify that on 15 May 1945, personally appeared before me Henry Gaither Perry, Jr., 1st Lieutenant, 0-436222, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said Henry Gaither Perry, Jr., read the same and affixed his signature thereto in my presence.

Place: Miami, Florida

Date: 17 May 1945

Meyer Sugarman
(Signature)

SA SIC
(Rank and organization)

CONFIDENTIAL

War Crimes Office

Judge Advocate General's Department

United States of America

In the matter of maldistribution of, and pilfering of Red Cross parcels forwarded for American personnel at P.G. 98, Sicily, by Lt. Col. Julio Oldani, Italian officer.	Perpetuation of Testimony of Henry Gaither Perry, Jr., 1st Lieutenant, O-436222

Taken at: Miami, Florida

Date: 15 May 1945

In the Presence of: Meyer Sugarman, Special Agent, Security Intelligence Corps, Fourth Service Command

Reporter: Jo Kate Annis, clerk-stenographer, Miami Field Office, SIC, Fourth Service Command

Questions by: Meyer Sugarman

Q. State your name, rank, serial number and permanent home address.

A. Henry Gaither Perry, Jr., 1st Lieutenant, O-436222, 1183 S. W. 19th Avenue, Miami, Florida.

Q. At what places were you held as a prisoner of war and state the approximate dates.

A. P.G. 98, Palermo, Sicily, March 2, 1943, to March 18, 1943; Capua, Italy, March 22, 1943; Mooseburg, Germany, April; Michstatt, Germany, April to June 1, 1943; Oflag 64, Schubin, Poland, June 6, 1943, to January 24, 1945.

Q. Were you the highest ranking American officer in P.G. 98 at the time?

A. Yes, sir.

Q. While there, were there any parcels at the camp from the Red Cross?

A. Yes.

Q. Were they distributed to the men?

A. Occasionally a piecemeal distribution was made after request.

Q. Were there any iniquities in the distribution of these parcels that you would like to report?

A. On the issue of tea from the British Red Cross parcels, we were given limes instead of milk. We were told that the milk from the parcels had been traded for these limes to be put in the tea.

Q. Would you have any reason to believe that some of these parcels were being pilfered so that Italian personnel were enjoying the contents?

A. We often saw Italian soldiers and officers with British cigarettes and chocolate, and we were certain that it was being pilfered.

Q. Would you say that the likelihood of their being captured at another point was very remote?

A.

CONFIDENTIAL

Prosecution Exhibit

Q. Who was the commander of the camp at that time?

A. Lieutenant Colonel Julio Oldani.

Q. Was he directly involved with these facts which you report?

A. Yes, sir.

Q. Did he, to your knowledge, have any parcels at his home?

A. No, not to my personal knowledge, although men claimed that they saw parcels in his home. These were American enlisted men.

Q. Do you recall the names of these enlisted men?

A. I do recall their names. I believe I have their names with me. Paul Freeman, 1740 Lake Avenue, Waterloo, Iowa, and Howard Bates, RFD #4, Holton, Maine.

Q. Were complaints ever made about malnutrition or the distribution of the Red Cross packages?

A. Yes, I personally complained.

Q. What answer did you receive?

A. That they were doing the best they could; that they could not give us more.

Q. Was there a need for these parcels?

A. Definitely.

Q. What was the food situation?

A. Terrible. Most men suffered from malnutrition. Lieutenant Abrahams can vouch for this.

Q. Did you have any occasion to see an inventory of these parcels?

A. Yes.

Q. Do you feel that there was a sufficiently large number on hand to have made distribution at that time?

A. Yes, sir.

Q. To sum up the instances of malnutrition; the distribution that you refer to was unwillingness to distribute parcels when there was a need for them, and an evidence of these parcels having been broken into to take out candy and cigarettes and the use of milk to trade off for limes.

A. Yes sir, and failure to allow any person in the camp to deal with the Red Cross.

Q. You made a request that you be permitted to contact the Red Cross?

A. Yes, and was told that I could when a representative was in camp.

Q. Do you recall the approximate date that he was in camp?

A. About March 12, 1942.

Henry Gaither Perry Jr.
Henry Gaither Perry, Jr., 1st Lt., Inf.

CONFIDENTIAL

State of: Florida
County of: Dade } ss

I, Henry Gaither Perry, Jr., of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Henry Gaither Perry
Henry Gaither Perry, Jr., 1st Lt., Inf.

Subscribed and sworn to before me this 17 day of May 1945.

Robert R. Thompson

Notary Public, State of Florida at Large
My Commission expires March 24, 1948
Bonded by American Surety Co. of N. Y.

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[illegible] in 19[illegible]

Q. Where [illegible]

[illegible] did you practice [illegible] since?

[illegible] a year and a [illegible]

[illegible] into the Army?

[illegible]

[illegible] the time of

Prosecution's Exhibit No. 93

T.E.C.

[illegible] Vaide Pass, Tunisia.

Q. In what Prisoner of War Camps were you?

A. I was in a transient Interrogation Camp on the outskirts of Sousse for approximately six weeks from 17 February 1943 until about 1 April 1943. I was in PO #98 at Palermo, Sicily from about 3 April 1943 until 14 May 1943, and then at PO #21 at Chietti in Italy from about 18 May 1943 until the middle of September, I believe. The last camp was Oflag #64 at Schubben, Poland. I was there until Christmas Eve of 1943, then went to Stalag XVII-B at Krems, Austria. I spent seventeen months there. We were marched out of there and were liberated while on the march. It was the 17th of May 1945 when we were liberated by the 13th Armored Division.

Q. When did you return to the United States?

A. On 11 June 1945.

a/ Q. During the time that you were at Palermo at PO #98, did you witness the beatings of any American soldiers, Prisoners of War?

A. No; I did witness incidents of chaining them though.

Q. How was the weather at the time?

A. The weather was mild.

Q. What were the circumstances of those situations?

A. Two of the men, I do not remember their names, one an American and one an Englishman, escaped by cutting the wire, and were at liberty for about a week, after which they were apprehended and brought back into the camp. As punishment, they were chained with their arms behind them to flagpoles, and they had to stay that way all day long - standing up.

Q. Did they suffer any ill effects?

A. No. No serious ill effects.

Q. Do you remember the date on which the chaining occurred?

A. No, I do not remember exactly.

Q. Who was responsible for chaining these men?

A. The Camp Commanding Officer, Colonel Julio Oldani.

Q. Do you know of any means of further identifying Colonel Julio Oldani such as organization, background or address?

A. No.

Q. Do you know anybody else who saw the men chained there?

A. Yes. Captain Garvin Fitton, Infantry [illegible], now at Camp Joe Robinson, Arkansas; Lt Carl Blevins, now at the same camp, and Lt Lee Cooper, Infantry Officer, now in Germany, who was an enlisted man when he was a prisoner at this camp.

Thomas E. Corcoran
Capt., U.S. Army

CONFIDENTIAL

I, [redacted] being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all [illegible] contained therein are true to the best of my knowledge and belief.

Thomas E. Corcoran
[redacted]

Subscribed and sworn to before me this 12th day of Oct 1945.

[illegible]
[illegible]

CERTIFICATE

I, [redacted], Special Agent, SIC, Seventh Service Command, certify that [redacted] personally appeared before me on [redacted], 1945, and testified concerning [illegible], and that the foregoing is an accurate transcription of the answers given by [redacted] to the several questions set forth.

Place: Denver, Colorado

Date: 5 [illegible], 1945

[illegible]
Signature

[redacted]
Special Agent, SIC, Dist #6, 7160
Rank and organization

CONFIDENTIAL

[illegible] of America

[illegible] Transcription of [illegible] of Captain [illegible], [illegible] 0-[illegible], U. S. Army.

[illegible] Kidlin[illegible]

[illegible] General [illegible], Denver, Colorado

[illegible] September 1945.

[illegible] the [illegible] of [illegible] Spe[illegible] Agent, SIC, Denver, Colo.

[illegible] Spe[illegible] Agent, SIC, Denver, Colo.

[illegible] Spe[illegible] Agent, SIC, Denver, Colo.

[illegible] of [illegible]ial number?

[illegible] RC, 0-[illegible].

[illegible] of the United States?

[illegible] Yes.

Q. Where were you born?

A. Rock Rapids, Iowa.

Q. What is your date of [illegible]

A. 16 Febru[illegible]

Q. [illegible]

[illegible] to 1938, and in 1938, [illegible]

Q. Where did you [illegible]?

A. At Saint Mary's [illegible] Kansas City, Missouri.

Q. Where did you [illegible]ince?

[illegible] practiced Medicine in Rock Rapids, Iowa for about a year and a half.

[illegible] you go into the Army?

[illegible]

[illegible] with in the Army?

[illegible], and was with them at the time.

Transcription [illegible] 34

T. S. C.

[illegible] of
[illegible] 1943
[illegible] Sicily
[illegible] at PO #21
[illegible] the middle of
[illegible] Schuben,
[illegible] then went to
Stalag XVII-B at Krems, [illegible] months there.
We were marched out of there [illegible] while on the march.
[illegible] the 17th of May 1945 [illegible] by the 13th
[illegible] Divi[illegible]

[illegible] did you return to [illegible]

[illegible] 11 June 1945.

[illegible] was the [illegible]

[illegible] do not know [illegible] I do know
[illegible] the Itali[illegible] would give
[illegible] a small [illegible] the
[illegible] Cross [illegible] soldier
[illegible] anything [illegible]
[illegible], an [illegible] stated
that he was [illegible] I had left. He was
there when the [illegible] there were still Red
Cross Packages [illegible]

What kind of [illegible] occasions?

[illegible] They were [illegible]

[illegible] Did you [illegible] packages clearly recognizable as
coming [illegible]

A. Yes, Italian [illegible] Red Cross packages.

Q. What were [illegible] things?

A. Cigarettes and food.

Q. Were the Red Cross packages necessary for the men to have had a satisfactory diet?

A. Yes, definitely. The food was very inadequate.

Q. Whom do you believe was responsible for this situation?

A. The Commanding Officer of the Camp, [illegible] Julio Oldani,

Q. Do you know of any means of further identifying Colonel Julio Oldani such as organization, background or address?

A. No.

Q. Do you know the names of [illegible] to this situation?

[illegible] Capt Garvin Fitton, Infantry Officer, [illegible] at Camp Joe Robinson, [illegible] Lt Carl Blevins, [illegible] and Lt Leo Cooper, Infantry [illegible] in Germany, [illegible] a prisoner [illegible] camp.

[illegible]

Thomas [illegible]

-2-

[redacted]

[redacted]

[redacted]

[redacted] THOMAS E. CORCORAN [redacted], of [redacted] age, [redacted] duly sworn on oath, [redacted] the foregoing transcription of my interrogation [redacted] contained therein are true to the best of my [redacted] and belief.

Thomas E. Corcoran

THOMAS E. CORCORAN

[redacted] and [redacted] this 12th [redacted] of Oct [redacted] 1945.

[redacted]

[redacted]

[redacted] Agent, SIC,

[redacted] THOMAS E. CORCORAN, Captain [redacted]

[redacted] before me [redacted]

1945, [redacted] and [redacted] is an accurate [redacted] the answers given by him [redacted] forth.

[redacted] Colorado

Date [redacted] October, 1945

[redacted]

[redacted]

Special Agent [redacted] Dist. [redacted]

rank and organization

[redacted]

[illegible] the [illegible]

[illegible]

12th Oct

[illegible]

[illegible] Special [illegible] SIC.

[illegible] September [illegible]

[illegible] testified [illegible]

[illegible]

Special [illegible]

[illegible]

In the [illegible]
[illegible]
Camp 98, [illegible]
death of [illegible]
December 1942 to [illegible]

Taken at: [illegible]
Date: [illegible]
In the Presence of : [illegible] Security Intelligence [illegible]
Eighth Service [illegible]

Questions by: Harry E. Smith, [illegible] Security Intelligence Corps
Eighth Service [illegible]

Q. State your name, rank, [illegible] number and permanent home address.

A. Leroy Thurman, Pvt., ASN 6956922 and my permanent home address is Braggs, Okla.

Q. When did you return to the United States from overseas?

A. 2 August 1944.

Q. Were you a prisoner of war?

A. Yes.

Q. At what places were you held and state the approximate dates?

A. From 23 December 1942 to 23 January 1943 I was held at an Italian Prisoner of War Camp, known as Camp 98 in Sicily; from 23 January 1943 to 15 February 1943 I was at Italian Prisoner of War Camp 66 near Naples, Italy and from 15 February 1943 to 15 September 1943, at which time I escaped, I was held at Camp 0-59 in northern Italy.

Q. Did you witness any mistreatment of American soldiers while a prisoner at Camp 98 located in Sicily?

A. Yes.

Q. On what dates did this mistreatment take place?

A. From 23 December 1942 to 23 January 1943.

Q. State what you know of your own knowledge about this mistreatment.

Incl 3' P26

CONFIDENTIAL

Case #40
Prosecution's Exhibit no. 26

a) [illegible] to Italian Prisoner [illegible] and in [illegible] of any kind and as a [illegible]

[illegible] breakfast and our [illegible] one piece of [illegible] which [illegible] did not work [illegible] were given [illegible] of broth which [illegible] and which contained [illegible] While at [illegible] received no vegetables [illegible]

[illegible] soldiers, [illegible] in my opinion [illegible] proper heating facilities. [illegible] throughout this camp and no medical attention was ever given to any of us at any time.

All of the mistreatment stated above was responsible and apparently sanctioned by the commandant of the camp. He was present or witnessed our feedings, the lack of medical attention and lack of heating facilities.

b) Description of the commandant of Camp 98 is as follows: Col. Bucci or Buccu, who was an Italian officer, [illegible] an elderly man approximately 55 to 60 years of age, had a very [illegible] complexion, extremely gray hair, short in stature, approximately 5'4" tall, extremely heavy for his size, weighing about 180 to 190 pounds.

Leroy Thurman
Leroy Thurman, Pvt., AUS

State of: Texas)
) ss
County of: Bowie Smith)

I, Leroy Thurman, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Leroy Thurman
Leroy Thurman, Pvt., AUS

Subscribed and sworn to before me this 7th day of May 1945.

George N. Alvin
(Notary Public)
1st Lt. Inf.
T. V. A.

My commission expires:

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2

CONFIDENTIAL

CONFIDENTIAL

CERTIFICATE

I, Harry E. Smith, Agent, Security Intelligence Corps, Eighth Service Command, certify that on 1 May 1945, personally appeared before me Leroy Thurman, Pvt., ASN 6956922, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed the said Leroy Thurman read the same and affixed his signature thereto in my presence.

Place: Hereford, Texas

Date: 9 May 1945

[redacted]

Agent, Security Intelligence Corps, Eighth Service Command.

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3

CONFIDENTIAL

For the War Crimes Office

16-160-14
Case # 40

Judge Advocate General's Department - War Department

United States of America

In the matter of Improper Treatment and Exposure of Sgt. Sorano, U. S. Paratrooper at Prisoner of War Camp No. 98, Palermo, Sicily, on/or about 26 January 1943.

Perpetuation of Testimony of Russell P. Jobusch, Discharged Sgt., U.S. Commando, 34th Division ASN 20704519.

Taken at: Post Intelligence Office, Anniston Ordnance Depot, Anniston, Alabama

Date: 27 June 1945

In the Presence of: Joseph A. Macon, Special Agent, Security Intelligence Corps, Security and Intelligence Division, Headquarters, Fourth Service Command.

Questions by: Joseph A. Macon, Special Agent, Security Intelligence Corps.

Question: State your name.

Answer: Russell P. Jobusch

Q: Give your former rank, serial number, and former organization in the Army of the United States.

A: Staff Sergeant, Serial Number 20704519, Outfit - Company "B", 29th Battalion, 6th Regiment.

Q: Have you recently been returned to the United States from overseas?

A: It has been a long time now, about a year and a half.

Q: When were you discharged?

A: 11 January 1945.

Q: Were you a prisoner of war while overseas?

A: Yes, for about nine (9) months.

Q: At what places were you held and state the approximate dates?

A: Held by the Germans for approximately 3 days at Bizerta, December 1 to December 4, 1942. Held by the Italians in Sicily at PG No. 98 for about 40 days and at PG 59 near San Serino, Italy for about 8 months.

Q: Where were you captured?

A: At Bizerta.

Q: Did you wittness any atrocities or mistreatment of any American Citizens at any time, while you were at Camp 98?

A: Yes I did. They forced us to work with improper clothing, insufficient food , and disregarding sanitary conditions.

CONFIDENTIAL

Q: Did you at any time see an American citizen chained?

A: No, I didn't see any.

Q: Do you remember of Sgt. Serano ever being chained?

A: Yes.

Q: Who told you about the chaining of Sgt. Serano?

A: He told me himself, and about 40 or 50 more of the prisoners but I do not remember their names.

Q: What were the circumstances under which he was chained?

A: He refused to obey orders from a guard regarding the work he had to do.

Q: Where was that?

A: At camp No. 98.

Q: Do you know the names of any of the responsible parties?

A: A Corporal Major named Mario.

Q: What part did Mario play in this?

A: He was the interpreter for the camp and claimed that he was a Red Cross Representative , but he wore an Italian uniform. He threatned us with chains and cutting our food out.

Q: Did you ever see Mario strike a man?

A: No, I didn't. He wasn't big enough.

Q: What is his description?

A: About 5 feet 2 inches tall, dark complexion, black curly hair, wore horn rim glasses, bow-legged and weighed about 125 pounds.

Q: Do you know the color of his eyes?

A: No, but I think they were black.

Q: About how old was he?

A: 27 or 28 years old, he played in a band in the United States and is supposed to have a family and people in New York.

Q: Was he a member of the Italian Army?

A: Yes.

Q: Did he have a scar or mark that he could be identified by?

A: Not that I know of, he had rather sharp features.

Q: Did Mario ever order any man punished?

A: No, I can't say that he did but he threatned to plenty of times. He always conferred with the Colonel and the Colonel would do what he wanted done.

Q: Do you know the Colonel's name at Camp 98?

A: No, I don't think I ever heard it called.

Q: [illegible]

A: [illegible] think [illegible]

Q: [illegible] you know of Sgt. Sorano's chaining, was Mario [illegible] for this instance?

A: He could have been easily. I have no way of knowing for sure.

Q: Do you have any other information about Mario?

A: No, I've told you everything I know about him.

Q: Did he have a nickname?

A: Just Mario is all I ever heard him called.

Q: Do you know where his home was in Italy?

A: No, I don't know if he had a home there, but he did live in the United States at one time.

Q: What is your permanent address?

A: 1212 Hanley Street, DesMoines, Iowa

Q: What is your present or temporary address?

A: 1412 Christine Avenue, Anniston, Alabama

Russell P. Jobusch

Russell P. Jobusch,
ASN 20704519

STATE OF: ALABAMA)
COUNTY OF: CALHOUN)

I, Russell P. Jobusch, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained herein are true to the best of my knowledge and belief.

Russell P. Jobusch

Russell P. Jobusch, ASN 20704519

SUBSCRIBED and SWORN to before me this 30 day of June 1945

My commission expires: Feb. 1949.

[illegible]
(Notary Public)

CERTIFICATE:

I, Joseph A. Macon, Security Intelligence Corps, certify that on 27 June 1945 personally appeared before me Russell P. Jobusch, discharged S/Sgt, 20704519, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said Russell P. Jobusch read the same and affixed his signature thereto in my presence.

Place: Anniston Alabama

Date: 30 June 1945

Joseph A. Macon

Joseph A. Macon, Special Agent
Security Intelligence Corps

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DOCUMENT

[illegible] 1943. I was [illegible] I [illegible] 1 March by [illegible] [illegible] I [illegible] taken [illegible] I [illegible] [illegible] 12 April [illegible] [illegible] Germany [illegible] [illegible] III B [illegible] [illegible] until 2 January [illegible] I was [illegible] stayed from 2 January [illegible] 29 [illegible] I [illegible] until [illegible] July [illegible] I [illegible] October [illegible] on [illegible] [illegible] there [illegible] 19 [illegible] [illegible] our liberation by [illegible] 10 [illegible] [illegible] which time I was [illegible] the [illegible] [illegible] [illegible] I remained until my liberation on 16 April 1945.

State that you recall of the mistreatment of [illegible] prisoners of war at P.O. 98, Palermo, Sicily, during March 1943.

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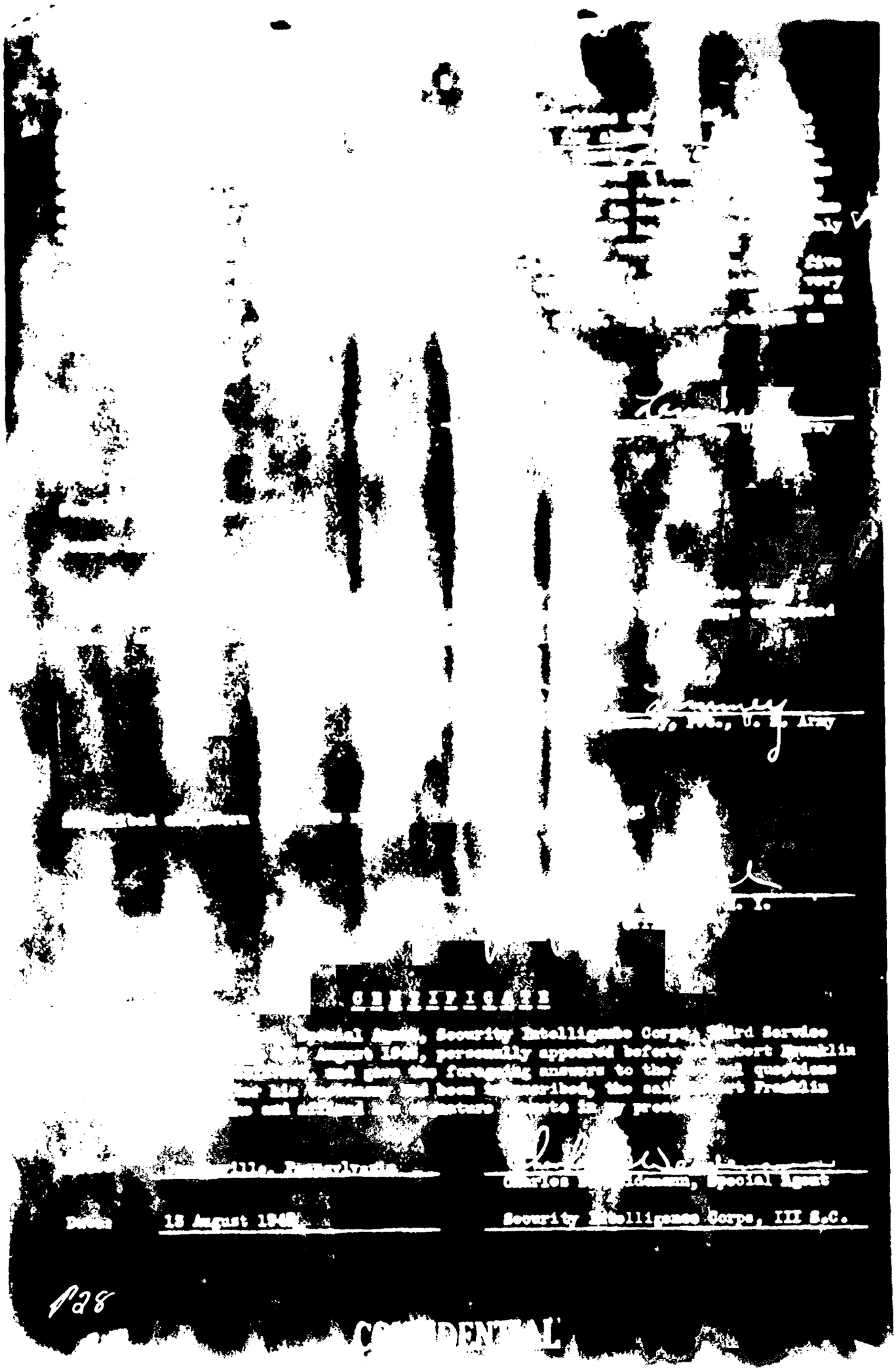
1

Prosecution's Exhibit No 28

CONFIDENTI



CERTIFICATE

[illegible] Special Agent, Security Intelligence Corps, Third Service [illegible] August 194[illegible], personally appeared before [illegible] Robert Franklin [illegible] and gave the foregoing answers to the [illegible] questions [illegible] his [illegible] and been [illegible]ribed, the said [illegible] Franklin [illegible] and [illegible] signature [illegible] in my presence.

[illegible]ville, Pennsylvania

Charles [illegible]idemann, Special Agent

Date 15 August 194[illegible]

Security Intelligence Corps, III S.C.

P28

CONFIDENTIAL

CONFIDENTIAL

United States of America

In the [illegible] of the locting of American prisoners [illegible] of their personal possessions [illegible], on 4 March 19[illegible]

Perpetuation of Testimony
Franklin Lowney, Pvt.,
Number [illegible].

Place: 500 Summers Stockyard Building, Philadelphia

Date: 6 August 19[illegible]

In the Presence of: [illegible]

Reporter: [illegible] Security [illegible]

Questions by: [illegible]

Q. State your name, rank, serial [illegible]

A. My name is Robert [illegible]

Q. Have you recently [illegible] United States [illegible]

A. Yes.

Q. Were you a prisoner [illegible]

A. Yes.

Q. At what places were you [illegible]

A. I was captured [illegible] Pass, North [illegible] truck to [illegible] where I remained until [illegible] and taken to Tunis, arriving [illegible] Palermo, Sicily. I [illegible] Palermo, remaining [illegible] from [illegible] until [illegible] class coaches and taken by train to [illegible] March until 18 April 1945. We were then placed in box [illegible] Moosburg, Germany, where I remained from 14 April to 4 May 1945. [illegible] in box cars and [illegible] to Stalag III B, [illegible] May 1945 [illegible] 1944. I was then taken to Stalag II B, [illegible] where I [illegible] January to [illegible] January 1944. I was sent out on a [illegible] I remained [illegible] July 1944. I was then returned to Stalag II B [illegible] until [illegible] was [illegible] sent out on a [illegible] remaining [illegible] until 19 February [illegible] [illegible] by the [illegible] I remained from 19 February [illegible] which [illegible] I was dropped out of the [illegible], due to illness, at Fabl[illegible] remained until my liberation on 16 April 1945.

Q. State [illegible] you recall of the locting of American prisoners of [illegible] possessions at Palermo, Sicily, on 4 March 1945.

Prosecution Exhibit No. 39

CONFIDENTIAL

WAR CRIMES BRANCH
Washington 25, D. C.

A. Upon our arrival at Palermo, Sicily, we were told to turn in our jewelry, watches and cash as it was a transit camp, and that our belongings would be returned to us when we left. I, personally, lost a Hamilton wrist watch, high school class ring, and $419.00 in cash. $170.00 of this was in United States currency and the rest in France. I also lost my passport and pay book. All of the above articles were taken by a man named Marrio who searched us on our arrival. Marrio claimed to have lived in New York City for some time, and boasted of being an American citizen. He said that he was caught in Italy in 1936 while visiting his mother. He also boasted that he would be back in the United States before we were. He was a small, well-built man, about five feet, five inches tall, and weighed about 145 pounds. He had dark wavy hair, rosy cheeks, very white teeth, and was very good-looking. He wore tortoise shell glasses. He wore an Italian uniform and posed as a member of the Medical Corps. He had one chevron on his arm.

Robert F. Lamney
Robert Franklin Lamney, Pvt., U. S. Army

State of: Pennsylvania
County of: Chester } SS

I, Robert Franklin Lamney, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Robert F. Lamney
Robert Franklin Lamney, Pvt., U. S. Army

Subscribed and sworn to before me this 13th day of August 1945.

Joseph F. Howell
JOSEPH F. HOWELL, Captain, M. I.
(Summary Court Officer)

C E R T I F I C A T E

I, Charles B. Weidemann, Special Agent, Security Intelligence Corps, Third Service Command, certify that on 6 August 1945, personally appeared before me Robert Franklin Lamney, Pvt., ASN 33137868, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said Robert Franklin Lamney read the same and affixed his signature thereto in my presence.

Place: Coatesville, Pennsylvania

Charles B. Weidemann
Charles B. Weidemann, Special Agent
Security Intelligence Corps, III S.C.

Date: 13 August 1945

TERRITORIAL COMMAND OF FLORENCE VII

Florence, 6 November 1946

Subject: Treatment of Italian Military Personnel in 1945.

To: War Crimes Investigation Branch, Florence.

Sequel to letter nr. 10467/Serv. of [illegible]

To further clear the details attached to the a/m letter, it will be noted that the food ration considered referred to operational Italian troops in Italy.

But the ration issued to depot troops was somewhat inferior to the preceding. We lack data to define this latter ration exactly.

Under Chief of Staff
Lt. Colonel

Amerigo Chiarotti.

CONFIDENTIAL

Prosecution's Exhibit No. 30.

Exhibit No.

C
O
P
Y

MTOUSA

Rome, Italy.

Mario Beltramo, being duly sworn deposes and says:

1. My name is Mario Beltramo, I reside at Via Mecenate No. 59, Rome, am a lawyer by profession and now employed by US Forces at the office of the Deputy Chief Claims Officer, MTOUSA, Rome, Italy.

2. Anhexed hereto are true and correct copies of the originals of two letters in English now on file at the Court of Cassazione, Palace of Justice, Rome, placed in evidence in a judicial proceeding before that Court relating to GIULIO OLDANI, together with translations thereof into Italian.

3. I prepared the annexed copies from the originals on file with said Court and know them to be correct. The Italian translations of said letters bear the seal of said court. The English copies do not for the reason that said Court will not annex its seal to copies in English of documents, even the the originals thereof be in the English language.

/s/ Mario Beltramo

Mario Beltramo

Subscribed and sworn to before me
this 25th of October 1946.

/s/ George J. Ranigan

GEORGE J. RANIGAN
Major, JAGD

CONFIDENTIAL

Defense Exhibit B.

2/12/

To the Commandant of Camp Cout. Pb. 98.

Dear Sir,

I wish to say a few words on behalf of the two hundred Englishmen who arrived on 8th of Nov. under my charge as the Camp Leader -

My men and I wish to thank you, notwithstanding the sad conditions of the camp we realise although you have been a strict disciplinarian you have shown us every consideration and kindness throughout our stay under your command -

We wish also to bring to attention the fine work carried out by the English speaking officer and Interpreter who while carrying out your orders strictly has helped us in every possible way in regards to our food, clothing, health and general welfare -

The Doctor too has surpassed himself in keeping us fit and well not withstanding the poor conditions and occasional lack of necessary medical supplies -

Exhibit

To:

The Commandant of Camp No. P.

Sir,

prisoners who have passed through the [illegible] the period 17th March [illegible] I should like to thank you for the [illegible] have received at your hands.

The Doctor also, for the way in which he treated all the men who have been either or wounded. He did splendid work under [illegible] conditions.

The English speaking Officer who [illegible] of the Food and Clothing I helped [illegible] ways, with the help of his other interpreter.

During my stay at the above camp I found that all Officers and Men tried to help as much as possible under your directions.

Sigfrid Kelkbyn

29/5/43

p. u. TEN. COLONN. COM[illegible]
(Dr. Giulio Oldani)

918146 Milano

AT THE SPECIAL ASSIZES

Colonel Giulio Oldani, 55 years old, was Commanding Officer of the Military District of Moana, during the Fascist Republic. Having been arrested during the days of the insurrection, he appeared yesterday before Section 5 of the Special Court of Assizes (president Counsellor Pisani; Public Prosecutor: Avv. Occhini) charged, among other things, with having made propaganda among his own subordinates, in favor of the Nazi-Fascist cause, and with having organized Military squads for the round-up of Partisans.

Few were the specifications of the charges, whereas the testimonials in favor of the accused were numerous, describing him as having favored the Partisan movement. The Public Prosecutor had asked for fifteen years confinement; the Court has, however, acquitted him on the grounds of insufficient evidence.

C O N F I D E N T I A L

Defense Exhibit E (translation)

COPY

21-2-43 Camp 98 20.2.1942.

My Colonel:

The Adjutant Stocklavier, Commanding Officer, having arrived at the Camp 31/1/43 with 224 prisoners, leaving 21/2/43 with 220 prisoners, two of whom remaining for reasons of health and one having died to whom all military honors have been accorded by the Italian soldiers on the one hand, including the Colonel and the numerous officers personally and by the prisoners who accompanied him to his last resting place, on the other hand.

On behalf of the non-commisioned officers, corporals and legionaries and some soldiers of other armies, we express to the commandant of the camp, to the officers, the doctor of the camp, to the corporal interpreter and the officer interpreter, to the NC officers and the Italian soldiers in the camp our deepest gratitude for the good recepeion and the care accorded us, as well as the kindness shown us.

We are leaving the camp, addressing to you our sincerest thanks and respectful greetings.

We dare think that our prisoner comrades will be treated in the same way, and that they will leave the camp with the same confidence.

Long live Marshal Petain. Long Live France.

(Signature undecipherable)

C O N F I D E N T I A L

Defense Exhibit F (translated)

Subject: Report [illegible]
Chapl[illegible]

1. At th[illegible]

near San Giuseppe [illegible]

lity by the Co[illegible]

[illegible] On the [illegible]

Det[illegible] and [illegible]

of the prisoners [illegible] also [illegible]

their souls.

2. Report on treatment [illegible]

huts [illegible] kitchen [illegible]

and distributed [illegible]

barbed-wire, the proper way they [illegible]

impression of how the Corps was being [illegible]

During the following days [illegible] together with the Commanding

Officer, and I had a good impression [illegible] fri[illegible] paternal way [illegible] which he spoke

and treated [illegible] prisoners, [illegible] would [illegible] speak [illegible] him and ask him some favors.

I also had pleasure in observing how the prisoners [illegible] content when the Commanding

Officer encouraged them to do well and gave the[illegible] conduct and good work.

Up to this time none of the PWs has ever compl[illegible] mistreated or

punished severely or by beatings; I even asked [illegible]

had occurred on other occasions and they told [illegible]

[illegible] published,

[illegible] do their

[illegible] tionality and

[illegible] who were

[illegible] I tried to

[illegible] them; al-

[illegible] their satis-

[illegible] Off[illegible] Minor officer

[illegible] Abo[illegible] our sol[illegible]

[illegible]

[illegible] (they were [illegible]

[illegible] the first [illegible]

[illegible] of the detail[illegible] the [illegible]

[illegible] a dozen sol[illegible]

[illegible]

[illegible] detachment; I explain

the Gospel, [illegible] soldiers who are some

what demorai[illegible] they - all men with a

family - are worr[illegible] and [illegible] their families are

encountering. As [illegible] 200 [illegible] from Tunis, arrive

[illegible]; whe[illegible] them, [illegible] themselves to be

[illegible] Doing [illegible] and that 56 are Catholics,

1[illegible] Anglicans, [illegible] 2 [illegible] and 1 Jew; all of them

show themselves [illegible] of comfort and encouragement.

7. On 10 Nov. 42, [illegible] arrived [illegible] me to tr[illegible] [illegible]antine
Camp fo[illegible]ionals, l[illegible]ted at [illegible] (Sicily), near Castelvet[illegible] In agr[illegible]
ment wi[illegible]nding [illegible] [illegible]ave [illegible] to celebrate, th[illegible] day,
th[illegible] at the Camp [illegible] the King Emperor (11 Nov. [illegible])
[illegible] my sermon, I pr[illegible] the [illegible] of the house of
[illegible]. [illegible] with [illegible] are [illegible] Catholic [illegible] also
[illegible] I [illegible] notice that they
attend [illegible]
12-15 Ja[illegible] to what
happened [illegible]
though both the C[illegible]
One of the deman[illegible]
the [illegible]
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he held mass at [illegible]
visited the [illegible]
This Padre [illegible]
On the pa[illegible]

[illegible] (Junior officers)

Feb. - March: During the month [illegible] arrive

from Tunis to Camp (98), [illegible] Febru[illegible]

[illegible] the Quaranti[illegible] to ot[illegible]

pr[illegible] and [illegible]

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[illegible] prisoners, a [illegible] amount

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[illegible]), [illegible] our own detachment, in spite

[illegible] for [illegible] to follow thei

[illegible] and [illegible], often with

[illegible] encounter[illegible]

the prisoners at the Camp, I take the liberty of [illegible] which I have drawn for my own private use:

From 1 Feb. to 31 March I had to deal with PWs belonging to the following religions: 350 Catholics, Protestants, Presbyterians, Methodists, Confucians, Christians of the Salvation Army, Baptists, Dutch Reformists, English High Church, Orthodox, Wesleyans, Sirkianis, Lutherans, Mohammedans, Jews, and a certain number of Americans who professed themselves as being complete atheists. The following nationalities were represented:- Americans, English, French, South Americans, natives of Africa, Germans, Portuguese, Algerians, Cubans, Russians, Estonians, Georgians, Lithuanians, Hungherians, Indians, Mauritanians, Palestins, New-Zelanders, Italian immigrants.

Naturally men who had to enlist in the Foreign Legion, which was organised in order to eliminate many of those who were compelled to go abroad for political reasons and to avoid them to do spionage; others maybe the most, on account of their unemployment, enlisted to make their own living in combat. At the Camp right now everything runs smoothly for the PWs and the guards whom I shall religiously prepare in order they be, for the near Easter, ready to get their Easter communion.

Months: March - April - Short diary of the Camp during the month of April:

In the Camp there were occurrences of three groups of PWs: in the first week 150 PWs departed for new Camps, in the second week a new group of 170 PWs, Americans and British, originally from Tunis, arrived.

Until the middle of the month there were no people seriously ill, nor was there any sign of contagious illness, but those who suspected to be so, were sent immediately to the hospital of Palermo.

About the middle of the month an order suddenly came to send 450 PWs, among whom were the French awaiting to be shipped back home.

During the last week of the month two other group[illegible]

of PWs, originally from Tunis, members of different nationalities, arrived; some of Sicilian origin (sons of Sicilian folks).

In a short period of time Amoby (disentary) spread among these new (men), and very soon one of them (on the night of 20 April), of American nationality, Protestant, (Evangelic Sect) died as a result. The Chaplain had been over to see him the day before at the infirmary; his status did not appear serious, therefore it was the belief that no religious assistance was needed, the Chaplain, therefore, just thought to encourage him and to trust in the lenity of God and Jesus Christ. He suddenly aggravated and at the same night he died without the presence and assistance of the Chaplain who had not been awaken.

Religious Activity: The funeral of the deceased PW, was performed with real decorum. The casket, carried on shoulder by 12 co-religious, passed between two rows of PWs who were lined up in attention along the entire road of the Camp, and in front of our guards who were presenting their arms in attention. As they put the casket in the mortuary vehicle, a funeral parade was organized; the Chaplain walked ahead between two italian sergeants, right behind were escorting guards, 12 PWs led by their American Lieutenant; one of our Lieutenants represented the Camp leader. The corpse was still interred in the common cemetery of the near town of San Giuseppe Iato.

PW's Cemetery: To avoid the inconvenience of interring catholics PWs, who died in the Camp, the Chaplain, in agreement with the Commanding Officer of the Camp, took personal interest to get authority from the Mayor of the Commune of S. Giuseppe Iato, to obtain a piece of ground in the local cemetery, to be esclusively for PWs. The proposal, accorded by the Commanding Officer of the Camp, was accepted by the Mayor and soon a good place that was choosen by the competent authorities was assigned. Now there was finally a cemetery esclusively for dead PWs.

Moral Assistance: The Chaplain also took care to regularize a divorced matrimony of one Italian soldier member of the guards, and everything was taken good care of.

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Statistic: During the month we had the following religions [illegible] Catholics, Anglicans, Presbyterians, Methodists; Salvation Army, Baptists, [illegible], Reformists, Confucians, Mohammedans, Jews, and the following nationalities: American, British, South African - National Colonial South America.

In exception there are present 8 Americans officers and British of whom 5 Catholics.

PARTICULAR NOTE : The only variety concerning the internal disposition was the worry of the Commanding Officer for the escape of 2 PWs, which occurred at 0500 hours after Easter night. Some PWs did in some way get hold of a pair of pincers, while working in the Camp, [illegible] and during the night, they cut the barbed-wire, but were fired upon as the guards heard them crawl, nevertheless they were able to escape throught the fields. After three days search they were found in the house of a shepherd, who at first had furnished them food and then denounced them to the fascist guards in the vicinity of Borghetto. After the interrogation of the escaped PWs, it appeared that the escape had been attempted not for mistreatments they received, but for their mental impulse that brought them to believe they could possibly reach the Sea shore with means of fortune, from there to Malta, then to Africa or to their own Country. These escaped pri[illegible] by the Commanding Officer with confinement and field irons ([illegible] for [illegible] a day, as prescribed by regulations of Higher Commands.

UNPLEASANT NOTE : During this month an unpleasant incident occurred [illegible] of American nationality and Italian origin [illegible] of Italian immigrants) treated the Commanding Officer with very bad respect while he was recommending PWs to be good and disciplined and gave them the usual prizes for work performed and good conduct. He (Oldani) invited the PWs to remember the Italians with gratitude during peace [illegible] having treated them well during their prisoner status; [illegible] PW instead, [illegible] as the war was over, if he happened to meet him [illegible] would [illegible]

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the PW to the Military Tribunal, but he first asked my advi[illegible] a[illegible]plain and then decided to reduce the punishment administering him confinement [illegible] two hours of menales per day, which lasted for three days; because he (Oldani) considered that the PW had probably drunk some Sicilian wine at the nearby PW Canteen. This punishment was carried out in order to give an example to all PWs, so that they would respect the authority of the Commanding Officer and the honor of the Italian soldiers, and to avoid further abuses of that type.

Easter Communion: During Good Friday the Chaplain gave religious and moral instructions to soldiers who were to get ready for Easter; the Commanding Officer, all the other officers and enlisted men [illegible] associated themselves to same preparation. No speech was made to Catholic [illegible] because they briefly amount to about 25, but while mass was held at the Camp on [illegible], Padre [illegible] administered a nice pray to them. Easter holiday was celebrated [illegible] solemnity, but with mystical happiness and good result. Besides the 25 [illegible] there were 260 local soldiers, all officers and Commanding Officer who received the precept communion. Out of the Camp area the Chaplain also celebrated the Easter precept to entrance personnel and to their officers located [illegible] the motor pool station of the near town of Sancipirello.

[illegible]l - May: During this month the weather became pretty fair and there was some good feelings of [illegible] which made PWs feel comfort and happy.

As a result of the [illegible] weather, people of San Giuseppe Iato and Sancipirello came frequently, specially on holidays, to visit the Camp and bring presents to PWs who appreciated them very much.

A very kind visit was paid by Prince of Montecicala and Princess of Camporeale, [illegible] daughter of an Italian father and American mother.

[illegible] who speaks English [illegible]ently was in private conversation with the American [illegible] who told [illegible] all happy. Only one (PW) asked

the Princess to see the Commanding Officer in order to get his little ring back, which was of no value, but was a nice souvenir of his family. Colonel Oldani immediately went over to check with the Officer in Charge and the interpreter, and it appeared that the ring disappeared among the other items impounded. As a result, the Colonel wanted to reimburse the PW and punish the officer, but the PW said it was not necessary.

Departures from Camp: During the first week of the month 360 PWs left this Camp heading toward new Camps; so that the Quarantine Camp remained with 250 PWs who were still under treatment. The Chaplain visited the latter ones daily giving a particular assistance of comfort to the sick people; he (Chaplain) administered confession and communion to the Catholics.

As it wasn't possible to obtain, from the Town Hall of San Giuseppe Iato, a special place in the cemetery for the burial of PWs, we arranged to put a sign or crucifix on each tomb with names of each deceased; we would then send photographs of each man and tomb to their respective families. The Chaplain also administered the Easter precept (communion) to the Militian-men assigned to hearing posts in the Sancipirello area. On Sunday, besides the mass served at the Camp, the Chaplain held another one for 250 soldiers, part of which assigned to block posts of Portella and part to the 25th Artillery detachment, who were gathered altogether in a room of the "Casa del Sole" (Sun house) where 200 displaced children of Palermo were living there on account of their sick status. On the last Sunday of May, in agreement with the Parish of San Giuseppe Iato, we organized sort of a festival relating to the anniversary of the Holy Father Pius XII. After the mass was held at Camp, the Commanding Officer, few other officers, and the armed guards, and also a member of the Ordnance and militian-men, were present to the solemn mass in the church of San Giuseppe Iato, where the Chaplain made the occasional speech in the presence of local authorities.

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At the end of the month 253 PWs still remained in the Camp and they are about ready to leave within the last week of the month, but we are expecting orders, that have been suspended, to arrive around the first week of June.

As soon as these last PWs depart, the Chaplain assigned to said Camp will be no longer on duty and will be at the disposal of the Chaplain attached to Army Hqs., until further information may be received to the contrary.

/s/ Military Chaplain
(FRANO Don Felice)

P.W. Quarantine Camp # 98,

1 June 1943.

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C O N F I D E N T I A L

Defense Exhibit O (translation)

C O N F I D E N T I A L

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

PIETRO MAGI, an Italian National

TRIED AT

FLORENCE, ITALY

24 - 30 October 1946

C O N F I D E N T I A L

(3rd Carbon Copy)

RESTRICTED

General Order No. 140 was the last General Order of the 1946 series.

HEADQUARTERS
PENINSULAR BASE SECTION
A. P. O. 782

GENERAL ORDERS
NUMBER 1 — 3 January 1947

Before a military commission which convened at Florence, Italy, 24, 25, 26, 28, 29 and 30 October 1946, pursuant to paragraph 3, Special Orders Number [illegible], Headquarters Peninsular Base Section, dated 16 October 1946, of which Colonel William E. Dye was President and Lt. Colonel Clyde W. Wollen Judge Advocate, was arraigned and tried:

PIETRO MAGI, formerly a member of the Fascist National Republican Guard acting with and in support of the German Reich.

CHARGE: Violation of the law of war.

Specification: In that Pietro Magi, then a member of the Fascist Nationals Republican Guard, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Ponte Nuovo, River Reno, in the District of San Vitale, Bologna, Italy, on or about the 17th day of May 1944, wrongfully and contrary to the law of war, kill summarily First Lieutenant Lyle E. Morehead, an American Pilot, who had then recently been captured and was a prisoner of war, by bayoneting him.

PLEAS

To the specification of the Charge : Not Guilty
To the Charge : Not Guilty

FINDINGS

Of the specification of the Charge : Guilty
Of the Charge : Guilty

SENTENCE

To be confined, at hard labor, at such place as the reviewing authority may direct, for a period of twenty years.

The sentence was adjudged on 30 October 1946.

The action of the appointing authority, after review of the record of trial, is as follows:

The sentence is approved and will be duly executed. KTOUSA Disciplinary Training Center or elsewhere as the Secretary of War may direct is designated as the place of confinement.

BY COMMAND OF BRIGADIER GENERAL BLOOD:

PAUL M. SELDEN
Colonel, GSC
Chief of Staff

OFFICIAL:

D. R. PATTERSON
Lt. Col., A. G. D.
Adjutant General

DISTRIBUTION
W & EGT
plus Special

RESTRICTED

C O N F I D E N T I A L

HEADQUARTERS PENINSULAR BASE SECTION
Office of The Staff Judge Advocate
APO 782

30 December 1946

REVIEW OF THE STAFF JUDGE ADVOCATE

U N I T E D S T A T E S	Tried at: Florence, Italy.
vs	Date of Trial: 24 to 30 October 1946.
Pietro Magi, an Italian National	
Age: 21 years.	Sentence: Confinement at hard labor for 20 years.
Present Confinement: NTOUSA Disciplinary Training Center.	Maximum Authorized: Death.

CHARGE	PLEAS	FINDINGS
Charge: Violation of the Law of War.	NG	G
Specification: In that * * * Magi, * * * acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Ponte Nuovo, River Reno, in the District of San Vitale, Bologna, Italy, on or about the 17th day of May 1944, wrongfully and contrary to the law of war, kill summarily First Lieutenant Lyle E. Morehead, an American Pilot, who had then recently been captured and was a prisoner of war, by bayonetting him.	NG	G

I. EVIDENCE.

Prosecution:

The pre-trial statement of the accused, Pietro Magi, (Prosecution's Exhibit No. 11) dated 10 July, 1946, was received in evidence, without objection. Accused stated that:

"On a day of May 1944 in which an Allied aeroplane crashed near the Ponte Nuovo sul Reno, which is at the District of San Vitale of the Commune of Calderara di Reno, I was on duty at this bridge. Shortly after the crashing of the aeroplane, I left the place where I was on duty going towards the spot where the aeroplane was. I stopped a little while behind a small mound of land to shoot two bullets with my rifle to the direction of where the aeroplane was. Moving from this place I rejoined a fellow of mine BONAZZI Giuseppe, who was already near the crashed aeroplane. In that time the Milite BONAZZI Giuseppe with Sergente, LODI Luigi dragged away the pilot from the wing of the aeroplane and while the body of the pilot was dragged by the above mentioned Militi, I, had the bayonet on my rifle ready with the intention to kill the pilot if he was still alive. I pushed my bayonet in the direction of the pilot's stomach where I did hit him, that my bayonet did bend having met the buckle of the parachute. While I was doing this action somebody hit my head with fists and turning myself I saw that was a German Marshal arrived at the place where I was in the meantime that I was doing the above action but I did not see him. Almost at the same time that I hit the pilot with the bayonet, Sergente, LODI hit the pilot with the heel of his shoe smashing the nape of the neck of the pilot. After that I went away to go to the place where I was on duty. On the evening of the same day that the aeroplane

C O N F I D E N T I A L

crashed the Milite BONAZZI Giuseppe told me that he had fired with his rifle several shots, and that he had thrown to the direction where the pilot was two or three hand grenades as the pilot was standing over the aeroplane and pointed against him a pistol. That BONAZZI fired with his rifle some shots in the direction of where the aeroplane was is confirmed by me as it has been seen by myself, and in that moment BONAZZI was about 20 metres away from the aeroplane."

1st Lieutenant Lyle A. Morehead, a member of the 71st Fighter Squadron, 1st Fighter Group, was on a strafing mission in the Po Valley with members of his squadron on the 17th of May 1944. In a run on the field of Modena, Lieutenant Morehead's plane, a P-38, was hit by ground fire and crashed about three miles from the field, as shown by Prosecution's Exhibit No. 1, Missing Air Crew Report, with three inclosures attached, admitted in evidence over the objection of the defense. It will be noted that inclosure No. 1 locates the scene of the crash between Modena and Bologna. There is an airfield at Modena and another just north of the "New Bridge", about three kilometers west of Bologna.

Without objection by the defense, Prosecution's Exhibit No. 5 was introduced into evidence. This exhibit consisted of a map of the general area of Modena and Bologna, with fifteen official statements attached thereto, marked pages 1 to 15 inclusive, showing that no plane fell in the general area of Modena and Bologna on or about 17 May 1944, except the plane flown by Lieutenant Morehead.

The evidence shows conclusively that a P-38 (R-8; 11; 22; 39; 45; 51; 94; 96; and 99) crashed in flames (R-11; 23; 25; 31; 39; and 99) in the vicinity of San Vitale, Bologna, Italy (R-8; 10; 24; 47; 48 and Prosecution's Exhibits 3 and 4) on 17 May 1944, between 1400 and 1600 hours (R-8; 9; 10; 20; 25; 29; 36; 47; 58; 107 and 118). The evidence further shows that, immediately before the crash the plane was proceeding rather slowly and descended into the dry bed of the River Reno at an angle of about 45° (R-15; 49 and 60).

After the plane crashed in flames and the ammunition was exploding, the pilot was seen alive by five witnesses--Oreste Andreotti, Armando Albertazzi, Riccardo Cappelletti, Edoardo Marani and Giuliano Maniezzi as he left the plane and attempted to reach the water in the Reno River (R-50; 55; 59; 60; 63; 110 and Prosecution's Exhibits 3 and 4).

The 12th Archer Detachment, 67th Legion of the Republican National Guard, a Fascist organization, was engaged in guarding the "New Bridge" across the River Reno, near Bologna, on the 17th day of May 1944. This organization was fighting with, and in support of, the troops of the German Reich, a belligerent enemy nation. (R-9; 38 and 68). Pietro Magi, a member of No. 1 Section of the 12th Archer Detachment, was on duty on the afternoon of 17 May 1944, guarding the "New Bridge".

After the plane had crashed in the dry bed of the Reno River near the "New Bridge" and the pilot had gotten out of the plane, the Fascist guards of the 12th Archer Detachment fired at the plane with M-8 rifles (R-31; 43; Prosecution's Exhibit No. 3) and one guard threw a hand grenade toward the plane (R-25; 30; 31; 39; 40; 43; 61 and Prosecution's Exhibit No. 3). The pilot fell either on the wing of the plane (Prosecution's Exhibits 3 and 4; R-60), or on the sand (R-55; 59; 60; 63; 110) and the Fascist guards Lodi and Fornasi ran into the smoke of the burning plane and dragged the pilot about 15 meters from the plane (R-25; 30; 31; 40; 43; 61 and Prosecution's Exhibit 3).

The pilot was not resisting or fighting and there is no evidence of any movement on his part at that time (R-61; 75), but one witness testified that civilians dragged the pilot from the vicinity of the plane (R-68).

When the pilot had been moved about 15 meters from the burning plane, the accused, Pietro Magi, ran up, armed with a rifle, bayonet fixed, and struck the pilot (R-12; 15; 26; 30; 40; 46; 52; 61; 65; 72; 75; 86 and Prosecution's Exhibits 3 and 4). Many witnesses saw the accused strike the pilot with his bayonet or saw the striking motion, but most of them were too far away to see the actual penetration. One witness, however, who was five meters away saw the bayonet penetrate the pilot's body a distance of 20 centimeters, and stated that the pilot moved his head from side to side and groaned as he was bayonetted (Prosecution's Exhibit No. 3). At this time the accused had witness Pasquali Tolmino's rifle and bayonet, and when Magi returned the rifle and bayonet about two hours later, the bayonet was bent and wet with blood (R-74). Magi then told Pasquali to keep quiet and not to tell what he had seen (R-74).

Following Magi's act, Sergeante Ledi kicked the pilot on the head (R-73). A German sergeant going to the scene of the crash saw the action of the accused and ran up and struck Magi (R-51; 61; 72 and Prosecution's Exhibit No. 3). Following this action the pilot was dragged about 15 meters further from the burning plane where the body was searched for documents and papers before being covered with a parachute.

It was after the pilot had been moved the second time that witnesses observed his wounds. One witness described a large wound on the right side, crushed skull, and burned leg, although previously he had described a wound about 4½ inches in diameter in the pilot's stomach in addition to the other wounds.

One witness, Pederzoli Bruno, stated that he arrived at the point where the pilot was lying four, or five, minutes before the arrival of the Fascist Guards, or the Germans, and that he observed that the pilot had one foot burned, a face injury and a body injury, because his clothes were full of blood and that he did not observe any movement of the body, or breathing, for a period of four, or five minutes, before Magi made his attack. This witness, later in his testimony, admitted that his pre-trial statement was true and that he was approaching the scene of the crime at the time it was committed and was not nearer the pilot than 60 meters before Magi struck (R-16; Prosecution's Exhibit No. 2).

The witness, Remo Cuzzani stated that he arrived on the scene about 10 minutes after the crash; that, at that time, the pilot's body was 15 or 20 meters from the plane (R-102) and that he looked at the body closely from a distance of four to six meters. He stated that there was a wound on the face, a big wound on the left leg below the knee and a hole just above the belt on the left side of the body about three inches in diameter.

About two hours after striking the pilot with the bayonet, accused Magi told witness Settimio Piancastelli "I killed him" (R-41). Magi made the same statement within the hearing of witness Armando Albertassi (R-61) and two days later told witness Fernanda Gabriele "I killed him"**** "They came here just to kill the people and even if the pilot had not tried to defend himself, I would have killed him." (R-120).

Later on the same day, 17 May, 1944, Lieutenant Morehead's body was taken away in a German Red Cross vehicle (R-15). The Germans delivered the body to La Certosa Cemetery in Bologna, Italy, for burial on 19th of May, 1944, (R-34) and it was taken up and reburied at Miramiola, Italy, on the 18th of May, 1945, one of the identification tags being still on the body, as shown by Prosecution's Exhibit No. 6, admitted in evidence without objection.

Defense:

The accused, Pietro Magi, did not take the stand, or make a statement.

The witness, Oliviero Gottardi, testified that he arrived at the scene of the crash on 17th May 1944, four or five minutes after the plane fell (R-132); that three, or four, Fascist Guards were standing around the body of the pilot (R-133); that the pilot was dead (R-132); that his body was about 15 meters from the plane (R-133); that he observed the body for half an hour (R-134); and that the pilot had a wound in the vember about 20 centimeters large (R-136), as well as burns, leg and head wounds. It will be noted that this witness did not see the pilot moved from the vicinity of the plane (R-142) and did not see the German strike Magi (R-143), although he stated he was present for half an hour (R-143), but did hear a Fascist Guard say that "he had killed the pilot."

The witness, Mario Grisoli, stated that he saw the plane coming down at an angle of about 45° (R-147) and heard a Fascist Guard say that "he had killed the pilot" (R-146). The Fascist Guard in question apparently was not the accused.

The witness, Antonio Ferrari, established that only one grenade had been thrown towards the plane (R-149; 154) and was told by Magi that he struck the pilot, but that the pilot was dead.

II. COMMENT.

The evidence is sufficient to sustain the findings of the Commission.

The accused was charged with the offense of murder. The evidence shows that the accused bayonetted Lieutenant Morehead, while Morehead was in the custody of, and was being dragged from the burning plane by the Fascist Guards, Ledi and Remassi. Morehead was unarmed, was making no resistance, and was a prisoner of war and entitled to be treated as such. The pre-trial statement of the accused shows that the act was deliberate and intentional, and that he did it maliciously and in a cruel, wanton manner. The motive was for revenge, because of the repeated bombings and strafing by American planes. The offense was committed on 17 May 1944, near Ponte Nuovo, San Vitale, Bologna, Italy.

The identity of deceased, as the person bayonetted, was established beyond a doubt by circumstantial evidence, and was never even questioned by the defense attorneys. The identity of accused, as the person who bayonetted Morehead, was established by many eyewitnesses, as well as the pre-trial statement of the accused, and the fact that, following the offense, he had in his possession a bent and bloody bayonet.

The only substantial defense offered by the accused was to the effect that Lieutenant Morehead was dead at the time the crime was committed. At least five witnesses saw Lieutenant Morehead alive after the plane crashed. He was trying to tear off his burning clothes and make his way to the water in the River Reno when attacked by the Fascist Guards. One hand grenade was thrown in the direction of the plane and he was subjected to rifle fire, at which time he fell over. The Fascist Guards Ledi and Remassi then rushed about 25 meters to him and had dragged him about 15 meters when the offense was committed. The total elapsed time from the time Morehead fell until he was bayonetted could not have been more than one minute.

"The presumption that a person proved to have been alive at a particular time is still so, holds until it is rebutted by the lapse of time, or other satisfactory proof." (Wharton's Cr. Law, Vol. 1, par. 451).

In general, "proof of the existence at a particular time of a fact of a continuous nature gives rise to an inference, within logical limits, that it exists at a subsequent time, unless the contrary is shown. The burden is on the party who seeks to prove its termination, when such termination is claimed to have occurred prematurely." (Wharton's Cr. Law, Vol. 1, par. 142).

"But where a party is shown to have been alive at a stated time, the presumption is that he still lives, until the contrary is shown by testimony." (Wharton's Cr. Law, Vol. 1, par. 143).

Marani, the fifth man present at the scene of the crime, says Moreland was alive and was moving, as he was being bayonetted. Even though Moreland was mortally wounded prior to the blow inflicted by the accused, Magi's act was murder. (Miller Cr. Law, Sec. 6, par. 34, pp 85). "One point upon which the cases agree is that defendant's act need not be the sole cause of the injury, provided that it be a proximate cause, actually contributing thereto. Thus, although a person has been mortally wounded by another, a third person, who afterwards inflicts a second mortal wound, commits a homicide, though he merely hastens a death which is bound to happen without his interference, or contributes to the operating causes of death, when it occurs."

"Accelerating the death of a dying person is homicide. Accordingly where intervening, concurring or independent causes contribute to the death of a person whom the defendant has wounded, it is held by the courts that accelerating a death of a person, diseased or wounded, is homicide." (Wharton's Cr. Law, Vol. 1, par. 433).

The evidence, in any event, established that Moreland was dead within a very few minutes after the attack by the accused.

The Military Commission had jurisdiction to try this case.

The accused was in possession of the armed forces lawfully exercising jurisdiction. The authority for military government is a full possession, a firm holding, a domination of the country. That condition existed when the Germans were driven out of Italy. In so far as the Italian Government is concerned our rights were recognized and set out in the Armistice terms signed by the Italian Commissioners on 3rd September 1943, and reported on 11th September 1943, which provided among other things that all resources and facilities in Italy be placed at the disposal of the Allies and paragraph 9, "The Allied Commander-In-Chief reserves the right to take any action deemed necessary to protect the Allied Forces and to prosecute the war, and the Italian Government binds itself to take any action which the Commander-In-Chief may require."

This jurisdiction existed at the time of the trial. The Armistice terms are still in effect, and a Treaty of Peace has not been signed with Italy. By the Armistice terms, the Italian Government surrendered the right to govern Italy to the Allies. That right will not be terminated until a Peace Treaty is signed. The fact that the occupying force is reduced in strength does not alter the fact of military government- "International Law- Charles C. Hyde, page 1881."

CONFIDENTIAL

The following classes of persons may become subject to the jurisdiction of military commissions "(1) Individuals of the enemy's army who have been guilty of illegitimate warfare or other offenses in violation of the laws of war; (2) Inhabitants of enemy's country occupied and held by right of conquest." The evidence shows that the 12 Jaeger Detachment was acting with and in support of the combatant forces of the German Reich, a belligerent enemy nation. Germany was a party to the Geneva Convention, and her combatant forces were bound by the terms of the convention. The accused Magi was a member of, and was on duty with, the 12 Jaeger Detachment on the 17th May 1944, and thus violated Art. 2 of the Geneva Convention of July 1929, Art. 1 of the Geneva (Red Cross) Convention of July 1929, and Art. 23, par. (c) Annex to the Hague Convention No. IV of October 18, 1907, which provides: "It is especially forbidden one to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion."

The offenses cognizable by the military commissions include among others "violations of the laws and usages of war," (Winthrop page 839). Such crimes can be tried by military tribunals only and in the case of the Army of the United States that is the "military commission." By the term "law of war" is meant "those principles and usages which, in time of war, define the status and relations not only of enemies--whether or not in arms--but also of persons under military government or martial law and persons simply resident or being upon the theater of war, and which authorizes their trial and punishment when offenders," (Winthrop page 773). As noted above, Magi is accused of violating one of the laws of war that is universally recognized and condemned as a crime.

The Commanding General of the Peninsular Base Section, by letter dated 7 October 1945, Headquarters Mediterranean Theater of Operations, United States Army, was granted authority to appoint military commissions for the trial of persons charged with the violation of the laws of war in such cases as may be referred to him. This case was properly referred to this command.

Prosecution's exhibits 1, 3, and 4 were objected to by the defense. The exhibits were admissible under Circular 114, Headquarters Mediterranean Theater of Operations, dated 23 September 1945. Exhibit No. 1 is a duplicate original of an official report. Exhibit No. 3 is a statement made by Marani Edoardo, now dead (R-33) signed by him in the presence of two witnesses. Exhibit No. 4 is a statement made by Giuliano Manissi, now a fugitive from justice, (R-34) signed by him in the presence of two witnesses. A Military Commander in the field can prescribe rules of evidence to be applied before a Military Commission. The majority of such crimes are committed behind enemy lines and many of the witnesses are either dead or are not available to testify. Direct evidence is difficult if not impossible to get. Therefore in order to do justice and to carry out the mission of the Commander, the rules and principles of evidence may be liberally construed and applied.

The sentence of 20 years at hard labor is not unreasonable. A death sentence would have been justified under the circumstances. From his own statement, the accused said that he intended to kill the pilot and later boasted that he did kill the pilot.

The Commission was legally constituted and had jurisdiction of the person and the offense involved. The record of trial is legally sufficient and there are no errors or irregularities which injuriously affect any of the substantial rights of the accused, or invalidate the findings or sentence.

III. RECOMMENDATION.

For the reasons above stated, it is recommended that the sentence be approved. A form of action designed to accomplish the foregoing recommendation is submitted herewith.

Claudius O. Wolfe

CLAUDIUS O. WOLFE,
Colonel, J. A. G. D.,
Staff Judge Advocate.

(WRITE NOTHING ABOVE THIS LINE)

CHARGE SHEET

Leghorn, Italy (Place) 16 October (Date) 1946

Name, etc., of accused: Pietro, Magi, an Italian National.
(Give last name, first name, and middle initial in that order followed by serial number, grade, company, regiment, branch or by other appropriate description of accused. Alias name, etc., to follow in same manner)

Age ... Pay, $ ... per month. Allotments to dependents, $ ... per month.
(Base pay plus pay for length of service)

Government Insurance deduction, $ ... per month.

Data as to service: Presently a prisoner held for the American Military Forces in the Civilian Prison in Bologna, Italy.
(As to each terminated enlistment, give including dates of service and organization in which serving at termination. As to current enlistment, give the initial date and the term thereof. Give similar data as to service not under an enlistment).

Data as to witnesses, etc.: WITNESSES FOR THE PROSECUTION:
(Give names, addresses, and note if for accused. List documentary evidence and note where each item thereof may be found)

GIOL-GRATIEN, Don Graziono	Bologna, Italy.
GORIOLO, Fermanada	712 Via Lame, Bologna, Italy.
GOTTARDI, Oliviero	90 Via Aldina, Calderara (Bologna), Italy.
TOLLINO, Pasquali	1 Via Sevenella, Ca' de Fabbri, Bologna, Italy.
MANIEZZI, Giuliano	San Francesco Prison, Bologna, Italy.
GARDINI, Primo	18 Via della Certosa, Bologna, Italy.
RONDINA, Leonino	Rovigo, Italy.
MELECCHI, Ettore	San Pietro in Casale, Bologna, Italy.
CARIANI, Esterina	744 Via Lame, Bologna, Italy.
MASOTTI, Maria	575 Via Lame, Bologna, Italy.
PEDERZOLI, Bruno	113 Via Lame, Castel Maggiore, Bologna, Italy.
PIANCASTELLI, Settimio	3 Via Viaggi, Castel Guelfo, Bologna, Italy.

DOCUMENTARY EVIDENCE:

Statements ... Magi, Pietro, dated 27 June 1945 and 10 July 1945.
Letter - Capasso, Steven S., Capt., QMC, Removal of deceased, 16 July 1945.
Missing Aircrew Report, dated 20 May 1944 and inclosures.
Reburial Report, dated 16 May 1945.
Map of area at location of plane crash.
Statement - Maniezzi, Giuliano, dated 11 July 1945.

Data as to restraint of accused: ...
(Give date, place, and initial date of any restraint of accused)

W.D., A.G.O. Form No. 115 AG Publ Depot 2-46 - 20,000

Charge: Violation of the Law of War.

Specification: In that Pietro Magi, then a member of the Fascist Nationale Repubblica Guard, acting with and in support of combatant forces of the Germany, a belligerent enemy nation, did, near Ponte Nuovo, River Reno, in the District of San Vitale, Bologna, Italy, on or about the 17th day of [illegible] 1944, wrongfully and contrary to the law of war, kill [illegible] Lieutenant Lyle [illegible]. Morehead, an American Pilot, who had recently been captured and was a prisoner of war, by bayonetting him.

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 12½ inch paper will be used for additional sheets.)

(2)

(WRITE NOTHING BELOW THIS LINE)

(WRITE NOTHING ABOVE THIS LINE)

(Signature of accuser) Ivey W. Cashatt
IVEY W. CASHATT,
Captain, CMP, Headquarters PBS
(Grade, organization, or branch)

AFFIDAVIT

Before me, the undersigned, authorized by [illegible] to administer oaths in cases of this character personally

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 13½ inch paper will be used for additional sheets.)

(2)

(WRITE NOTHING BELOW THIS LINE)

(WRITE NOTHING ABOVE THIS LINE)

(Signature of accuser) Ivey W. Cashatt
IVEY W. CASHATT,
Captain, CMP, Headquarters PBS
(Grade, organization or branch)

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 16th day of October, 19 46, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he * [redacted] (Indicate by specification and charge numbers) [redacted] has investigated the matters set forth in specifications of the Charge and the Charge (Indicate by specification and charge numbers), and that the same are true in fact, to the best of his knowledge and belief

(Signature) Percy A. Matthews
PERCY A. MATTHEWS
(Grade and organization)
Major, JAGD, Headquarters PBS
(Official character, as summary court, notary public, etc.)

Norm.—At (*) strike out words not applicable.

If the accuser has personal knowledge of the facts stated in one or more specifications or parts thereof, and his knowledge as to other specifications or parts thereof is derived from investigation of the facts, the form of the oath will be varied accordingly. In no case will he be permitted to state alternatively, as to any particular charge or specification, that he either has personal knowledge or has investigated.
If the oath is administered by a civil officer having a seal, his official seal should be affixed.

1st IND.

Headquarters PENINSULAR BASE SECTION, Leghorn, Italy (Place), 16 October (Date), 19 46

Referred for trial to Lieutenant Colonel Clyde H. Wellan, Infantry, (Grade, name, and organization of summary court, or trial judge advocate)
Judge Advocate of Military Commission (Summary) (Trial judge advocate of special or general) appointed by paragraph 3, Special Orders No. 251.

Headquarters Peninsular Base Section, 16 October, 19 46.

By Command of Brigadier General Blood:
(Command or order) (Grade and name of commanding officer)

D. R. Patterson, Adjutant.
D. R. PATTERSON,
Lt. Colonel, AGD,
Adjutant General.

(3)

I have served a copy hereof on (each of) the above named accused, this 17th day of October, 1946

(Signature) Clyde W Willen, ~~Sum~~ Judge Advocate,
Lt. Col. Inf. Hq. P.B.S.
(Grade and organization)

(SPACE FOR USE WHERE TRIAL IS BY SUMMARY COURT)

CASE No.

SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OF ACQUITTAL AND REMARKS

Place , Date , 19

, Summary Court.
(Signature, grade and organization)

Headquarters , 19
(Place and date)

(Action of reviewing authority)

, Commanding.
(Signature, grade, and organization)

Entered on service record in cases of conviction
(Initials of personnel adjutant)

(4)

(WRITE NOTHING BELOW THIS LINE)

DCK/gm

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

CIRCULAR)
NUMBER 114) 23 September 1945

REGULATIONS FOR THE TRIAL OF WAR CRIMES

1. As used in these regulations the expression "war crime" means a violation of the laws or customs of war.

2. Military commissions appointed by the Theater Commander or by other commanders under authority delegated to them by the Theater Commander, shall have jurisdiction to try all cases referred to them of persons accused of committing war crimes.

3. A military commission shall consist of not less than three officers, the senior present at any trial being president. For each military commission there shall be appointed a judge advocate and a defense counsel with such assistants as may be required, whose duties shall be similar to those of like officers before general courts-martial.

4. The president of a military commission is empowered to appoint court reporters and interpreters who shall be entitled to such compensation as may be authorized by law and regulation.

5. A formal charge and investigation as provided for court-martial procedure is not required for military commissions. The charge may state the offense by its legal name or may describe it in terms of international law. The specification may in non-legal terms set forth the details of the act constituting the offense. It should also include expressions to enable the commission to determine its jurisdiction both in respect of the offense and the accused. The charges should be subscribed by any person subject to military law but need not be under oath.

6. Members of a military commission may be challenged for cause either by the accused or by the judge advocate, but they shall not be subject to removal upon a peremptory challenge.

7. The oaths prescribed by Article of War 19 for courts-martial shall be applied to military commissions, judge advocates, interpreters and witnesses with such modification as to make them appropriate to military commissions.

8. Military commissions may conduct their proceedings as may be deemed necessary for a full and fair trial, having regard for but not being bound by, the rules of procedure prescribed for general courts-martial.

9. The fact that an accused acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the commission determines that justice so requires.

Hq LTOUSA Circular Number 114 (cont'd).

10. The technical rules of evidence shall not be applied but any evidence shall be admitted which, in the opinion of the president of the commission, has any probative value to a reasonable man. Without limiting the scope of the above rule the following in particular will apply:

a. If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the president of the commission, unable to attend without undue delay, the commission may receive secondary evidence of statements made by or attributed to such witness.

b. Any document purporting to have been signed or issued officially by any member of any allied or enemy force or by any official or agency of any allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof.

c. Any report by any person when it appears to the president of the commission that the person in making the report was acting within the scope of his duty may be admitted in evidence.

d. Any deposition or record of any military tribunal may be admitted in evidence.

e. Any diary, letter or other document may be received in evidence as to the facts therein stated.

f. If any original document cannot be produced or, in the opinion of the president of the commission, cannot be produced without undue delay, a copy or translated copy of such document or other secondary evidence of its contents may be received in evidence. A translation of any document will be presumed to be a correct translation until the contrary is shown.

g. Photographs, printed and mimeographed matter, and true copies of papers are admissible without proof.

h. Confessions are admissible without proof of circumstances or that they were voluntarily made. The circumstances surrounding the taking of a confession may be shown by the accused and such showing may be considered in respect of the weight to be accorded it, but not in respect of its admissibility.

11. A military commission shall record its proceedings as nearly as practicable as prescribed for a general court-martial.

12. Convictions and sentences shall be determined by the concurrence of at least two-thirds of the members present at the time the vote is taken.

13. Appropriate sentences imposed by a military commission are:

a. Death (by hanging or shooting)

b. Confinement for life or a lesser term

c. Fine

Hq MTOUSA Circular Number 114 (cont'd).

14. No sentence imposed by a military commission shall be carried into execution until it shall have been approved by the appointing authority.

15. No sentence of death shall be carried into execution until it shall have been confirmed by the Theater Commander, but where the military commission that imposed the death sentence was appointed by the Theater Commander and he has acted on the sentence as approving authority, no additional confirmation by him is necessary.

BY COMMAND OF GENERAL MCNARNEY:

M. C. WHITE
Major General, GSC
Acting Chief of Staff

OFFICIAL:

C. W. CHRISTENBERRY
Colonel, AGD
Adjutant General

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HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

In reply
refer to

AG 334/368 JA-O 7 October 1945

SUBJECT: Authority to Appoint Military Commissions.

TO: Commanding General
Peninsular Base Section
APO 702

1. Authority is granted to the Commanding General, Peninsular Base Section to appoint military commissions for the trial of persons charged with violation of the laws of war in such cases as may be referred to him by this headquarters.

2. Military commissions appointed under this authority will be guided by theater regulation for the trial of war crimes.

B COMMAND OF GENERAL McHARNEY:

A CERTIFIED TRUE COPY

Claudius O. Wolfe

CLAUDIUS O. WOLFE
Colonel, J.A.G.D.
Staff Judge Advocate

C. W. CHRISTENBERRY
Colonel, AGD
Adjutant General

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

In reply
refer to

AGCSO.S/[illegible] JA-O 22 October 1945

SUBJECT: Disposition of War Crimes Case

TO : Commanding General
Peninsular Base Section
APO 782

1. By letter, file AG 354/[illegible] JA-O, dated 7 October 1945, the Commanding General, Mediterranean Theater of Operations granted authority to the Commanding General, Peninsular Base Section, to appoint military commissions for the trial of persons charged with violations of the laws of war in such cases as may be referred to him by this headquarters.

2. War Crimes Case Number 180, relating to one MAGGI, Pietro an Italian National, and member of the Fascist Guardia Nazionale Repubblicana, who is accused of the murder of an American pilot, Lt. Melba J. [illegible], 0-748045, 1st Fighter Group, 71st Fighter Squadron, [illegible] Wing, United States Army, has heretofore been forwarded to your headquarters.

3. It is desired that the above mentioned case be disposed of before a military commission appointed by you. Said commission will be guided by theater regulations for the trial of War Crimes.

BY COMMAND OF LIEUTENANT GENERAL LEE:

A CERTIFIED TRUE COPY

Claudius O. Wolfe

CLAUDIUS O. WOLFE
Colonel, J.A. G.D.
Staff Judge Advocate

U. G. FUTTERMAN
Major, AGD
Asst Adjutant General

6 December 1946

C E R T I F I C A T E

I, Clyde W. Wallen, Judge Advocate of the Military Commission appointed by Paragraph 3, Special Orders No. 251, Headquarters Peninsular Base Section, APO 782, dated 16 October 1946, do certify that in due time prior to his trial, Pietro Magi was advised of his right to assistance by a qualified counsel of his choice, but he elected to proceed with the regularly appointed defense counsel; further that Mario Ratterano, a competent interpreter, acceptable to accused, was present with and assisted the said Pietro Magi throughout the trial.

CLYDE W. WALLEN
Lt Colonel, Infantry
Judge Advocate

C E R T I F I C A T E

Under the provisions of Paragraph 2 i, AR 35-4120, 30 July 1945, compensation for clerical duties performed for a court will not be paid to a person who is in the pay of the Government. For this reason the undersigned, who is a War Department employee, has not submitted a Reporter's Voucher for reporting the case of United States vs. Pietro Magi, an Italian national.

Ethel L. Goddard
Ethel L. Goddard
Court Reporter

6 December 1946.

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

Pietro Magi, an Italian national

FLORENCE, ITALY.

Proceedings in the trial of Pietro Magi, an Italian national

by the military commission appointed by the orders of which a copy is appended.

CONFIDENTIAL

RECORD OF TRIAL

BY

MILITARY COMMISSION

OF

PIETRO MAGI, an Italian national

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TESTIMONY

Name of Witness	Direct	Cross	Redirect	Recross	Commission
For the Prosecution:					
Antonio Feriani	6				
Bruno Pederzoli	10	14	16	19	
Graziano Giol-Gratton	20	22	24		
	94	94			
	100	101			
	122	123			124
Maria Masetti	25	27	28	28	
Asterina Cariani	29	31			
Charles Heat	33,167	168	170,171	170	
Carmelo Ponture	34	36			
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Settimio Piancastelli	37, 95	41	44, 46		45
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Tolmino Pasquali	65,165	74,163	78, 92	86	91,158
Remo Cussani	101	105		106	106
Riccardo Cappelletti	107	111	114,118	116	117
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For the Defense:					
Oliviero Gottardi	131	136	142		141,143
Mario Grisoli	144	146			147
Antonio Feriani	148	153	154		155,156

EXHIBITS APPENDED

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Statement of Giuliano Maniezzi in Italian and English	4	34
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R-E-S-T-R-I-C-T-E-D

HEADQUARTERS
PENINSULAR BASE SECTION
A. P. O. 782

SPECIAL ORDERS

NUMBER 251 E-X-T-R-A-C-T 16 October 1946

3. A military commission is hereby appointed to meet at Florence, Italy, at 0900 hours, on 23 October 1946, or as soon thereafter as practicable for the trial of such persons as may properly be brought before it.

DETAIL FOR THE COMMISSION

COLONEL WILLIAM E. ELA, 0-307190, QMC, 61st Quartermaster Base Depot,
LT COLONEL CHARLES F. KNOBLOCH, 0-158894, INF, G-4 Section, MTOUSA,
LT COLONEL FRANCIS T. DAVIS, 0-275121, CAV, Headquarters P.B.S.,
LT COLONEL CAROL C. HINES, 0-336085, QMC, 61st Quartermaster Base Depot,
LT COLONEL LEWIS D. TWIN, 0-177868, CMP, Headquarters P.B.S.,
MAJOR CECIL W. MIGHTOWER, 0-419971, GSC, G-5 Section, MTOUSA,
MAJOR ROBERT P. HUMBLICH, 0-31896, AGD, Adjutant General Section, MTOUSA,

LT COLONEL CLYDE W. HELLER, 0-153627, INF, Headquarters P.B.S.,
Judge Advocate,
1ST LIEUTENANT CLARENCE W. BURNS, 0-2030731, INF, Headquarters P.B.S.,
Asst Judge Advocate,
LT COLONEL KENNETH F. LAFAYETTE, 0-207303, CAV, 61st QM Base Depot,
Defense Counsel,
CAPTAIN ARTHUR A. BURCK, 0-1002767, AUS, Judge Advocate Section, MTOUSA,
Asst Defense Counsel.

In the conduct of its proceedings, the commission shall follow the provisions of Circular 114, Headquarters Mediterranean Theater of Operations, 23 September 1945, entitled, "Regulations for the Trial of War Crimes".

BY COMMAND OF BRIGADIER GENERAL BLOOD:

PAUL H. SELLEN
Colonel, GSC
Chief of Staff

OFFICIAL:

O. A. FEHLOW
CWO USA
Asst Adj Gen

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R-E-S-T-R-I-C-T-E-D

The Military Commission met pursuant to the foregoing orders at Florence, Italy, at 0930 hours, 24 October 1946.

PRESENT

COLONEL WILLIAM E. ELA, O-307190, QMC
LT. COLONEL CHARGE F. KNOBLOCH, O-158894, INF.
LT. COLONEL FRANCIS W. DAVIS, O-275121, CAV.
LT. COLONEL CAROL C. HINES, O-336885, QMC
LT. COLONEL LEWIS D. ERWIN, O-177868, CMP
MAJOR CECIL W. HIGHTOWER, O-419971, GSC
MAJOR ROBERT F. MUNBACH, O-31896, AGD

LT. COLONEL CLYDE W. WELLEN, O-153627, INF.
Judge Advocate

LT. COLONEL KENNETH F. LAFAYETTE, O-287383, CAV.
Defense Counsel
CAPTAIN ARTHUR A. BURCK, O-1002767, AUS
Assistant Defense Counsel

ABSENT

1ST LIEUTENANT CLARENCE W. BURKS, O-2039431, INF.
Excused VOCG, on official business.

The Military Commission proceeded to the trial of Pietro Magi, an Italian national, of the Fascist National Republican Guard.

Prosecution: The accused is present in court represented by the regularly appointed defense counsel and the assistant defense counsel.

Ethel L. Goddard was sworn as reporter.

Eva Modern-Lowbeer was sworn as interpreter.

The trial judge advocate then announced the names of the members of the Commission present and absent.

Prosecution: At this time I would like to introduce Captain Franklin D. Ashcraft as assistant judge advocate, if there is no objection on the part of the defense?

Defense: No objection.

Prosecution: A copy of the charges in this case was served on the accused on the 17th October 1946. The general nature of the charges in this case is an alleged violation of the Law of War. The charges were preferred by Ivey W. Cashatt, Captain, Corps of Military Police, Headquarters Peninsular Base Section. The charges were referred for trial to Lieutenant Colonel Clyde W. Wellen, Infantry, judge advocate of the Military Commission appointed by paragraph 3, Special Order Number 251, Headquarters Peninsular Base Section, by command of Brigadier General Blood, under indorsement dated 16 October 1946, which apparently is in proper form.

Prosecution. The judge advocate does not expect to call any members of the Commission, now present, as a witness in this case, nor is any member an accuser.

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Prosecution: The records in this case disclose no grounds for challenge. If any member of the Commission is aware of any facts which he believes to be a ground for challenge by either side against any member, it is requested that he state such facts.

President: None.

Prosecution: The prosecution has no challenge for cause. Does the accused desire to challenge any member of the Commission for cause?

Defense: The accused does not.

The members of the commission and the personnel of the prosecution and the defense were then sworn.

Prosecution: The accused will now be arraigned. Pietro Magi I will now read the charge and specification under which you are about to be tried.

ARRAIGNMENT

The accused Pietro Magi was then arraigned upon the following charge and specification:

CHARGE: Violation of the Law of War.

Specification: In that Pietro Magi, then a member of the Fascist Nationale Republicana Guard, acting with and in support of combatant forces of the German Reich, a belligerent enemy nation, did, near Ponte Rizzo, River Reno, in the District of San Vitale, Bologna, Italy, on or about the 17th day of May 1944, wrongfully and contrary to the law of war, kill murderily First Lieutenant Lyle E. Moreland, an American Pilot, who had then recently been captured and was a prisoner of war, by bayonetting him.

(Signature of accuser) /s/ Ivey W. Cashatt
IVEY W. CASHATT,
Captain, CMP, Headquarters PBS

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 16th day of October 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he has investigated the matters set forth in specification of the Charge and the Charge, and that the same are true in fact, to the best of his knowledge and belief.

(Signature) /s/ Percy A. Matthews.
PERCY A. MATTHEWS,
Major, JAGD, Headquarters PBS

1st IND.

Headquarters PENINSULAR BASE SECTION, Leghorn, Italy, 16 October, 1946.

Referred for trial to Lieutenant Colonel Clyde W. Wallen, Infantry, Judge Advocate of Military Commission appointed by paragraph 5, Special Orders No. 221, Headquarters Peninsular Base Section, 16 October, 1946.

By Command of Brigadier General Black:

(Signature) /s/ D. R. Patterson
D. R. PATTERSON,
Lt. Colonel, AGD,
Adjutant General.

CONFIDENTIAL

Prosecution: Does the defense have any special pleas or motions to offer at this time?

Defense: The defense does not have any special pleas or motions to offer at this time.

Prosecution: How does the accused Pietro Magi plead to the specification and the charge?

<u>The accused, Pietro Magi, then pleaded as follows:</u>

To the specification of the charge: Not Guilty

To the charge: Not Guilty

Prosecution: May it please the Commission the prosecution expects to produce evidence in this case to show that Pietro Magi, the accused, was a member of No. 1 Section of the 12th Arches Detachment, 67th Legion of the Republican National Guard, a Fascist organization that continued to fight after the surrender. That on the 17th day of May 1944 this detachment was engaged in guarding the new bridge near Bologna, Italy, and was acting with and in support of German units. On that day Lieutenant Lyle Morehead of the First Fighter Group, 71st Squadron, 15th Air Force, was flying over the Po Valley and, in conjunction with the other members of the squadron were strafing targets of opportunity in the area between Modena and Bologna; that he was shot down; that two members of the squadron saw the plane fall; that the plane landed in the dry bed of the same river, near Ponte Nuovo, not far from Bologna. The plane was on fire when it crashed in the dry bed of the river, but Lt. Morehead was seen leaving the plane. He was limping badly at the time and shortly after getting out of the plane, fell to the ground. The plane was enveloped in smoke by that time but either two civilians or two members of this Fascist guard organization ran into the smoke and dragged him a short distance from the plane. At that time the accused Pietro Magi ran up and shouted to the people "Stand back" and ran his bayonet into Lt. Morehead's body one or more times. After doing so, he boasted that he had killed the American pilot. The pilot was later picked up - that is the body of the pilot was later picked up - by a German Red Cross vehicle and two days later was delivered to a cemetery in Bologna for burial. His body was buried either on May 19th or the following morning May 20th, and was disinterred about a year later and moved to an American cemetery.

TESTIMONY FOR THE PROSECUTION

Prosecution: The prosecution offers as Exhibit No. 1 for identification Missing Air Crew Report, with statements and map attached.

Defense: The defense objects to this paper being offered in evidence. It is a matter of hearsay and is not even signed.

Prosecution: May it please the Commission this is an official report dated the 20th day of May 1944, received through channels, despatched out to the AG Casualty with the statements attached to it. It is an official report although it does not - the signature is typed and not in ink.

President: Objection over-ruled. It will be admitted.

Defense: If it pleases the Commission the defense would like to point out at this time the credibility of this statement for future consideration, the fact that this in its present condition - -

Prosecution: I will just read the important parts of this report, the pertinent facts.

(Prosecution's exhibit No. 1 was then read to the Commission.)

Defense: If it please the Commission, at this time the defense desires to emphasize to the Commission, mainly for future reference, these statements made by American pilots who were flying as comrades and in conjunction with it. Moreover - the condition of the plane as it left the airfield, the speed of flight and the striking of the ground. The defense desires to leave these particular points in the minds of the Commission for future reference. And there is some inconsistency there between the left and right wing being on fire, and the plane was shot down while travelling at a high rate of speed and striking the ground with great force.

Prosecution: May it please the Commission I think arguments should be reserved - -

Defense: If it please the Commission the defense does not desire that as an argument but purely to emphasize points in statements which are unsigned and introduced by the trial judge advocate.

Antonio Poriani, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Antonio Poriani.

Q. What is your occupation?
A. Agriculturist.

Q. On the 17th May 1944 do you remember what your occupation was?
A. I was then called to the Militia.

Prosecution: (to interpreter) would you ask him to speak a little louder so that the Court can hear what he says?

Q. Do you remember what, if anything special, happened on the 17th May 1944?
A. On the 17th May 1944 a plane was shot down by the defences of the aerodrome.

Q. Do you know to what country that plane belonged?
A. I don't know. It was either American or English. I don't know the nationality.

Q. Where did the plane fall?
A. In the vicinity of the Ponte Nuovo on the Reno River, near Bologna.

Q. In what country?
A. Italy.

Q. State whether or not it fell near Bologna in Italy.
A. Yes, five kilometers from Bologna.

Q. Tell the Court exactly where you were at the time the plane fell.
A. I was with the guard in the shelter.

Q. In what shelter?
A. Under the tunnel there was a shelter - the railway tunnel.

Q. Was that in Bologna?
A. Outside Bologna on the bridge.

Prosecution: I will ask the reporter to mark this document Prosecution's Exhibit No. 2 for identification.

Defense: The defense objects to the introduction of the evidence of this document. It purports to be a map of the locale of the alleged incident, but it is more than a map. First of all we have no assurance that this is a true copy of the actual map, but that is not what concerns us. What concerns us is the fact that already the prosecution has marked the positions of the various witnesses to the incident. In other words, it is telling the witness where he stood. It is not asking the witness where he stood, but it is telling the witness where he was standing. I can - -

President: Are there markings on the map? Can they be understood?

Prosecution: Approximately, yes sir.

President: The witnesses have seen this map and it was pointed out where they were? We will accept it.

Questions by the Prosecution:

Q. I will ask the witness to look at this purported map and ask him if he can identify, by looking at this map, where - approximately where - Bologna is with reference to a figure indicating an airplane.
A. Bologna is down here (indicating a position on the map.)

Q. Now what direction north, south, east or west is Bologna from the figure indicating an airplane?
A. North-east.

Q. The figure indicated an airplane. I will ask you to point this pencil on the figure indicating an airplane.
A. (Witness indicates.)

Q. That figure - for identification we will put the letter 'A' for airplane. Now from the letter 'A' - airplane - can you locate where you were with reference to this drawing at the time the airplane fell to the ground at the spot located as 'A'?
A. (Witness indicates.)

Prosecution: And we will mark that place - - (to interpreter) Ask him to put the pencil on the place indicating where he was at this time. We will mark the spot indicated by the witness as 'F' for Farina. It gives its location with reference to this map at the time the airplane fell.

Q. Do you know how far it is from the location the witness has marked as 'F' to the location the witness has marked as 'A' where the airplane fell?
A. About 400 meters.

Prosecution: At this time I wish to offer Government's Exhibit No. 2 in evidence.

President: What is the title?

Prosecution: Its title, sir, is "Comune Di Calderara Di Reno."

President: It will be admitted.

Q. Did you see the airplane fall?
A. No.

Q. Did you see it after it fell?
A. Afterwards I saw the flames. From my position I could not see. There was a lot of earth hiding it.

Q. What did you do after you saw the plane?
A. Some civilians passed and I sent someone to call the sergeant and give him the news.

Q. Then what did you do?
A. I interrogated the sergeant Lodi. I asked him what had happened. He told me that the plane - -

Defense: The witness started to testify as to what someone told him and I objected.

Q. Did you go to the scene of where the airplane crashed?
A. After about 2½ hours I went there.

Q. Did you see the airplane?
A. Yes, I saw it when I went there. It was already nearly completely destroyed by the flames.

Q. What kind of an airplane was it?
A. Two tails.

Q. Then did you make any report of this accident?
A. Yes.

Q. On the same day?
A. Immediately.

Q. What day was it?
A. 17th May.

Q. What year?
A. 1944.

Q. Did you see anyone at the plane when you left there?
A. No I did not see anybody. There was not anybody left. There were civilians.

Q. Did you see the accused there? Magi, the accused?
A. Yes, I saw him at the prison.

Q. But not at the scene of the plane?
A. I did not know that Magi had gone there. I did not know anything at all about Magi.

Prosecution (to interpreter): Ask the witness to answer the question "Yes" or "No."

Q. Did he or did he not see Magi when he went to the scene of the airplane?
A. No.

Q. Do you now know the accused in this case, Pietro Magi?
A. Yes.

Q. Would you point out for the court the person in this room whom you know to be Pietro Magi?
A. I don't see him.

Q. Stand up.
A. I don't see him. Uh, yes, I see him at the back there.

Q. Would you point him out to the court?
A. (Witness indicates accused.)

Q. Ask the man to stand up.

(Accused stands up.)

Q. Is that the man you identify as Pietro Magi?
A. Yes.

Q. Do you know whether or not the accused Pietro Magi was a member of the Republican National Guard on the 17th May 1944.
A. Yes.

Q. Do you know whether or not he was on active duty on the 17th May 1944 with the previously referred to organization?
A. Yes.

Q. Was the Fascist Republican National Guard fighting with the German Army on the 17th day of May 1944?
A. They did not fight. They had territorial duty guarding all bridges.

Q. The duty that day they were performing, was that duty assisting the German Army?
A. That was a service ordered of the Italians.

Q. And state whether or not that service was in cooperation with the Germans?
A. I was - yes it was all ordered.

Q. By whom?
A. By the officer of the Militia.

Q. To what country did the officer of the Militia owe allegiance to?
A. Italian.

Q. Were the Germans in command of the area at that time?
A. They were at the aerodrome.

Q. State whether or not they were in command of the area on the 17th May 1944?
A. Yes, because they came and controlled the plane.

Q. State whether or not the Republican National Guard received orders for their operation from the Germans in command of that area?
A. That I cannot know because we always got the orders from our officers.

Prosecution: That's all.

Defense: The defense does not -- the witness appears to be a creditable witness and if it pleases the Commission reserves the right to call the witness for the defense.

CONFIDENTIAL

Prosecution: Does any member of the Commission have any questions.

President: Apparently not.

Prosecution: May the witness be excused.

President: The witness is excused.

(There being no further questions the witness was excused and left the courtroom.)

Bruno Federzoli, a witness for the prosecution, was then brought into the courtroom, was sworn in and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name.
A. Bruno Federzoli.

Q. Where do you live?
A. Castel Maggiore, Bologna.

Q. What is your occupation?
A. Industrialist.

Q. Where did you live in May 1944?
A. At Castel Maggiore.

Q. What was your occupation at that time?
A. I directed the industry where I worked.

Q. What kind of industry?
A. For construction of roads; production of stones for road construction.

Q. How many employees did you have?
A. At that place twenty.

Q. Do you recall an American plane crashing near the new bridge in San Vitale district in May 1944?
A. In San Vitale. At the new bridge.

Q. How far is the new bridge from your place of business?
A. About 1 kilometer, 200 meters.

Q. Did you see the plane crash?
A. Yes, but I was no more at my place of work because there had been an alarm and I left there.

Q. Where were you when the plane crashed?
A. I was about 800 or 900 meters from where the plane fell.

Q. What day was that if you recall?
A. It was during the week between the 12th and 19th of May.

Q. Can you fix the exact date?
A. The 17th.

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Q. How do you fix that date?
A. When the officer came to interrogate me, we looked at my pay-books and as there was an alarm, we had abandoned the place of work.

Q. What time during the day did the plane crash?
A. During the day. I could not give the exact time.

Q. When did you first see the plane?
A. I saw it whilst it was machine-gunning the aerodrome.

Q. Did you observe any markings on the plane?
A. Yes, the American star.

Q. What kind of a plane was it?
A. An airplane with two tails.

Q. Do you know the accused, Pietro Magi?
A. Frankly when I came near the pilot I was so agitated that I could not say exactly.

Q. I think you misunderstood the question. Do you know Pietro Magi?
A. No.

Q. Where were you when the plane crashed?
A. I was lying on the ground in a wood at about 800 meters from the plane.

Q. I hand you Prosecution's Exhibit No. 2 and get you to point out, if you can, your position when the plane crashed.

Defense: I object. The defense feels he ought to state in pretty precise terms where he was before he puts in this map where he was, otherwise the prosecution is telling where he was.

President: Objection sustained.

Prosecution: I do not believe that his position at that time is even marked on the map. I want to get the relative position.

Q. What did you do after the plane crashed?
A. I took the bicycle and went to the place where the plane was.

Q. What was the condition of the plane at the time of your arrival?
A. It was in flames.

Q. Did you see the pilot?
A. I saw the pilot. He was also in flames. His clothes were in flames - about 30 meters distance.

Q. He remained 30 meters from the plane or from yourself?
A. About 30 meters distance from the plane.

Q. How far were you from the pilot at that time?
A. About 20 to 25 meters.

Q. How many minutes had elapsed from the time the plane crashed until you arrived at the scene?
A. I could not say exactly because before leaving I stopped a moment to look whether there were any more planes, then I left.

Q. Who was present at the scene of the crash when you arrived?
A. Other civilians.

Q. Were there any Fascist soldiers, members of the National Republican Guard?
A. I could not say exactly.

Q. Did you see any Italian soldiers there?
A. No, not Italians.

Q. Did any Italian soldiers arrive or any members of the Republican National Guard arrive after you arrived there?
A. Yes, members of the Republican Fascist Guard.

Q. What, if anything, did the members of the Republican Fascist Guard do?
A. One arrived somewhat annoyed. He ran and then he threw himself against the pilot with a gun and then he hit him.

Defense: I believe he said he attempted to hit. There is a great difference.

A. He made the move to hit him.

Q. Did he hit him?
A. At that moment I closed my eyes and did not see any more.

Q. What was the soldier's position when you closed your eyes?
A. He had the musket and the bayonet and he was on the point of hitting him.

Q. Will you demonstrate or show to the court just what you saw the soldier do?
A. Yes. I was about 20 to 25 meters from the pilot. Then he arrived with the musket-bayonet in that position (witness demonstrates). At the moment when he made this move and pushed the pilot, I closed my eyes because I did not want to see.

Q. You stated that the pilot's clothing was on fire when you arrived?
A. Well you see they were burned. They had already tried to put out the flames.

Q. What part of his clothing was on fire?
A. I could not say exactly, frankly.

Q. Describe the clothing that the pilot were at that time.
A. No, I could not say exactly. He was already all dirty, all sand and blood.

Q. Did you go nearer than 25 meters to the pilot at any time?
A. Yes.

Q. How close to the pilot were you?
A. I don't know, about three or four meters.

Q. That was after the pilot had been struck by the bayonet, is that correct?

Defense: I object. That is a leading question. You do not know that the pilot had been struck.

Prosecution: Withdraw the question.

Q. That was after you saw the Italian soldier leaning over the pilot with the bayonet?
A. No before.

Q. Do you know whether or not the pilot was wearing a flying jacket.
A. I don't know. I don't remember.

Q. After you saw the Italian soldier leaning over the pilot with his bayonet fixed - -

Defense: I object. There has been no testimony that the Italian soldier had a bayonet.

Prosecution: There has been testimony here. He has already demonstrated the position of the Italian soldier with the gun. He stated the bayonet was fixed. Will the reporter check the previous testimony regarding the bayonet?

(Reporter reads previous testimony to the Commission.)

Q. Did the Italian soldier have his bayonet fixed when he rushed up to the pilot?
A. I think so. I could not say exactly.

Q. When the Italian soldier was in the position ready to strike, did he have a bayonet fixed on his rifle?
A. Yes.

Q. Immediately after the incident which you have described, did the Italian soldier make any remark?
A. No, as far as I know.

Q. Did you hear the Italian guard make any statement as he left the scene?
A. Yes, he said to me that he did not run, he said yes, he did not run.

Prosecution: Will you repeat the question to him please?
(Question repeated by interpreter)

A. I heard him when he went away. I heard him say this. He said, "I did not run at all."

President: Will the reporter read the question and answer.

(Reporter reads questions and answers.)

Q. Did the Italian soldier make any statements in your presence at any time?
A. After such a long time I can't remember.

Q. How long did you remain at the scene of the crash?
A. About twenty minutes.

Q. Was the pilot still there when you left?
A. Yes.

Q. Did you later return to the scene of the crash?
A. Yes.

Q. Did you at that time observe the pilot again?
A. I could not see him any more because he was covered by a sheet.

Q. What was done with the body, do you know?
A. When I arrived for the second time - - a few minutes later a German car arrived and took the body into the car.

Q. In answer to the question as to the statements made by the Italian soldier you answered that he said he did not run. What do you mean by that?
A. I could not say exactly what he wanted to say with that.

Q. Did he at that time make any other statements?
A. I don't remember.

Q. Did the Italian soldier murmur something as he passed by you and, if so, what?

Defense: The defense objects. He has already said he doesnot remember. The same questions have been asked half a dozen different ways and he always says he does not remember. He has given the only thing said.

President: Objection over-ruled.

A. More than those few words I don't remember.

Prosecution: You may have the witness.

Defense: The defense would like to ask for a five minute recess.

President: There will be a five minute recess.

The Commission then recessed at 1105 hours and was reopened at 1115 hours, at which time all the members of the commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

CROSS-EXAMINATION

Questions by the Defense:

Q. After you arrived at the scene of the accident, you testified you approached the body of the pilot about three meters away?
A. Yes.

Q. Did you observe the condition of the body?
A. Yes.

Q. Were the feet burnt?
A. I don't remember exactly, but I think one foot was and also his face was bleeding.

Q. Bleeding in which way?
A. I could not say exactly what it was because he was already full of blood.

Q. In other words, his face was covered with blood?
A. Yes, blood and sand.

Q. Did you observe any wounds about the body, bloody gashes?
A. Yes, I was under the impression that he had been wounded because his uniform was full of blood.

Q. How was he lying? With his face up?
A. Yes.

Q. And the arms, were they thrown out?
A. The position in which I saw them was when he had been dragged there by other people. He had been put into that position.

Q. Which position?
A. In which I found him.

Q. His face was up, but how about his arms and legs?
A. He was stretched out in this position. (Witness demonstrates position.)

Q. For how many minutes did you observe the body?
A. I could not say precisely.

Q. Could he estimate roughly?
A. About four or five minutes.

Q. Did the pilot make any motions or attempt to get up during that time?
A. No.

Q. In other words for about five minutes while you watched, the body was motionless?
A. Yes.

Q. Absolutely no motion?
A. None.

Prosecution: If the Commission please, the defense has covered questions here -- if the defense wishes to make --

President: Objection sustained.

Prosecution: I am not making objections. I merely want to get the record straight. If the defense wants to make this man their witness, that's all right with the prosecution, but this is not proper cross-examination, such as his covering facts not brought out on direct examination.

Defense: We hope to cover it more completely -- this cross-examination that was put on by the prosecution.

Questions by the Defense:

Q. Did you see this airplane fall, actually fall?
A. No, I could see it up to about 30 meters from the ground and after that it was hidden by trees.

Q. Did it fall from a considerable latitude?
A. When I saw it was losing height and it did not actually fall.

Q. Was it coming down at a tremendous speed?
A. Rather quickly but it was not actually falling.

Q. It appears you have seen the speed of the fall and you have testified that you saw the body for five minutes and you have told the condition of the body, is it your opinion that the body was dead when you arrived?

Prosecution: Objection. This man is not qualified to make such a statement.

Defense: Any layman, we all know from human experience, that under certain conditions, if you see a body under certain conditions, the fact of death is pretty obvious. If he testified that he was there for five minutes and watched it closely, he is in a pretty good position; I can't imagine a better position.

President: The question will not be answered. He has already testified that he had been moved and I do not think he is in a position to testify whether he was dead.

Questions by the Defense:

Q. Was it your opinion from what you observed that the body was dead?

Prosecution: We object to this conclusion that this witness is required to make. He should stick to the fact of what he saw.

President: Objection sustained.

Defense: Does the court move that it will reject any opinion from any lay witness as to whether the body was alive or dead? Is that what you meant when you sustained the objection? Is that what you meant?

President: I don't think this witness is in a position to know if the body was alive or dead.

Defense: I am asking for his opinion, not as a medical statement, purely as an individual layman his opinion.

Prosecution: The witness can describe what he saw. He should not ask the witness for a conclusion which this court will have to arrive at after all the facts are arrived at.

Defense: His opinion may be of considerable assistance. His opinion is based on facts to which he has already testified.

President: He has already testified that the body was not moving.

Questions by the Defense:

Q. This inspection of the body which we have discussed - strike that - These Italian soldiers did they arrive after your inspection of the body?
A. Yes.

Q. Can you estimate the length of time it took you to arrive at the scene of this crash?
A. From where I lived, where I had taken shelter? As I said before I could not say precisely. It may have been eight or ten minutes.

Q. In your inspection of the body did you see the pilot's dress?
A. I could not say exactly.

Q. Do you know whether he was wearing a heavy belt?
A. No.

Q. You do not remember?
A. No.

Q. Did you observe when you watched this body, did you observe any indication of breathing?
A. I watched him but I think he did not breathe.

Defense: That's all.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. I will get you to state whether or not you went back to the scene of the crash later with an investigator from the United States Army?

C O N F I D E N T I A L

Defense: I object to this line of questioning for the reason that during the recess, when this witness was still in the custody of the court and after the prosecution has rested its case, we come back to find the prosecution showing this witness documents of purported previous statements. The defense takes this position that it is highly irregular, after the prosecution has completed its case, to bring to the witness additional documents. This witness was in the custody of the court. He had not been released. It just so happened that the recess gave the prosecution this opportunity, obviously improper after the prosecution rested before the court, to come up and start questioning him upon alleged statements.

Prosecution: If the Commission please, I am very much surprised that any counsel would take the position that the Captain is taking here. It is true we showed him his former statements made in Italian, statements which he has apparently completely forgotten. We showed him them for refreshing his memory.

Defense: Why did you do it when the recess -- all of us were away? That is what is regarded as improper.

President: Objection over-ruled.

A. Yes.

Q. Did you at that time place upon a map your name indicating the position from which you had witnessed the scenes which you have described?
A. Yes.

Q. Did the figures 1, 2, 3 and 4 represent the various positions that you occupied at the time of the crash?
A. Yes.

Q. What does the numeral 60 represent on this map?
A. That would indicate the approximate distance of the pilot from the plane at the moment when I arrived.

Q. Where is the pilot's position as shown on this map?
A. It would be where this cross is.

Q. The cross marked in red on the map?
A. Yes.

Q. What is the distance from the cross to X 1?
A. This is where the pilot was but I could not indicate the exact distance.

Q. Did you approach the pilot closer than the point marked 4 on the map?
A. Yes.

Q. When?
A. Before the militia men arrived.

Q. Is it not true that on February 24th, 1946 you stated to an investigating officer, "I took the same place at which I observed on the 17th May 1944 the beginning of the scene of a falling airplane."
A. Yes.

Q. And is it not true that you stated that you subsequently moved to another position "from which I observed that day the act of Magi Pietro against the Allied airmen?

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Defense: Objection, the prosecution appears to be trying to impeach its witness. Impeachment of a witness cannot be permitted by the side which brings in the witness. That is an established rule of procedure. This is established in Courts-martial. In other words, the prosecution cannot bring in a witness and then later on impeach him.

Prosecution: If it pleases the Commission, I am trying to get this witness to tell the truth to this Commission. He has made certain statements here and apparently he is confused today. From the map and from the statements he witnessed this scene from some distance away. We are simply trying to get the truth to the Commission.

President: Objection over-ruled.

Questions by the Prosecution:

Q. The militia men of the Black Brigade and afterwards I - -

Defense: They are reading from a copy.

(Question repeated)

A. Yes.

Q. Is it not true that you stated that "This movement of mine is indicated by the succession of numbers 1, 2, 3 and 4 that I have noted on the map and placed my signature near."

A. Yes.

Q. Is it not true also that you stated, "I therefore saw the aggression by the Republican Fascist guard when I saw a few days ago at the prison of San Giovanni in Monte, Bologna, and when I learned is named Pietro Magi. I was at point marked 4 which was at a maximum distance of 60 meters?"

A. Yes.

Q. Is it not also true that you stated at that time, "In conclusion I would like to state that my distance from the aviator was actually less than 60 meters; about 40 meters as I said in my first statement. This is because, while watching the above scene, I did not stop walking, but was gradually nearing the airman?"

A. Yes, that's just it. I could not at first give the precise distance.

Q. This map and this statement is correct?

A. Yes, they are correct. This distance was at first measured in the presence of the Allied officer. This position was indicated in an approximate way. It was already two years after the incident.

Defense: Did he say two years?

A. Two years.

Defense: After the incident?

A. Yes.

Q. Did the Fascist guard that you have already referred to pass near you as he left the American pilot?

Defense: I object. This is improper redirect examination. On cross-examination we did not cover any questions relating to this subject. It is something he should have covered in his direct, and he did cover in his direct examination. What he is attempting to do is go over his direct examination.

President: Objection over-ruled.

A. Yes.

Q. What, if anything, did you say to the guard at that time?
A. Yes - - I said that he had done a very ugly act by wounding a man who was immobile. I also said this pilot - -

Defense: I object. Was there a question put to him?

Interpreter: He added this:

A. This pilot will not kill anyone any more.

Defense: Who said that?

A. He said that to the militia man.

Defense: Did he make that - -

A. I also said this pilot will not kill anyone any more.

Questions by the Prosecution:

Q. Did the Fascist guard say that or did the witness?
A. No, the militia man said that to me.

Defense: I object. The question is what did you say to the militia man. I demand that it be stricken. The question was, "What did you say to the militia man?". And now you add on to that something that was not a part of that question.

President: Objection sustained.

Questions by the Prosecution:

Q. What, if anything, did the Fascist guard say to you at that time?

Defense: I object. That same question has been asked four, five or six times and the answer has been he does not know, he does not remember. That is his answer.

President: Objection sustained.

Prosecution: No further questions.

RECROSS EXAMINATION

Questions by the Defense:

Q. You previously stated that you arrived at a point within three meters of the pilot?
A. Yes.

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Q. Is it not possible that you were - - arrived at three meters from the pilot - - in the position three meters from the pilot?
A. Yes, three or four meters.

Defense: That's all.

Prosecution: Does the Commission have any questions to ask?

President: Any questions? No questions.

Prosecution: Request that the witness be excused subject to recall for further examination.

President: The witness should be excused.

Prosecution: I would suggest a noon recess.

The Commission then recessed at 1210 hours and was reopened at 1420 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Don Graziano Giol-Gratian, a witness for the prosecution, was then brought into the court-room, was sworn in and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Giol-Gratian, Graziano.

Q. Where do you live?
A. In Bologna.

Q. What is your occupation?
A. Chaplain.

Q. Were you a chaplain in 1944, particularly in May of that year?
A. Yes.

Q. State whether or not you have any knowledge of an American plane crashing near the new bridge in May 1944.
A. In May 1944, on the 17th May, at about 4 o'clock pm. I heard that an airplane fell down near the bridge, the new bridge. I went at once on my bicycle, with a young lady, to see what had happened. When I reached there, I crossed the river leaving the bicycle on the other side of the river and we went to the place where the airplane was burning. At about fifteen yards from the airplane there was, so they told me, the body of the pilot, covered with the rest of the parachute. I asked the German marshall, sergeant major, to see the pilot and he allowed me, because, if he were a Catholic, I would have known from the disc, like a medal, that they were around their necks, because I have seen them in other cases, and they say "I am a Catholic, please call a priest." When I began to remove the rest of the parachute and I reached the head behind, I saw that the man was lying this way, then the German told me - he would not allow me to go further.

Then I blessed him. After that as I was a Partisan, I was interested in knowing something about him. I looked at his documents but I could not find his name, only some papers in which it was written, "Where is the nearest place of the Partisans? Where are they living?" in Italian and in English. They are the words I remember. "Is this the right way?" "Is this the wrong way?" and other things, and I looked for some time. Then I gave back those papers. I looked into his pocket. There was some money, Italian notes, I cannot remember how many, French notes and some dollars. After that I looked at the other things that were gathered near the body and I saw a radio transmitter in fairly good state. While I was looking at the radio transmitter, a man of the Italian guard rushed to the place where we were. He asked me, "Please as you know German," he thought I knew just a few words, "tell this marshall that if he finds the pocket money with three thousand lire, tell him that they are mine because I lost them on coming up to this place." Then I asked him at once straightforward, "Why have you killed this man?" and he answered, "If I had not done it, here is a mistake, I made a mistake, if we had not done it, they would have killed us."

Defense: This is a hearsay statement first of all. Consequently, it in no way ties up with the accused who is on trial. He has in no way identified this man who has issued this alleged hearsay statement.

Prosecution: I think it is a part of the res gestae and could be introduced for that purpose although not identified.

President: The witness is telling his story. Let him proceed.

Defense: He should identify the man that - who made this statement.

President: He is telling his own story. Proceed.

A. Then on looking at the other things near the body, I had in mind to take something to recognize him afterwards; at least his nationality, not I but others who could do it because they knew that enquiry would come. I could take a hook, you call it a hook, and a ring which hung to a bit of belt of the parachute. In one there was a ring and in the other a hook, and I put them into my pocket unseen. Something else happened there with another of the guards, a young man. I saw that he stole something, some kind of a watch, then a pair of new gloves. Then the German saw it and struck the man because he steal to a dead man. Something else, something of the kind, but nothing interesting, because I was a little afraid being near the airplane and the cartridges were bursting.

Q. How long after the crash was it until you arrived at the scene?
A. From seven to eight minutes.

Q. And the pilot was covered with his parachute?
A. He was covered with the parachute. The pieces burnt.

Q. Did you see any part of the pilot's body other than his head?
A. Yes, one foot burnt, yes burnt, not completely, burnt only here and there. There was out a foot and I saw it reddish and black.

Q. You have stated that this airplane crashed on the 17th May in the afternoon. How do you recall that so exactly?
A. Yes, because I have a record of it which I can show. After a few days,

on the 21st, I had to go on an errand to the partisans on the hill, who were waiting for ammunition and money and the radio transmitter. We were waiting for this, so I wrote it down here, on the 17th I wrote, "P.A. bird killed."

Q. You made that entry in your note-book at the time?
A. Not this, I wrote it afterwards, but at the time I wrote, "On the 21st May, my errand." in Indian character with English and Italian words mixed up, in case I was caught, and here I have signed - that means the ammunition will come. They had to come but they told them the story the airplane fell down and they should have waited for it.

Q. Did you look at the plane?
A. Yes, I looked at the airplane but vaguely because we were afraid to and I did notice that it was a two tail airplane, the kind we call lightning, so we hear often on the radio.

CROSS-EXAMINATION

Questions by the Defense:

Q. Chaplain where were you located when you heard about this airplane crash?
A. I was in the refuge.

Q. Where?
A. Under my church and they told me and this young lady I mentioned before that a plane fell down.

Q. Someone mentioned it in the refuge that a plane had fallen?
A. One girl who was out came in and told me an airplane fell down, let us go and see.

Q. How far away was this from the refuge?
A. About one and a half miles. If I say one and a half kilometers, one mile about and we could see the smoke.

Q. Approximately one mile. You had to leave the shelter, the refuge. You had to leave the refuge. Where was your bicycle?
A. I was in my home.

Q. Was that close at hand?
A. Yes, I must pass through the house to go to the refuge.

Q. Then you went outside, mounted your bicycle and proceeded to the - -
A. In company with the young lady.

Q. How did you cross the river?
A. There was a - there was very, very little water. I could go in without wetting my shoes, but we went a little further and we passed a passerella, some stones and some wood.

Q. Did you just drop your bicycle at that point and start crossing the stream?
A. I put it in the house of a certain Marie who will be a witness.

Q. You had to get from your place to the bicycle outside, get on your bicycle, drive almost a mile, then leave that bicycle at someone else's house, then find this place across the street?
A. Yes.

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Q. Now you made this statement before that you arrived there approximately seven or eight minutes after the crash. Are you sure it was only seven or eight minutes after the crash?
A. After the crash I don't know. It was only the time taken from my place to the place of the new bridge. It is about on a bicycle say about seven, eight, nine minutes at the most.

Q. But before you actually arrived at the scene, it was much more. Was it possibly half an hour from the time you left the refuge until you were at the scene, was it approximately half an hour?
A. I would say quarter of an hour. I had to take the bicycle out and wait for the young lady to get ready. It was a quarter of an hour at most.

Q. I have here a copy of a statement that was made by you. Will you take a look at this. This particular sentence here in which you say, "I arrived there about twenty minutes after." Then you are not quite certain of the time?
A. No, I am not quite certain.

Q. Half an hour possibly after the accident?
A. If you say how much time it took from the accident - -

Q. Did you actually see what was there?
A. Yes, I saw it.

Q. Well it could be half an hour then, forty-five minutes from the time that you actually left your house until you stayed there at the scene of the accident?
A. I would say quarter of an hour.

Q. Now you also mentioned this airplane that was at the scene. Therefore, did you observe the condition of the airplane?
A. Yes, I looked at it often because we were afraid of it, because of the cartridges bursting. We were looking at it fully and to see if there was some other body inside.

Q. From your personal observation of this airplane, what condition was it in? Was it badly smashed up?
A. It was all burnt. How can I say that?

Q. It was completely enveloped in flames?
A. Yes.

Q. Did it look like a light object that had hit the ground with great force?
A. I think so.

Q. Did it cut the ground surface there?
A. There was mud.

Q. The plane had hit the ground with great force?
A. I think so..

Q. Now when you arrived actually at the scene, how many soldiers were gathered there?
A. I spoke with two.

Q. My question was how many were there, twenty?
A. Two I spoke to and then there were at least some three or four Italians, Republicans.

Q. That's six, two you spoke to and four more who were around?
A. There was an old man.

Q. Just an estimate, six Italian soldiers?
A. In other words two and three.

Q. Well that's five. How many German soldiers?
A. Two marshalls.

Q. How many civilians, quite a few people?
A. Yes, on both sides of the river.

Q. There was quite a few people and I sup,ose they were coming and going?
A. Yes.

Q. Had you ever seen any of these soldiers before this time?
A. No.

Q. You said previously that a man made a statement to you?
A. Yes.

Q. You said something about killing. Do you recognize that man?
A. If I see him, yes.

Q. You would not recognize him again?
A. I would if I see him; I think so.

Q. Where do you see him?
A. I don't see him.

Q. Then this man that made that statement to you is not in the court-room?
A. No, I don't think - -

Q. Well, look carefully now, this is very serious. He is not in the court-room.

Defense: That's all.

MEDICAL EXAMINATION

Questions by the Prosecution:

Q. The province in which the new bridge is located is in Italy?
A. Yes.

Prosecution: Any questions by the Commission?

President: Apparently none.

Prosecution: May the witness be excused?

President: The witness is excused.

There being no further questions the witness was excused and withdrew.

Maria Masotti, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

Q. Is that the new bridge at Bologna that you refer to?
A. Yes.

Q. State whether or not you saw an airplane burning?
A. Yes.

Q. State whether or not you saw a man being taken from that airplane?
A. I saw him being taken about three meters from the plane.

Q. State whether or not, if you knew, whether the man being taken from the airplane was the pilot?
A. I don't know because I was far away.

Q. What position was the man you saw removed from the airplane in after he was taken away from the plane?
A. I don't know exactly because I was far away.

Q. Do you know whether he was standing up or lying on the ground?
A. On the ground.

Q. State whether or not the men who removed this man from the airplane left him where he was on the ground after they brought him from the plane?
A. No, because I did not see.

Q. State whether or not you saw one of the men who helped to carry this man from the airplane strike the man who was on the ground?

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Maria Masotti.

Q. Where do you live?
A. 575 Via Lame, Bologna.

Q. In the month of May 1944 where did you live?
A. Pondarano.

Q. On a day in the middle of May 1944 do you remember an air raid alarm?
A. Yes.

Q. Do you know what date or the number of the day in May 1944 that an alarm was given?
A. 17th.

Q. Do you remember what time of the day the alarm was sounded?
A. About 3 o'clock in the afternoon.

Q. And what did you do when you heard the alarm given?
A. I went to the shelter.

Q. About how long did you stay in the shelter?
A. More or less a quarter of an hour.

Q. When you came out of the shelter where did you go?
A. Near to the bridge.

Defense: I object to the question. Leading question putting words into the witness' mouth.

President: Objection over-ruled.

Defense: I object to the question of asking her whether she saw him strike the man on the ground.

Interpreter: Whether or not. (Question repeated to witness.)

A. I saw one who threw a bomb. I saw one who did like this. (Witness clenches fist to chest.) I don't know who that was.

Q. Do you know whether or not the man you saw do like this (clenching fist) had anything in his hand or not?
A. I was far away and I don't know who it was. I don't know because I was far away.
Q.
Q. The man who you saw strike, did he strike with one hand or with two hands?

Defense: I object. She has not said she saw anyone strike. She has said she was too far away; leading the witness by asking her if she saw somebody do something rather than describing what she saw.

President: Objection over-ruled.

A. I don't know because I was far away. I only saw him do like this (clenches fist) but I don't know because I was far away.

Q. After you saw one man who removed this man from the plane make a motion like this (clenches fist) with his hands, what did you do next?
A. I went home inside the house. I entered the house and I did not see any more.

Q. How far were you from the man who was taken from the airplane and who laid on the ground when you saw a man make a motion like this towards him (clenches fist) at the time you saw it, saw the motion?
A. Very far away - probably more than 150 meters.

Q. Not 200 meters, between 150 and 200 meters?
A. Yes.

Q. But not nearer than 150 meters?
A. No probably further away.

Q. At the time you saw the man make the striking motion like this (clenches fist) were there any other man close around this body that you saw on the ground?
A. No, because when I saw this, it disgusted me so much that I entered the house and I didn't see any more.

Q. Explain to the Commission what you mean by being disgusted.
A. Because I too have a son and when I saw this dead man I thought my son might have been dead too.

Q. What killed this man if you know?

Defense: Objection.

President: Objection over-ruled.

A. I don't know. I don't know it because I went into my house.

Q. Ask her if she fully understood the question above where I asked her to explain to the court what she meant by "feeling disgusted". Ask her if she understands that question.
A. Yes, I understood. I meant that I too had a son who had been gone a long time and I did not know where he was and I thought that I had a son too and he might have found himself in the same position.

Prosecution: Your witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. Did you know a Fascist guard by the name of Bonazzi?
A. Yes, I knew that one.

Q. Do you know whether he was on duty at the new bridge on the day of this incident?
A. Yes.

Q. Did you see him approach this plane which had fallen?
A. Yes.

Q. What did he do as he approached this plane?
A. He took a bomb.

Q. What kind of a bomb?
A. He took a hand grenade and threw it against it.

Q. Against the plane?
A. He threw it against the plane. When we came out of the shelter, we saw him take this hand grenade and throw it against the plane.

Q. At that time was the pilot still in the plane?
A. Yes.

Q. Did you see the bomb explode against the plane?
A. Yes.

Q. Do you know Bonazzi well?
A. Yes, because he lived near me.

Q. And you know for a certainty that it was he who threw this bomb?
A. Yes, Bonazzi.

Q. Later did Bonazzi say anything to her after this event?

Prosecution: I object to anything that was said outside of the presence of the accused. It would be hearsay and probably not admissible unless for the purpose of showing the credibility or impeachment of this witness.

Defense: This woman has already testified that this guard Bonazzi - she has already identified him by this bomb; that may throw a great deal of light

on who is responsible for the events immediately thereafter. He may have made a statement. If he did, that may have shown his motives for throwing that bomb. It is evidence that is admissible in a regular court and, even if it is hearsay, the court can admit it. If the court does not want to believe it later, that is another thing.

President: Objection over-ruled.

A. When Benassi came back after this incident he said, "I had my revenge."

Prosecution: May it please the Commission, I wish it understood that this is a witness for the defense during testimony of this kind and not cross-examination of the witness.

Defense: How does that enter into the picture? Are you objecting to the question?

Prosecution: I am not objecting to the question. I am objecting to this witness being cross-examined in this manner. You are making this witness your witness on the questions you are asking her at the present time. They are not proper questions for cross-examination, as such, and do not cover the ground in the examination in chief.

Defense: I don't see how that affects it.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. When the statement was made by the witness that she saw a soldier throw a hand grenade against a plane, did she mean that the grenade struck the plane or was thrown at the plane?
A. I saw that the hand grenade had been thrown towards the plane.

Q. Ask her whether or not she could see from where she was or did see from where she was the grenade strike the plane?
A. No, I did not see that. I saw it being thrown but I didn't see it hit.

Prosecution: No further questions.

RECROSS-EXAMINATION

Questions by the Defense:

Q. Earlier in response to my question she said that she saw the bomb hit the airplane and explode, now she just said something that renders that statement - -

Prosecution: If the Commission please, if the counsel will place a direct question to the witness, we have no objection - -

Defense: All right.

Q. Did you see the bomb explode against the airplane?
A. I saw the bomb being thrown towards the plane. After that I saw smoke, but I don't know whether the smoke came from the plane or some distance away.

Prosecution: Does the court have any questions of the witness?

President: Apparently not.

Prosecution: Request that the witness be excused?

President: The witness may be excused.

There being no further questions the witness was excused and withdrew.

Prosecution: If it please the Commission the prosecution would like to have a five minute recess.

The Commission then recessed at 1525 hours and was reopened at 1540 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Esterina Cariani, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Cariani, Esterina.

Q. Where do you live?
A. 744 Via Lame, Bologna.

Q. What is your occupation?
A. Agriculturist.

Q. Where did you live in the month of May 1944?
A. Same address.

Q. Do you remember any unusual incident happening in or near that address on the 17th May 1944?
A. Yes, I remember well, well.

Q. State whether or not that incident was preceded by an air raid alarm?
A. Yes.

Q. Did you proceed to an air raid shelter upon hearing the alarm given?
A. Yes.

Q. State, if you know, how long you remained in the air raid shelter?
A. I don't know exactly, but about twenty minutes to half an hour.

Q. When you came out of the shelter state whether or not you saw a burning airplane?
A. Yes.

Q. State whether or not you saw some Italian and German soldiers near this burning airplane?
A. Yes.

Q. State how you identified certain men as Italian soldiers and other as German soldiers?
A. On the uniform.

Q. How far was you from the burning airplane at the time you identified the German soldiers and the Italian soldiers?
A. I don't know exactly, about 350/400 meters.

Q. How far was that from the entrance to the air raid shelter?
A. Twenty or thirty meters, I don't know exactly.

Q. When you identified the soldiers near the airplane as Italian and German soldiers what, if anything, did you see going on?
A. I saw a militia man almost on the ground saying, "shoot at him", but I don't know whether they shot. I saw a bomb being thrown. The plane had hit the ground. So much ammunition exploded. Then I saw the militia man approach the airplane and drag away, I think drag away the pilot. They went back from the plane and then they put out the flames. One made a strike with his gun. When he strike I saw a German approaching and hitting this militia man because he saw it had been him because he still had his gun in his hand. I don't remember anything else.

Q. Ask the witness to show the court what position the militia man had the gun in when he executed the action she refers to as a shot?
A. He was nearly standing up. He hit like this to the ground. (Witness indicates by standing up and pointing downwards.)

Q. With what?
A. With the gun.

Q. Then what did the German do?
A. The German approached and he hit him. I think he slapped him. I don't know exactly. He went away. I don't know whether alone or he took the man with him.

Q. From what you say state if this is true or not. You saw an Italian guard strike the airman who had been taken from the airplane with his rifle, similar to this (indicates) and after doing that a German soldier approached and struck the Italian guard similar to this (indicates.)
A. Yes, I don't know exactly whether he slapped him or whether he hit him with his fist.

Q. State whether or not there was a bayonet - - state whether or not you understand what a bayonet is?
A. To tell the truth I have always heard talking about it, but I don't really know what it is. I have seen bayonets. Aren't they the things the soldiers wear? I don't know that a bayonet is.

Q. Do you know what a rifle is?
A. Yes.

Q. Did you ever see a piece of metal fastened on one end of a rifle?
A. Yes.

Q. State whether or not the rifle that you saw the guard strike the man on the ground with had one of these pieces of metal fastened to one end of it?
A. No, from that distance one could not see.

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CROSS-EXAMINATION

Questions by the Defense:

Q. You spoke about seeing this airplane at the scene. What was the condition of the airplane?
A. Well it was a plane on the ground in flames.

Q. Did it look - - what condition was the plane in, in addition to the flames?
A. To tell the truth from that distance one could not really see. One saw one big flame.

Q. Did you see the plane come down out of the sky?
A. No, it was already on the ground.

Q. You spoke about seeing this group of soldiers drag this body from from the plane.
A. Yes, not a large group - two or three.

Q. But they were dragging the body?
A. Yes.

Q. From where you were standing did you see any response from this body?
A. No, because he was amidst the flames. I saw him in the plane and they ran towards him and dragged him out of the flames.

Q. At the moment you first saw him, the body was in the flames in the plane, is that right?
A. Yes, one could not see. It was too in flames. I could only see people running out towards it and dragging the body out of the flames, and the body also was in flames.

Q. And two or three soldiers rushed into this burning plane and dragged the body from the plane, is that right?
A. Yes.

Q. I have here a statement that you made before the investigators some time ago. Do you recognize this as your statement here? I will read from this: "Also from the same plane near the shelter I saw that a Fascist guard of the Guardia Nazionale Repubblicana, a certain Giuseppe, who was about thirty meters away from the airplane was firing at the aircraft. I also saw him throw a hand grenade at the airplane." Is that true or not true?
A. Yes.

Q. This individual that you know and recognize as Giuseppe, do you see him in the court-room today? Look around very carefully.
A. I don't recognize him.

Q. Do you know of a man by the name of Bonassi?
A. I know only Giuseppe, but not Bonassi.

Q. But you don't see Giuseppe in the court-room today. The man you know as Giuseppe?
A. No, I don't see him.

CONFIDENTIAL

Prosecution: All the statements in this case were taken by Flight Sergeant Amat of the Royal Air Force. The originals have been lost. I have copies signed by the sergeant. The sergeant is here and I would be glad to put him on the witness stand to identify these statements, as well as the interpreter, before reading, if the Commission so desires. I refer particularly to two statements. In the one statement the witness is dead. We were just informed today the witness is dead. The other has escaped from prison and it will be impossible to secure him. We have seven other witnesses, either here now or who will be here before morning.

Defense: The defense will state its position now. Positive objection to the introduction of these hearsay statements. It is true under Circular 114 hearsay may be introduced. It may be accepted. But here are complete declarations, complete statements of witnesses. Not just an occasional hearsay phrase, but it appears to be a complete three page statement. Well the witness is not here. That is a pretty important thing. Cross-examination is more than a phrase, more than a word. It is a pretty important reality in dealing with the average witness. You can see if you take a look at these statements, that if cross-examined, when the other side has been brought up the original statement is pretty worthless. So since we have absolutely no chance to cross-examine, we protest vigorously to their introduction as evidence.

President: The prosecution states that the sergeant who took these statements is present.

Prosecution: He is present and also the interpreter.

Q. The bomb or grenade that you saw Giuseppe throw at the plane and also the shooting that he did, did you see that strike the plane?
A. He threw it towards the plane, but I don't know whether it hit.

Q. You don't see this man Giuseppe in the court-room today?
A. No.

Q. With reference to this same statement that you made before. There is another sentence that I want to read to you. "The Fascist guard Giuseppe came up to me and said that he did not mind losing his wallet as he had succeeded in killing the pilot." Is that true or not true?
A. Yes, he said that. Coming back he said that.

Prosecution: Has the Commission any questions to ask the witness?

President: Apparently none.

Prosecution: Request the witness be excused.

President: The witness may be excused.

There being no further questions the witness was excused and withdrew.

Prosecution: May it please the Commission we have no more witnesses we are ready to put on at this time. We can take our case a little out of order and read some statements at this time if the Commission so desires.

President: Bring in the statements.

Defense: It seems the sergeant took these other statements. Like any ex parte statements, made without cross-examination, we feel that the validity is pretty nil and as far as the unavailability of these witnesses is concerned, we demand proof that they are in fact unavailable.

President: The statements may be admitted and the Commission will give such weight to these statements as they may warrant.

Charles Smat, a British subject, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Charles Gregory Smat.

Q. Where is your residence?
A. In London, England.

Q. What is your occupation?
A. Commercial traveller.

Q. What was your occupation during the year 1945?
A. I was a Flight Sergeant investigator of the Royal Air Force Special Investigation Branch.

Q. Did you make an investigation concerning the death of an American pilot, Lyle A. Morehead?
A. I did.

Q. I hand you herewith Prosecution's Exhibit No. 3 for identification and ask you if you took that statement?
A. This is a copy translation of a statement which I took from Marani, Edoardo.

Q. When did you take it?
A. On the 31st July 1945.

Q. Who was present?
A. Fenturo, Carmelo, Director of the Questura.

Q. What, if any, duty did he perform during the statement?
A. He was my interpreter. He also witnessed the statement and took it down in writing from the dictation of Marani.

Q. Do you know anything concerning the whereabouts of Marani at this time?
A. I believe him to be dead, shot by Partisans this year in the region of Bologna.

Q. Where did you obtain that information?
A. One - from the RAF pilot's station at Treviso; two - from a cousin of the deceased.

Q. State, if you know, whether or not that is a true statement made by Marani?
A. That is a true statement made by Marani. This is a copy.

CONFIDENTIAL

Q. That is a carbon copy of the original statement, is that correct?
A. That is correct, a translation of the original statement.

Q. I believe that you secured all the statements in the Lagi case?
A. Yes, I believe I did.

Q. I hand you herewith Prosecution's exhibit No. 4 for identification and ask you to state whether or not you took that statement?
A. I did.

Q. When?
A. On the 11th July 1945.

Q. Where?
A. At Bologna.

Q. Who was present at that time?
A. Brigadier Ponturo Carmelo.

Q. From whom did you secure the statement?
A. Maniessi Giuliano living at Calderara.

Q. Do you know of your knowledge whether or not he is available as a witness in this case?
A. I understand that he was in custody for an offense against the Italian State and has escaped and has not been apprehended.

Q. In connection with your investigation, I will get you to state whether or not you examined the cemetery records at Bologna?
A. I did.

Q. What, if anything, did you find in regard to Lieutenant Morehead?
A. In the cemetery at La Certosa, in the office, I was handed a file by an official. In that file was a piece of paper. On that piece of paper were a list of names which I was told were the names of Allied dead. Amongst these names I saw the name of Morehead. I then asked to be taken to his grave. I was told that his body had been removed by the United States Army authorities and reinterred at the Military Cemetery at Mirandola at Modena.

Q. Did the records disclose the date of the original burial?
A. To the best of my recollection there was a date on the paper 19th May 1944.

Prosecution: We may wish to recall this witness later.

There being no further questions the witness was excused and withdrew.

Prosecution: Would the Commission desire that this evidence in English be translated into Italian, or do you have an interpreter?

Defense: We have no copy. I think it would be a good idea to have it in Italian.

President: Yes it would.

Carmelo Ponturo, an Italian national, a witness for the prosecution, was sworn and testified as follows:

Questions by the Prosecution:

Q. State your name?
A. Ponturo, Carmelo.

Q. Where do you live?
A. I live in Rome.

Q. What is your occupation?
A. My occupation is Brigadier of the Public Security.

Q. What was your occupation during the year 1945?
A. My occupation during 1945 was just the same - interpreter at the Public Office in Rome.

Q. Did you assist Sergeant Reat of the Royal Air Force in making an investigation into the death of Lieutenant Lyle A. Morehead?
A. Yes, I have been his interpreter.

Q. I hand you herewith Prosecution's Exhibit No. 3 for identification and ask you to state what this is, if you know?
A. Yes, I know.

Q. Whose statement is it?
A. It is Mariani, Edoardo's statement and at the time I wrote down this statement he was at Treviso.

Q. Was the original in Italian?
A. Yes, it was.

Q. Did you make the translation?
A. Yes.

Q. Is that a correct translation of the original to the best of your ability?
A. Yes, I translated it to the best of my ability into English.

Q. I will get you to state whether or not that is a carbon copy of the original statement?
A. Yes, sir.

Q. By whom is it signed?
A. By me and by Flight Sergeant Reat.

Q. I hand you herewith Prosecution's Exhibit No. 4 for identification and will get you to state what that is, if you know?
A. Yes, I know this statement.

Q. What is it?
A. It is Maniezzi, Giuliano's statement.

Q. Were you present when that statement was made?
A. Yes, I was present and I wrote it down.

Q. The original statement was made in Italian, is that correct?
A. Yes.

CONFIDENTIAL

Q. Who translated it?
A. I translated it.

Q. Is that an exact translation from the original Italian, to the best of your ability?
A. Yes, sir.

Q. Did Marani read the statement before he signed it?
A. Of course.

Q. Did Marani read his statement before he signed it?
A. Yes, and it was signed at the top and the bottom of every sheet.

Prosecution: Any questions by the Commission?

President: Apparently not.

CROSS-EXAMINATION

Questions by the Defense:

Q. Just one question. Were these statements made under oath. Were these statements taken under oath?
A. Yes, he was cautioned.

Q. Actual oath. Was the hand raised? Did you see the hand raised of either of these two men?
A. No.

Q. The statement does not recite any oath.
A. No, no oath.

Q. So, in other words, there was no oath administered.

Prosecution: Any questions by the Commission?

President: No questions.

Prosecution: Request the witness may be excused.

President: The witness may be excused.

There being no further questions the witness was excused and withdrew.

Prosecution: I request that Exhibits Nos. 3 and 4 for identification be admitted.

President: They will be admitted.

Prosecution's Exhibits Nos. 3 and 4 read to the Commission.

Prosecution: Do you desire these statements translated?

Defense: Yes, if it pleases the Commission, we will have them translated to save the time of the court, if we can have the copies.

Prosecution: All right.

Q. Who translated it?
A. I translated it.

Q. Is that an exact translation from the original Italian, to the best of your ability?
A. Yes, sir.

Q. Did Marani read the statement before he signed it?
A. Of course.

Q. Did Marani read his statement before he signed it?
A. Yes, and it was signed at the top and the bottom of every sheet.

Prosecution: Any questions by the Commission?

President: Apparently not.

CROSS-EXAMINATION

Questions by the Defense:

Q. Just one question. Were these statements made under oath. Were these statements taken under oath?
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President: No questions.

Prosecution: Request the witness may be excused.

President: The witness may be excused.

There being no further questions the witness was excused and withdrew.

Prosecution: I request that Exhibits Nos. 3 and 4 for identification be admitted.

President: They will be admitted.

Prosecution's Exhibits Nos. 3 and 4 read to the Commission.

Prosecution: Do you desire these statements translated?

Defense: Yes, if it pleases the Commission, we will have them translated to save the time of the court, if we can have the copies.

Prosecution: All right.

Prosecution: May it please the Commission, the prosecution should have all its witnesses here by morning and we will have an opportunity to question them tonight and I would - -

Defense: If it please the Commission, in weighing these statements for their value, will they keep in mind, for the defense, that these are unsworn statements, that the accused was not identified by the witnesses in open court and that the accused, through his counsel, has had no opportunity - - nor was there any evidence at the time that the statements were taken as to whether there were questions establishing the truth and veracity.

Prosecution: May it please the Commission, this argument, like the one we had this morning, is something that should be taken up - -

Defense: No, it is purely a statement at this time.

President: The Commission is closed and will reopen at 0800 tomorrow morning.

The Commission then, at 1700 hours on 24 October 1946, adjourned to meet at 0800 hours on 25 October 1946.

Clyde W. Walker
CLYDE W. WALKER
Lt. Colonel, Inf.
Trial Judge Advocate

The Military Commission met pursuant to adjournment, at 0825 hours, 25 October 1946, all the members of the commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The interpreter, reporter and the accused were also present.

Settimio Piancastelli, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Piancastelli, Settimio.

Q. Where do you live?
A. Castel Guelfo, Bologna.

Q. What is your occupation?
A. Baker.

Q. Do you know the accused in this case, Pietro Magi?
A. Yes.

Q. Is he in this court-room?
A. Yes.

Q. Will you point him out?
A. (Witness indicates.)

Prosecution: Let the record show that the witness designated accused.

Q. What was your occupation in May 1944?
A. I was on service at the bridge - on duty at the bridge.

Q. What organization did you belong to?
A. Territorial battalion.

Q. Did the accused Pietro Magi belong to the same organization?
A. Yes.

Q. That was a part of the National Republican Army?
A. Yes.

Q. The National Republican Army was fighting as an Ally of Germany at that time, is that correct?
A. Yes.

Q. Do you recall any particular accident happening on the 17th day of May 1944?
A. When the plane came down.

Q. Where were you at that time?
A. In a shelter under the railway.

Q. Where at?
A. About nine or ten meters from the bridge.

Q. At the New Bridge across the Reno River in Bologna province, Italy?
A. Yes.

Q. How long had you been in the shelter?
A. Nine or ten minutes.

Q. Did you see the airplane before it crashed?
A. Yes.

Q. Did you see the airplane crash?
A. No.

Q. Was the plane flying very low or was it high when you saw it?
A. Very low.

Q. What would you estimate the distance to be from the plane to the ground at the time you saw it?
A. I saw it very far away, about 200 or 300 meters. It flew over houses and disappeared and I did not see it any more.

Q. Can you describe that plane?
A. It had two tails with two American stars.

Q. Do you know what kind of a plane it was or the name of it?
A. I don't - - they called it Mosquito - - but I don't know.

Q. I will get you to state whether or not the investigator showed you a number of pictures of various planes and whether or not you were able to

identify that particular plane from the pictures you saw?
A. Yes.

Q. And what did you then determine it was?
A. I don't know what it is called.

Q. Did you not make the statement at that time, "Among many photographs shown to me I identified the airplane as a Lockheed Lightning?"
A. Yes.

Q. What did you do after the plane crashed?
A. I was on the near side of the river and I did not move from there.

Q. You mean on the side on which the plane landed?
A. No, on the other side. I was here on the left side and the plane fell on the other side of the river.

Q. What was your position with regard to the plane? Were you looking at the front of it, the side of it or the rear of the plane?
A. One could not see that. It was all one flame. You could not see.

Q. Did you see anyone going towards that plane?
A. Yes.

Q. Who?
A. Bonassi and Sergeant Lodi.

Q. What did they do?
A. Bonassi threw a hand grenade against the plane.

Q. What did they do next?
A. They they approached further and they dragged out what I thought was a human body.

Q. Was that on the side of the plane next to you?
A. Yes.

Q. You could see that distinctly at that time?
A. You could recognize the Sergeant and Bonassi had been with me because he was on duty with me and I knew that he had run towards the plane.

Q. I hand you Prosecution's exhibit No. 2, a map of that locality. Can you pick out the location where you were standing at that time?
A. It was on this bank (witness indicates.)

Q. Can you locate your approximate position on this bank?
A. I was about here (pointing to position on map.)

Q. At this point?
A. Yes.

Q. Mark that point XP on the map. That is your approximate position, is that correct?
A. Yes.

Q. Was that point higher than the location of the plane?
A. Yes.

Q. Was it a clear day?
A. Yes.

Q. After you saw Sergeant Lodi and Nannasi dragging the body, what did you next see?
A. I saw a militia man coming - striking at the body.

Q. What did the militia man have in his hands at that time?
A. One could not distinguish it; it seemed a musket-gun.

Q. Was the bayonet fixed, or do you know?

Defense: Objection. A leading question, putting words in his mouth.

President: Objection sustained.

Q. Was there anything attached to the musket?
A. I did not see it from so far away. I could not distinguish it.

Q. Was the milite who was striking at the body in Italian uniform?
A. Yes.

Q. Do you know who that was?
A. I learned it later, I did not know at that moment.

Defense: What he heard later from other people has no bearing, asking what he knows - - it is what he saw, not what he heard later.

President: Objection over-ruled.

Q. Did you later that day talk to the accused Pietro Magi?
A. Yes.

Q. About how long after the scene which you have just described?
A. About one and a half to two hours.

Q. Who was present?
A. Nobody. We were on the bridge to go to the other place and look at the inspection books.

Q. What was said at that time?

Defense: Will the witness speak louder so the accused can hear?

A. I said, "Do you think you committed a nice act?"

Defense: Objection.

Q. What was his reply?
A. He was silent. I said, "You must go to the front if you want to go like this. You may find yourself in the same position tomorrow.

Q. What did Pietro Magi say?
A. He said he hit him and he thought a lot of himself. He boasted about it.

Q. Reading from your statement, did you not say, "About two hours after the crash I met the Fascist Guard Magi on the Ponte Nuovo, which is about 200 meters from where the airplane crashed, who boasting said, 'I killed

the pilot, he had come here to kill the people but I killed him?"

Defense: Objection. He read from these statements. The witness is in the court. There is no need to refer to statements he made a year or so ago in ex parte investigation. The witness is in the court. You don't need to go back to the statements.

President: Objection over-ruled. He can refresh his memory with the statements.

Q. Was that statement true?
A. Yes.

Q. Did you go to the scene of the crash?
A. No.

Q. Did you, at any time, go nearer the pilot than the position which you have marked out on the map, or did you see the pilot except from that one position?
A. The pilot I did not see from a shorter distance. I did not go near him. I saw the plane in the evening.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. You have stated previously that you saw this plane in the sky just before hitting, striking the ground. Is that correct?
A. I saw it about three or four kilometers up.

Q. Just before the plane crashed?
A. No.

Q. How long before the plane crashed, did you see this plane in the air?
A. About ten minutes.

Q. Where were you then after the time that you saw the plane in the air?
A. In the shelter.

Q. You went into the shelter?
A. Yes.

Q. When did you first know that the plane had crashed? While you were in the shelter?
A. I could hear it. Magi, myself and two women were in the shelter. Then everybody ran out. I remained inside. Then you could hear the crash.

Q. You could hear the crash inside the shelter? Is that what caused you to run out?
A. You could hear the explosion of the bombs when it crashed.

Q. How far away was this shelter from the scene of the crash? How far were you when you ran out of the shelter?
A. About 400 meters.

Q. About 400 meters. What was this shelter constructed of?
A. It was like an aqueduct.

Q. Concrete, metal or wood?
A. Cement.

Q. What were you doing at the particular moment of this crash. How did you happen to realize what the date was?
A. I remember it because they pointed out to me when they came to interrogate me at my home. I don't remember it, but they showed me the newspaper.

Q. At home?
A. Yes.

Q. How long later was that?
A. When I came home from Germany, about July.

Q. No, I think you misunderstood the question. What were you doing at the particular moment when you were in the shelter and you heard this crash some 400 yards away?
A. I was lying on the ground.

Q. Within the shelter?
A. Yes.

Q. And then it was the noise of this crash, you were sure, that brought you and the others in the shelter to the outside?
A. No, it was not exactly that. You could hear the explosion of the bombs and I thought that there was still shooting and I stayed inside.

Q. Then you stayed inside rather than go out when you heard this noise, is that correct?
A. Yes.

Q. Well then how long did you stay inside, after you first heard this noise, before coming out?
A. Three or four minutes.

Q. As you came outside the shelter, which direction did you look?
A. I went to the bank on the river and I saw the plane.

Q. You stated that you have seen this plane. Could you see the plane, was it completely in view from your position there?
A. No, because it was all enveloped in flames. You could only see a big flame, a column of flame.

Q. What was happening?
A. The plane was - burst into flames. You could see it. You could see the smoke.

Q. I have a statement here that you made in July of 1945. I'd like to read a few sentences from this statement in reference to what you testified previously here today, as to whether they are true or not true: "While I was in the shelter, I heard a loud noise and after one minute I went out from the shelter and I saw that an airplane had crashed in the bed of the River Mme at about 350 meters away from where I was." Is that true or not true?
A. Yes, correct.

<u>C O N F I D E N T I A L</u>

Q. About 400 meters. What was this shelter constructed of?
A. It was like an aqueduct.

Q. Concrete, metal or wood?
A. Cement.

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A. Yes, correct.

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Q. "The airplane was burning and was surrounded with thick black smoke?"
A. Yes.

Q. "Under the wings of the airplane I saw painted two white stars in a circle and that the airplane had a double fuselage and was of aluminum." Is that true or not true?
A. That I saw about three or four hours later when I went there, but at that moment you could not see that.

Q. You could not see that at that moment, is that correct?
A. You could not see that.

Q. Why could you not see it?
A. Because it was surrounded by this thick smoke and you could not distinguish anything.

Q. Was there a fire there too.
A. The flames you could not see. You could see the smoke.

Q. Now this next sentence: "At the same moment I saw Sergeant Lodi, and the Fascist Guard Bonassi Giuseppe running towards the airplane and when they were at a distance of about 50 meters from the airplane, they stopped and fired with their rifles at the airplane and threw hand grenades in the same direction of the airplane." Is that true or not true?
A. Yes.

Q. "After this Sergeant Lodi and Bonassi arrived at the burning airplane that was surrounded by smoke." Is that true or not true?
A. Yes.

Q. "After this Lodi and Bonassi disappeared in the smoke for a moment and I saw them again in almost the same moment dragging a human body which I thought was the pilot." Is that true or not?
A. Yes.

Q. How were they dragging this body or were they carrying it?
A. Dragging it.

Q. Dragging it after coming out of the air shelter. What was the closest that you ever approached the plane and the body of the pilot? Just after leaving the shelter, in the first ten minutes after leaving the shelter, what was the closest that you approached?
A. 200 to 250 meters.

Q. In the first ten minutes after leaving the shelter, the closest then that you approached the body of the pilot or the plane was 200 meters?
A. Yes.

Q. Could it have been 250? You were estimating this. Could it have been 250 meters?
A. About 200, I don't know.

Q. During this first ten minutes, did you at any time see the accused in the vicinity, the immediate vicinity of the plane?
A. No.

Q. You did not see him?
A. No.

Q. Any time later, referring to this man Bonassi that you have testified to here before, did you hear Bonassi, at any time later, make any statements?
A. Yes.

Q. What were these statements?
A. He boasted. He said, "He came to machine-gun us, but this time he won't machine-fun us any more. This time he stayed there."

Q. What did he say, if anything - - did he just say he would stay there? Why did he say this?
A. To show himself up.

Q. In what way?
A. I said, "Do you think you did something wonderful?And he boasted.

Q. What was this particular thing that he was boasting about?
A. Myself and Maria we said, "What do you think, you think you did something wonderful"and he said, "well this time he stayed there."

Q. Did Bonassi, at any time, mention losing anything?
A. Yes, the wallet with five thousand lire.

Q. These incidents that you have seen, did you report any of these to your senior officer or non-commissioned officer present that day or any day later?
A. No.

Q. You mentioned Poriani. Was he there at the time?
A. I did not see him.

Q. Was Poriani your marshal?
A. He commanded both detachments, but he was on the other side. We were on this side - left. On this side, on the left side, we had Sergeant Mandina.

Q. Did you report anything to Sergeant Mandina of the incidents that you had seen?
A. Mandina was with me after I came out of the shelter; I went to the bank of the river and he was with me.

Q. Sergeant Lodi that you mentioned, did you report anything to him?
A. No.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. In answer to a question in cross-examination, you stated that you did not see the accused in the vicinity of the plane during the first ten minutes. Did you mean that you did not see the accused or did not recognize him?
A. I had not even seen him.

Q. You stated on direct examination that you saw a milite running towards the body and that he made motions like he was bayonetting or stabbing a body?

Defense: Objection. He did not state that.

President: Objection sustained.

Q. I will get you to state whether or not you recognized the Fascist guard that you saw running towards the body, when Sergeant Lodi and Senesi were dragging the body away from the plane?

Defense: Objection. He has already answered two previous questions, because of the distance he could not recognize that individual.

President: Objection over-ruled.

A. No.

Q. At that time you did not know whether that Fascist guard was the accused or not, is that correct?

Defense: Objection. It is the same question.

President: Objection over-ruled.

A. I could not say that.

Q. I would like to read the following two sentences, following the one Colonel Lafayette just read to the accused - -

Defense: Again I object to the prosecution trying to impeach its witness on this statement. At a court-martial he is not entitled to do that.

President: Objection over-ruled.

Q. "When the pilot had been dragged about 15 meters, I saw a Fascist guard who had been running arrive where the pilot was. When he was close to the pilot he struck the pilot with force with his bayonet which was fixed to his rifle." Is that true?
A. I saw him strike. I did not know whether the bayonet was fixed on the rifle or not. I just saw him strike.

Prosecution: Does the Commission desire to ask any questions?

EXAMINATION BY THE COMMISSION

Questions by Major Muhbach:

Q. Did you actually see the body lifted from the airplane?
A. Lifted did you say?

Q. Lifted from the cockpit of the airplane?
A. Yes, it was dragged out of it.

Q. That was from 250 meters approximately?
A. Yes.

Q. Before he made a statement that he had seen two soldiers going towards the plane and disappearing in the smoke. How is it that they could

disappear in the smoke towards the plane and you could actually see the body being lifted from the plane?

A. I don't know. I just saw them dragging the body out. I thought a moment later it was a pilot. I just saw them dragging it out.

Q. Out from where?

A. From out of the smoke.

Q. Then he did not see the body actually lifted from the airplane proper?

A. No, in the midst of the flames.

President: No more questions.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. Was there any breeze blowing that day?

A. A little.

Q. Was it blowing towards you or in the opposite direction?

A. In my direction.

Q. In your direction?

A. A very slight breeze, a very slight wind.

Prosecution: No further questions. Does the Commission have anything further?

President: Apparently not.

Prosecution: Request the witness may be excused.

President, The witness may be excused.

There being no further questions the witness was excused and left the court-room.

Prosecution: May it please the Commission, the witness Bruno Federzoli has requested that he be excused if at all possible. The prosecution is through and we have no further questions to ask him. He desires to return home to look after his business by tomorrow morning.

Defense: The defense agrees.

Prosecution: May it please the Commission, may we have a five minute break. We would like to place a drawing on the board to illustrate something to these various witnesses.

President: The Commission will close for a five minute recess.

The Commission then recessed at 1055 hours and was reopened at 1100 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Oreste Andrecetti, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Andreotti, Oreste.

Q. Where do you live?
A. Bologna.

Q. What is your occupation?
A. Railway employee.

Q. On the 17th May 1944 where did you live?
A. Always in Bologna.

Q. At about 1450 hours on the 17th May 1944, do you remember where you were?

Defense: What is the answer?

A. Yes, they sounded an alarm.

Prosecution: I suggest that the witness confine his answer to the question and we will proceed more rapidly. Yes or No.

A. Yes.

Q. Where were you at 1450 hours on the 17th May 1944?
A. I was running away on my bicycle along the bank of the river.

Q. Along the bank of what river?
A. River Reno.

Q. Was that anywhere near the city of Bologna, Italy?
A. Yes.

Q. Was that anywhere near to the Ponte Nuovo at Bologna, Italy?
A. Yes.

Q. I show you on the blackboard some marks, one group of these marks marked at the top 'A' is to represent the Ponte Nuovo.
A. We call it the railway bridge.

Q. Your attention is directed to another irregular mark running across and under the marks representing the railroad.
A. Where?

(Mark indicated to witness)

Q. That means the water part of the river bed where the water ran in the river bed in May 1944. His attention now is directed to some other marks indicating the buildings in the city of Bologna. His attention now is directed to the fact that an arrow is on the left hand side of the blackboard, as you face it, indicating the approximate north, in this drawing. His attention is directed to the Bologna side of the River Reno and that there are marks there indicating the extremity of the river bed, the bluff on the side of the river next to Bologna. I ask you,

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DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Andreotti, Oreste.

Q. Where do you live?
A. Bologna.

Q. What is your occupation?
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Prosecution: I suggest that the witness confine his answer to the question and we will proceed more rapidly. Yes or No.

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DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Andreotti, Oreste.

Q. Where do you live?
A. Bologna.

Q. What is your occupation?
A. Railway employee.

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Q. Was that anywhere near the city of Bologna, Italy?
A. Yes.

Q. Was that anywhere near to the Ponte Nuovo at Bologna, Italy?
A. Yes.

Q. I show you on the blackboard some marks, one group of these marks marked at the top 'A' is to represent the Ponte Nuovo.
A. We call it the railway bridge.

Q. Your attention is directed to another irregular mark running across and under the marks representing the railroad.
A. Where?

(Mark indicated to witness)

Q. That means the water part of the river bed where the water ran in the river bed in May 1944. His attention now is directed to some other marks indicating the buildings in the city of Bologna. His attention now is directed to the fact that an arrow is on the left hand side of the blackboard, as you face it, indicating the approximate north, in this drawing. His attention is directed to the Bologna side of the River Reno and that there are marks there indicating the extremity of the river bed, the bluff on the side of the river next to Bologna. I ask you,

after the explanation, do you understand generally the drawing that is on the blackboard?

A. Yes, a little, yes. I am not one who has studied drawing, but I understand.

Q. Is the arrow indicating north pointing approximately towards north on this drawing?

A. North is on this side.

Q. In which direction does the river Reno flow?

A. It goes south.

Interpreter: He is asking do you mean in which direction the water runs?

Prosecution: That's right.

A. The water is almost always still.

Q. And when it does run, in which direction does it run, north or south? Does the water run north or south or east or west?

A. When it is full, I have never had an opportunity of seeing the river because it is so rare. It is never full -- because I don't live in the vicinity.

Q. In what direction does the railroad bridge cross the river Reno at Bologna?

A. From Bologna it goes up towards Milano.

Q. What direction, north, south, east or west?

A. Towards north.

Q. Then this direction is north?

A. Yes.

Q. Can you show us on this map where you were at about 1450 hours on the 17th May 1944, when you heard the air raid alarm?

A. As soon as I heard the alarm - at the moment I heard the alarm, I was at the office of the locomotive deposit.

Q. Then what did you do?

Defense: Speak louder.

A. As soon as I heard the alarm, I took the bicycle and I ran away.

Q. Where did you go?

A. Towards the bridge. As soon as the alarm sounded, I drove towards the bridge towards a little village which calls itself Trebo.

Q. Is that on the Bologna side of the rivur or the opposite side from Bologna?

A. This is Bologna. There is a little road which goes up here and then turns off here towards Trebo. When I heard the plane I had to stop here.

Q. Can you indicate this place on the map as where you stopped when you heard the airplane?

A. When I heard the plane instead of turning off here, where there was a little road, I stepped and stayed at the bank of the river.

Q. All right. Where were you - this line represents the top of the bank and this line represents the backside of the bank down at the road - where were you when you first saw the airplane?
A. I had taken this little road and when I heard the plane, I threw myself immediately towards the bank of the river instead of turning off.

Q. Then, a line similar to this, continuing on - when you heard the plane you were at point 'B', is that right? That's point 'B'.
A. Yes.

Q. Then you abandoned your bicycle and threw yourself on the ground at a point marked 'C', is that correct?
A. When I abandoned the bicycle I was almost immediately behind the bank.

Q. This is the top of the bank. This is the backside of the bank. This represents the backside of the bank, is that correct?
A. Yes, this is the backside of the bank, correct.

Q. Did you see the airplane, did you see an airplane approach?
A. The plane came almost towards me.

Q. Point out where you first saw the plane with reference to the bridge?
A. It came from that side (witness indicates on map).

Q. State whether or not the point marked 'D' indicates about where you first saw the airplane?
A. He saw the plane further away.

Q. Indicate the direction that the plane approached your position here?
A. From here and it came down like that. (witness indicates)

Q. You saw the plane coming in this direction?
A. Yes.

Q. What was the condition of the plane when you saw it here?
A. It smoked. It was almost in flames. One could not see the flames, but it smoked. There were some little flames coming from the plane.

Q. Then the plane approached you. Tell the Commission what you saw happen from the time the plane entered this area here until it either passed on by or came to rest.
A. When it hit the ground, it got flames.

Q. Where did it hit the ground?
A. About here. (witness indicates) Immediately on the other side of the water.

Q. Does the circle marked 'E' indicate practically where the airplane came to rest?
A. Yes, where the plane fell.

Q. Did you see the plane at all times, from the time it first came into your vision back here, until it came to rest on the ground near the River Amo?

A. Except for the moments when I heard the explosions and went to the ground with my head - put my head on the ground.

Q. Did you see the plane at the exact moment it came in contact with the ground?
A. Yes.

Q. Will you indicate with your hand, the angle, the approximate angle that the plane made the earth. How the plane formed when it hit the earth. Was it this way, this way (indicating). This is the ground, indicate with your hand about how you saw it meet the ground.
A. (Witness indicates)

Q. Did the plane slide after it touched the ground or not?
A. No.

Q. After the plane settled on the ground, state whether or not you saw any person or persons get out of the plane?
A. Yes, after a few seconds.

Q. Will you indicate in which direction was the nose, the nose being the front of the airplane, which direction was the nose pointed?
A. This way (witness indicates on map).

Q. Which side of the airplane did this man leave it from?
A. This side (indicating on map).

Q. Which direction did he travel, if any, after he left the airplane?
A. He made three or four meters towards the water.

Q. In other words the man got out of the airplane and walked or proceeded three or four meters towards the water?
A. Yes, then he fell to the ground.

Q. In what manner was this man travelling when you saw him out of the airplane proceeding towards the water?
A. He was rather bent.

Q. Was he walking or crawling?
A. From the distance where I was, I could not distinguish whether he was dragging a leg or something.

Q. At the time this man left the airplane, were there any other people in the near vicinity of the airplane?
A. Nobody.

Q. At the time you saw this man get out of the airplane where were you with reference to the river bank? Did you change your position in any way?
A. No, always in the same position.

Q. Then explain to the court how you could see over the top of the bank to what was going on in and around the airplane?
A. I was stuck to the bank and my head was over the top.

Q. Then your position was approximately at the top of the bank and not at the side of the bank, is that correct?
A. Yes, obviously.

CONFIDENTIAL

Q. Do you know how far it is from the position that you occupied on the Bologna side of the same river bed to where you saw the airplane come to rest?
A. It may have been 200 to 250 meters. I cannot say exactly now.

Q. But your best judgment is that the distance from where you observed the airplane come to rest and the man leave the airplane was between 200 and 250 meters?
A. 250, 200.

Q. From the point where you observed the airplane come to rest and the man got out of the airplane, are there any mounds or any places in the ground higher than the place where you observed this accident?
A. No, this is the highest point.

Q. From the place where you observed the flight of the airplane and observed the airplane come to rest and observed the man get out of the airplane are there any trees growing in there that would obstruct your vision?
A. Nothing, absolutely clear view.

Q. Do you remember whether it was a nice clear day or a dark cloudy day?
A. Like today, very sunny.

Q. Did you observe what kind of an airplane came in, came to rest on that day in the river bed?
A. Yes, it was one of those white ones, aluminum color with two tails.

Q. Did you at any time after the airplane came to rest and you saw the man get out of the plane see any other people approach the area of the airplane?
A. As soon as the plane had come down, I saw a militia man coming from the railway.

Q. State whether or not, no state in what direction you saw the militia man proceed from that point he came down from the bridge? From this point (indicating on map).
A. Yes from that side.

Q. Indicate with your finger where the militia man was when you first saw him?
A. I saw that he came from the railway.

Q. Did you at any time see the militia man in or near the position indicated by the position X10?
A. This is all right. Having come down from the railway, I saw him here.

Q. Did you see any other militia man other than the one indicated here at that time?
A. No, I have not seen any.

Q. State whether or not, state, if you know, about how long it was after the airplane crashed and the man got out of the airplane that you saw this militia man here?
A. I saw the militia man as soon as the plane had come down, running towards the plane.

Q. After the militia man reached the airplane, did you see the militia man do anything?
A. The militia man came from here. He ran and made a little curve and he came right up to the front of the plane there.

C O N F I D E N T I A L

Q. Where was the airman when he reached the plane?
A. Did you say the pilot.

Q. Yes, where was the airman?
A. When the militia man arrived at the front of the plane, the pilot was about to get out.

Q. Then after that did you see any other people anywhere in this area?
A. Nobody.

Q. How long did you remain in this position after the airplane crashed?
A. I may have been there quarter of an hour, twenty minutes or twenty-five. I do not know exactly.

Q. Then after the militia man reached this point, at the same time the pilot was getting out of the plane here, is that correct?
A. Yes.

Q. Then the pilot proceeded towards the river?
A. No, the pilot made three or four steps.

Q. Yes, towards the river. What did the military man do at the time or while the pilot was taking his steps towards the river?
A. When the militia man was here and the pilot was going out, I saw that the militia man was throwing something. I don't know what it was. There was so much smoke you could not distinguish what it was, whether it was bombs or stones or what.

Q. Then what did you see the militia man do next, if anything?
A. When the pilot had fallen to the ground, I saw the militia man approaching him and making some move. I don't know whether - what he had in his hand - whether it was a bayonet or gun, or I don't know whether he hit him with his fists. I could not distinguish that.

Q. What leads you to believe that he hit him with anything?
A. Because I saw the movement of the arms.

Q. Indicate, as best you can, the movement of the arms that you saw?
A. From the distance where I was, I saw him do like that (witness raises right arm and plunges downwards).

Q. Was he not about the same position with reference to the ground as you are now? Was he standing up at the time he made these motions?
A. Yes, standing up.

Q. And the pilot, what position was he in on the ground?
A. He was already on the ground.

Q. At the time the pilot left the airplane what was the condition of the view in and around the airplane, with reference to fire or smoke? Was there any fire or smoke or was there absence of fire or smoke?
A. There was smoke but there was some wind which sent it to the opposite direction - to the direction opposite to where I was.

Q. Did the smoke or fire obstruct your view in any way of the activities in and near this airplane at the time you saw the man get out of it?
A. It obstructed from behind the plane, but from where I was you could see the plane burn.

Prosecution: Repeat the question. It can be answered "Yes."

(Question repeated by reporter.)

A. It was not obstructed because there was a little wind which dispersed it in the opposite direction and in front of me I saw the plane which burned.

Q. After you saw the militia man standing over the body of the pilot, who had moved from the side of the plane three or four meters, and you saw this militia man make motions standing in an upright position like this over the body of the pilot - -

Defense: Object. He never has said he saw motions like that.

President: Objection sustained.

Q. Making the motions as were indicated by the witness, in an upright position over the body of the pilot, did you see anyone else in or near the vicinity of the airplane?
A. Nobody.

CROSS-EXAMINATION

Questions by the Defense:

Q. Can you describe the militia soldier which you observed on the other bank?
A. Well just a man from that distance.

Q. In other words, you can not identify him any better than that he was a man?
A. A man.

Q. Would you identify him if he were in this court-room today?
A. I could not because from the distance where I was, you could not see the face of the man, the outlines of the man.

Q. But you could see his size?
A. From that distance, one could not even judge his height.

Q. At that time were you sure he was in uniform, in the uniform of the militia?
A. One could recognize that. He was dressed in a sort of grayish green.

Q. And how was the pilot dressed?
A. Who knows? From the distance from where I was, you saw flames on one side.

Q. The pilot was burning?
A. Burning.

Q. Was he wearing a parachute?
A. I could not judge that, whether yes or no.

Q. Was he wearing a military uniform?
A. You could not distinguish that from the distance and I had never seen a uniform like this - American or English or whatever they were.

CONFIDENTIAL

Q. Can he now distinguish an American from an Italian uniform?
A. Yes, now I can.

Q. Can he tell the court what uniform the guard on the left at the door is wearing?

Prosecution: If the Commission please, the counsel will show the relevancy - -

Defense: The condition of his eyes is pretty relevant.

President: Proceed, there are two.

Q. The one on the furthest left?
A. Italian uniform.

Q. What is he wearing on his belt?
A. A revolver.

Q. Does the witness wear glasses? He has testified - you have testified that you saw the militia raise and lower his arm. Might not that have been a salute to the dying pilot?
A. I don't know, how can I know whether he saluted them.

Q. In other words, he has no idea of what happened?

Prosecution: I object. There is no purpose served in arguing with the witness. Interrogate him if you have some fact, but it is not a question, it is an argument. Do you know, or don't you?

President: Objection sustained. Frame questions so he can answer "Yes" or "No".

Q. When the militia came near the pilot, how many bombs did he throw?
A. Who, the militia man?

Q. Yes, the militia man.
A. The movement of the arm, I saw two or three times.

Q. Did you observe any explosion near the pilot?
A. There was some bursting of the plane, some that whistled, others that did not whistle after bursting.

Q. There were explosions.
A. Explosions of the plane.

Q. At the time the grenades were thrown, what was the position of the pilot?

Prosecution: Objection. We have no evidence by this witness that a grenade was thrown.

Defense: I will use the word "bomb" then.

Prosecution: No evidence that a bomb was thrown.

Defense: He just testified that he saw a bomb thrown. He saw a movement of the hand - no evidence that a bomb was thrown!

President: Amend your sentence to say "An object was thrown."

Questions by the Defense:

Q. At the time the militia man moved his arm as if to throw some object, what was the position of the pilot, that is, was he standing or on the ground?
A. On the ground.

Q. Did the militia man fire a rifle - withdraw that question - Prior to moving his arm, did you observe any other action on the part of the militia man?
A. How do you mean before the militia man moved his arm?

Q. Before he reached the point where he moved his arms, where he threw something?
A. No.

Q. Because of the view that distance involved from where you were standing, isn't it possible that it might have been another Italian soldier, another militia man leaving the plane?
A. How do you mean another militia man? I saw a man coming out of the plane.

Q. How was he sure he was the pilot?
A. I judged it to be the pilot who came out of the plane. He came out of the plane so I thought it was the pilot.

Q. How did he get out of the plane? Did he open the door of the plane?
A. That I don't know. I saw that he came away from the plane.

Q. Could it not have been someone else who had arrived at the plane immediately after the crash?
A. No, there was nobody.

Q. Why could it not have been someone else?

Prosecution: If the Commission please, if the question could be asked, "Did he see anybody else come out", not to say, "Why could not there have been?" To argue. We object.

President: Objection sustained.

Q. When you saw this plane approach you, were you not as a matter of fact frightened?
A. And how I was frightened!

Q. Didn't you conceal yourself in the bank for some time?
A. As soon as I noticed that the plane was almost on the ground, I threw myself on the ground.

Q. Didn't you stay there for some time?
A. As soon as I had thrown myself to the ground and I heard that the plane had come down, I lifted my head to see what was going on.

Q. Were you nervous for some time thereafter?
A. For some time I was full of fear.

Q. Isn't it possible that that fear may have impaired your vision?

Prosecution: I object.

President: Objection sustained.

Q. Did you make any attempt to leave this position and approach the fuselage plane?
A. No.

Q. How long after the crash did you leave this position?
A. I may have been there for some twenty minutes, then I went away when people started to come to the plane, approach the plane.

Q. Do only approached the plane?
A. No, first of all there was the water and besides I was not very keen to go near it.

Q. After this incident you described when a militia soldier acted against the pilot, did you observe other militia, other Fascist soldiers, approaching the scene?
A. After about quarter of an hour or twenty minutes, when I was about to leave, people started to come and approach the plane.

Q. For quarter of an hour there was only this one militia man at the scene of the crash?
A. For about quarter of an hour, it may have been thirteen or fourteen minutes, I did not see anyone. I saw the plane burn and the militia man for about quarter of an hour. I didn't see anyone else.

Q. Did this militia man leave the scene of the accident before you left - while he was observing?
A. Later some people started to arrive and then the Germans came.

Q. Before the trial, did you go over the details of this testimony with the attorney for the prosecution?
A. I do not even know him.

Q. In other words, he has never talked to them before he arrived in this court-room?
A. Which one would it be?

Q. Either of the attorneys for the prosecution?
A. I spoke last night at my hotel, where I was staying, with some Captain, this one, these two (indicates).

Defense: Your witness.

Prosecution: Does the Commission have any questions it wishes to ask the witness?

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Knobloch:

Q. You say the wind was blowing toward the plane from where you were?
A. Towards the plane.

CONFIDENTIAL

Q. Was the smoke very heavy?
A. It was white smoke.

Q. But it was heavy?
A. So, so, it is difficult to judge.

Questions by the President:

Q. Referring back to your previous testimony, you stated that for a fifteen minute period, my quarter of an hour period, that just the one militia man was in the immediate vicinity of the plane?
A. Nobody else.

Q. From the position you were in, would you be able to see other people approaching in the back of the plane?
A. From where I found myself, if the people came from either side of the plane, I would have seen them. If they had come from the back, I would not have seen them because in any case there was already smoke.

Q. During the entire fifteen minute period that he was observing the burning plane, was the body of the pilot within his view all that time?
A. When it was on the ground, you could just see it.

President: Apparently no more questions.

MEDIACT EXAMINATION

Questions by the Prosecution:

Q. In the reckoning of time, with reference to the reckoning of time, do you fix the time of approximately fifteen minutes from the time that the airplane came to rest on the ground until the time other people arrived or from the time that the militia man arrived at the front of the airplane until other people arrived at the scene?
A. I reckon from the moment the plane hit the ground and when I threw myself to the ground up to the moment that other people started to arrive.

Q. And the figure fifteen minutes is merely - is an accurate calculation of time, or is it an estimated calculation of time?
A. Estimate.

Prosecution: Any other questions by the Commission?

President: Apparently none.

Prosecution: Will the Commission excuse the witness?

President: The witness will be excused.

There being no further questions the witness was excused and withdrew.

The Commission then recessed at 1230 hours and was reopened at 1415 hours, at which time all the members of the commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Armando Albertassi, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Albertassi, Armando.

Q. Where do you live?
A. Calderara di Reno.

Q. What is your occupation?
A. Blacksmith.

Defense: Would you ask him to speak louder please?

Q. Where did you live in May of 1944?
A. Always in Calderara.

Q. What was your occupation at that time?
A. Always the same, the usual.

Q. Do you remember where you were on May 17th, 1944?
A. An alarm was sounded and I came from work and passed the bridge. I always have to pass the bridge because my house is on the other side of the bridge. When I was coming by the plane that had been hit by antiaircraft - the plane had been hit by anti-aircraft fire - its tails were bursting into flames and it came down. It had been going low to avoid the anti-aircraft. Then it came down crossing the bridge into the river.

Q. To what bridge do you refer?
A. The New Bridge.

Q. That is near Bologna?
A. Yes, near Bologna, outside Porto Lame.

Q. I call your attention to this drawing on the blackboard. This is supposed to represent the railroad bridge across the river. Bologna is on this side.
A. Coming from my home going towards Irebo, along the river, the road follows the river about 50 meters from the bridge, not even 50 meters.

Q. That's from the Ponte Nuovo or New Bridge?
A. Yes. I was going along the river towards my home when I passed the bank I saw the plane coming out from - one could see that it had been hit.

Q. This line here is supposed to represent the high bank along the river. This line represents the water.
A. There must be a little road here, one here and one there.

Q. Does this line represent the true north?
A. Towards Ferrara going up. If this represents Bologna, one would have to be going through Bologna, one would go towards Ferrara going through the middle of the road.

Q. The top of this drawing is approximately north, is that correct?
A. Yes.

Q. What time was it that you were passing here when you heard the air alarm?
A. About 3 o'clock. At 3 o'clock.

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Q. What did you do?
A. Crossing the bridge when I heard the plane I stopped. As soon as I had stopped I heard the other plane circling above. The plane had been hit and came down and the other plane was circling above. As soon as it came down the pilot made two steps from here to there.

Q. Where did you stop?
A. Under the tunnel.

Q. When did you see the plane that had crashed in the river bed?
A. 17th May.

Q. At what time did you first see the plane on the 17th May?
A. It must have been 8 o'clock, but it did not fall into the water, it was outside the water.

Q. Did it fall in the dry river bed?
A. It was dry.

Q. Did you see the plane before it fell?
A. Yes.

Q. Where were you at that time?
A. As I said before I was going up north when I saw the plane coming from that direction, and when it was about half way over the bridge, it made a bend and came down.

Q. Where were you along here when you first saw the plane? Just point out the spot?
A. I was about eight or ten meters from the bridge here (indicates).

Q. That is when you first saw the plane?
A. Yes.

Q. Then where did you go?
A. When I saw the other one circling above, I went under the bridge, under the arch of the bridge. I went under that.

Q. Did you see this plane crash?
A. Yes.

Q. Where were you when you saw the plane crash?
A. Always under the bridge. I did not move from there.

Q. Could you see from the point where you were across the river to where the plane was?
A. Yes.

Q. Were you near the river bank at that time?
A. Yes, I was under the tunnel and there was a sort of hole and I could see out of it right near the river.

Defense: Could we see the spot where he is pointing to.

Prosecution: Right here, under the bridge, under the arch.

Q. With reference to the bridge, point out where the plane fell.

Defense: Objection. I suggest that everything be erased from the map

from the previous witness and let this witness go ahead and put in his own markings.

President: Objection sustained. Erase those marks and have some chalk.

Q. This is supposed to represent the banks and this the bed of the river.
A. I am working somewhat outside Bologna about here. The alarm sounds. We take our bicycles and run out. We follow the road here which leads under the bridge, comes out the other side, and there is a little road here going towards the tunnel. I go round here and stop at about this point. When I am on that point I see the plane. When I am on this point here about to turn round, about to turn round in order to go on the bridge, I see the plane coming from the direction of the aerodrome, which is here (indicates). The plane came from this direction across the bridge. When it was about half way over the bridge, it turned round and fell here (witness indicates on map.)

Q. In which direction was the nose or front of the plane after it fell?
A. In this direction. This is the plane. This would be the front and these are the two tails and it fell so that the front pointed this way.

Q. At the time the plane fell, where were you located?
A. Underneath here.

Q. Were there any mounds of earth or trees or any other intervening objects between you and the plane?
A. No, I was on top of the tunnel and the river is low down. There was nothing in between.

Q. Was it a clear day?
A. Yes, clear, one like now.

Q. Did you see the plane strike the bed of the river?
A. Yes.

Q. Did the plane come straight down or did it come down at an angle?
A. It came down from the aerodrome, passed over the bridge and went down. It did not go straight down like this, it was slightly bent.

Q. Demonstrate on the table how the plane hit the ground.
A. (Witness demonstrated.)

Q. Did it stop suddenly or did it slide along the ground after it struck?
A. It slid at a distance from about here to the wall.

Q. Did you see any movement about the plane after it crashed?
A. The pilot coming out and then we stopped here.

Q. The pilot got out of the right side of the plane, is that correct?
A. From the side towards the water.

Q. Did you see him get out of the plane?
A. Yes.

Q. Will you demonstrate to the Commission how he got out of the plane?
A. (Witness demonstrates by falling off chair onto floor and sliding a little way.)

Q. Did he crawl along the ground or did he walk?
A. No he crawled. He had the legs burned.

Q. By legs burned, do you mean his clothing was on fire at that time?
A. I did not see the pilot from nearby. When I had seen the pilot coming out, I was here. Then I heard the other plane circling above and then fly away. I then saw civilians on the other side of the bank. These civilians took him, dragging him along the ground because the plane was burning. They may have taken him a distance of about 50 meters and they covered his legs with sand because they were burning. On the other side the militia man came. They did duty on the railway bridge.

Q. Where did you see the militia man first.
A. About here (indicating) and they came towards the plane.

Q. What, if anything, did you see them do?
A. The other planes could not be heard any more and it was all rather quiet by now so everybody came running. Before the militia man had reached the plane, there was another one who was on the bridge, about here. This one threw a bomb, but from there to here he could not reach. He would not have reached this spot with the bomb, and I think he only threw it in order to intimidate the civilians. One of these militia men when he arrived where the pilot was, he took - - at first he had sent these civilians away out of the way - and struck the pilot. I was underneath there (indicating). I went back on to my road this way. I reached this point (indicating a point west of the river). A German car came this way. I met it here and they asked me where the plane had fallen. There was another little road going up here.

Q. In other words, he is on this side of the bridge instead of this side?
A. The plane I should bring it here.

Q. The plane is on this side of the bridge? Place the plane where it actually fell as near as you can.
A. I put it over there and then we are all right. If this is Trebe, the aerodrome is here. When I was here with these Germans they asked me where the plane was. We went together up to here. We went together up to here and there a little road leads down to the river. They went down to the river whereas I remained here. When this German doctor or whatever he was arrived here at the pilot, to take the pilot, that militia man ran towards him and said, "I killed him." The German did not say anything and proceeded towards the pilot. When the German arrived at the pilot and saw that he had actually been hit, he hit the militia man with his fist and gave him a kick in the back. I remained there for another little while and then I went back to work. In the evening when I left work, I went home. I live, more or less, here (indicating). I went to see the plane for a second time and I arrived at the point where there were Germans with a little truck on to which they loaded a body. Then I turned away. I went home and I did not see any more.

Q. When you were here with the militia, did you see him strike the pilot more than one time?
A. No, one only.

Q. Did you see what kind of a knife or instrument he had in his hand at the time he struck the pilot?
A. No, I saw the movement.

Q. Would you be able to identify the militia that you saw strike the pilot and said, "I killed the pilot"?
A. I don't know him.

CONFIDENTIAL

Q. How close to the militia that struck the pilot were you?
A. About 150 meters.

Q. Did you see him at a closer distance at any time?
A. No because when I left this point to come here, it was always more or less the same distance.

Q. Do you think you could recognize him now?
A. No, because as I said, I don't know him, not even after the liberation, and I could not know him now.

Q. How was he dressed at that time?
A. As a militia man.

Q. In uniform?
A. In uniform.

CROSS-EXAMINATION

Questions by the Defense:

Q. Now you say, you testified that at the moment of the alarm you were about here, is that correct?
A. Yes, I was working here.

Q. Were you working with any others?
A. It was the State railway and there were about five or six hundred.

Q. Working right here?
A. Yes.

Q. Where did the others go when you left here?
A. We scattered here and there. Everyone went where he thought he was safest.

Q. Now this plane that you saw, after you got to this point here (indicates on map) - during the alarm how far away was that when you first saw it?
A. As I said, the first time I saw the plane I was about here, about to go under the bridge. The plane was in the sky and had then fallen here and I was here. I saw the other one circling above.

Q. How high was that in the sky and how far from here when you first saw it?
A. I was already under the bridge and I saw it about ten meters above the bridge. When one is as afraid as that, one does not step to measure.

Q. The first time you actually saw the plane was about ten meters above the bridge, just before it struck, is that correct?
A. Yes.

Q. You testified I believe that the plane had been struck by anti-aircraft fire from a nearby German airfield?
A. Yes.

Q. When did you notice that? At the moment that the plane was ten meters above the bridge? The first time you saw it or previous to that time before the plane had reached the bridge?
A. When I was here, I saw a plane in the sky and then it came down over the bridge. That's when I saw it

Q. I understood you to say that after you reached here the first time you saw the plane, it was immediately above the bridge about ten meters, is that correct?
A. I saw it from about ten meters above, over the bridge.

Q. Are you sure when you first actually saw the plane?
A. Yes, the first time I saw the plane was when it was already over the bridge and I ran down there and saw it about ten meters over the bridge.

Q. And at that time you saw the plane, it had been damaged by anti-aircraft fire, is that correct?
A. Yes.

Q. What damage did you see to the plane? What made you think the plane had been damaged?
A. It had been hit because you could see the smoke coming out from the plane.

Q. A lot of smoke?
A. Smoke columns about that thickness.

Q. Did you see any holes in the plane?
A. That I could not say.

Q. How fast do you estimate that plane was going at the time you saw it. 400 kilometers an hour, 500?
A. No, it could not.

Q. How fast?
A. It could not have reached 250?

Q. As the plane struck the - where did the plane strike? I believe you testified, you testified as to the plane landing where?
A. If that is the aerodrome, it came that way over the bridge.

Q. As you were watching the plane and it struck the ground, did anything unusual occur at the time it struck the ground?
A. I saw the pilot going out.

Q. Previous to this, I mean as the plane struck the ground, was there an unusual explosion, or more smoke or fire from the plane?
A. The plane burst and the ammunition that was in it.

Q. At that moment. Is that right? Was it a big explosion?
A. When it had hit the ground there was a big explosion.

Q. What next happened? You mentioned the pilot - you testified that the pilot got out of the plane. What was his condition as far as you could see?
A. I saw him get out from my position - that distance you could not see whether he was burned very much or whether his legs were burned or his uniform. All I could see was the movement of his dragging himself out.

Q. He dragged himself. He did not walk?
A. Dragging.

Q. Was your visibility good at that time so that you could see anything that might happen within the immediate area of that crashed plane?
A. When it burst into flames - -

Q. I understood you to say that after you reached here the first time you saw the plane, it was immediately above the bridge about ten meters, is that correct?
A. I saw it from about ten meters above, over the bridge.

Q. Are you sure when you first actually saw the plane?
A. Yes, the first time I saw the plane was when it was already over the bridge and I ran down there and saw it about ten meters over the bridge.

Q. And at that time you saw the plane, it had been damaged by anti-aircraft fire, is that correct?
A. Yes.

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Q. He dragged himself. He did not walk?
A. Dragging.

Q. Was your visibility good at that time so that you could see anything that might happen within the immediate area of that crashed plane?
A. When it burst into flames - -

President: Have the witness sit down.

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Hines:

Q. I believe the witness testified that civilians dragged the pilot from the position in which he had fallen to about fifty yards away from the plane. As the civilians dragged the pilot away from the plane, did the pilot endeavor to help himself by crawling or making any movement?

A. About fifty meters from the plane. I did not see that. I saw the pilot going out and dragging himself and then the smoke. Then after about ten minutes, after the planes overhead had flown away, I saw these civilians approach the pilot and then drag - and I saw them dragging behind them, but I didn't actually see the pilot any more.

Questions by Major Muhbach:

Q. You made a statement that you met the Germans coming down the road at a certain distance toward the airplane. You also stated that someone ran up to the Germans and stated, "I killed him". How far were you from the Germans and this militia man?

A. It would seem about 130 to 140 meters.

CONFIDENTIAL

Q. When what burst?
A. Burst - when it burst into flames, for about ten minutes nothing at all happened after the pilot got out, then civilians arrived and dragged the pilot away.

Q. Civilians arrived and dragged the pilot away?
A. The pilot was already out. The plane was exploding and burning and they dragged him around the ground and then succeeded in dragging him out from the plane.

Q. This was civilians that assisted the pilot?
A. Yes, at first civilians came to drag him out, then cover his legs because they were burning.

MADIANOT EXAMINATION

Questions by the Prosecution:

Q. After the plane crashed and the pilot had crawled out of the plane, did you look at your watch or do you just estimate that ten minutes elapsed before anybody arrived?
A. It is just my idea, I don't have a watch.

Q. In other words you were just standing there looking during that time? Was there anything at all happening during that period of time?
A. No.

Q. Is the period of time estimated from the time the plane crashed or from the time the pilot had dragged himself from the plane?
A. After the pilot had dragged himself out of the plane.

Prosecution: Do the members of the Commission desire to question the witness?

Q. You could hear that statement from that distance away?
A. Yes, because he was shouting loud.

Q. You could not recognize the man that said it though?
A. No.

Questions by the President:

Q. You testified that it was about ten minutes after the pilot crawled out of the plane until these civilians came to him. They were the first people to reach the pilot?
A. Yes.

Q. When did the militia man, when did he reach the pilot? After the civilians had dragged the pilot aways further and put him down or before, or when was it?
A. He arrived afterwards when they had already dragged him out and covered his legs.

Q. And when he made a striking motion toward the pilot were there other people around the pilot at that time?
A. He was in front, then behind him there were other militia men that were coming, but he was in front.

Q. Were the civilians still around the pilot when the militia man made that striking motion toward the pilot?
A. He had sent them away.

President: Apparently no more questions.

Prosecution: Request the witness be excused.

President: The witness may be excused.

There being no further questions the witness was excused and withdrew.

President: The court will now take a five minute recess.

The Commission then recessed at 1550 hours and was reopened at 1545 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Pasquali Tolmino, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Tolmino, Pasquali.

Q. Where do you live?
A. Ca' de Fabbri, Bologna.

Q. What is your occupation?
A. Carpenter.

Q. Are you working as a carpenter now?
A. No, I am military.

Q. On the 17th May 1944 what was your occupation?
A. I was in the National Republican Guard.

Q. Where were you stationed?
A. San Vitale, on the bridge.

Q. State whether or not you were on duty on the 17th May 1944?
A. I was on duty.

Q. At about 1450 hours on the 17th May 1944, do you remember where you were, yes or no?
A. At the barracks.

Q. By way of explanation, I will direct your attention to the blackboard and to the lines on the blackboard. The lines here, here and here are to indicate Ponte Nuovo. The irregular lines here are to indicate the water in the bed of the Reno River, during the month of May 1944. This line that you observe running across here is one of the sides of the river bed, the River Reno bed. This line running along here indicates the other bank of the River Reno. These lines here are to indicate a steep bank. These marks, these squares, irregularly placed, are to indicate buildings in part of the city of Bologna. Modena would be, as I understand it, in that direction.
A. The position in which we found ourselves, Bologna was here and Modena was there (indicating on map).

Q. Observe Ponte Nuovo. Can you locate on or near this bridge where your barracks were located?
A. If that is the way, Bologna is here.

Q. The railway is here also?
A. I was on the other side, not on the side of Bologna, the other side.

Q. Where is the guard house?
A. From the point on the bridge where we were, Bologna would be between East and South - Southeast.

Q. Do you know in which direction water flows in this river?
A. Towards Ferrara.

Q. Which way is that, this way or this way? Would that be that direction?
A. (Witness indicates on blackboard)

Q. Is the steep bank on the River Reno on the Bologna side or on the opposite side of the river?
A. That is on the other side where I was, not on the side where Bologna was.

Q. The high bank is on the other side, if this is Bologna, then you were over here, is that right?
A. I was there.

Q. Now if this is the bridge, can you show us where your barracks was on this side of the river? Place a cross on the - -
A. The map is drawn badly. I don't understand anything.

(Witness draws new map on blackboard)

CONFIDENTIAL

Q. First make the bridge, draw the bridge.
A. This would be the river, this would be the water. This would be high level.

Q. Ask him to show which bank is the bank that is steep. Which is the steep bank?
A. Both banks are the same.

Q. Are both banks high or steep or are they gradual and sloping?
A. On my side they are about four meters high, three or four meters.

Q. But on the other side?
A. On the other side it may be a little less, but, more or less, the same.

Q. Now make a few squares indicating Bologna.
A. This is the bank, Bologna is about four kilometers from it.

Q. Make two or three more marks to indicate Bologna. Bologna is indicated by small squares at the upper right hand corner of the blackboard, is that correct? The arrow points North is that correct?
A. Yes.

Q. Place your finger on the blackboard indicating the location of the barracks in which you were at about 1450 hours on the 17th May 1944.
A. (Witness indicates)

Q. I mark X with the letter 'B'. Does that indicate on this drawing where your barracks is located? Tell the Commission whether or not at the time you heard the air raid alarm and were in your barracks, did you have your rifle with you, yes or no?
A. No not on me. I was in bed.

Q. Did you stay in the barracks or did you leave it when you heard the alarm?
A. I was in the barracks when I heard the alarm.

Prosecution: Repeat the question.

A. As they gave many alarms, I did not go out. I stayed there.

Q. Did you at any time after this alarm leave the barracks?
A. Afterwards I heard another alarm and I then went to the refuge, to the shelter because the planes arrived.

Q. What planes?
A. American or British planes.

Q. Do you know how many planes there were in the air near Bologna at that time?
A. I have not seen them.

Q. How far was the air raid shelter from your barracks?
A. About ten meters.

Q. Would you place your finger on the blackboard indicating the location of the air raid shelter?
A. (Witness indicates)

Q. Place a X and put the letter 'S' for shelter.
A. It crossed the railway.

Q. Under the ground or above the ground?
A. Under ground.

Q. Where was the entrance? Put your finger on the spot indicating the entrance to the shelter.
A. Here were the barracks. Immediately here I went into the shelter. (Witness indicates)

Q. The cross X with the letter 'S' indicates the entrance to the air raid shelter which extended to the south the complete width of Ponte Nuovo. Do you know the accused in this case?
A. Yes.

Q. What is his name?
A. Magi, Pietro.

Q. Will you point him out to the Commission?
A. That one (indicating)

Prosecution: Ask him to stand.

Q. Is that the accused standing?
A. Yes.

Q. At the time that you went to the air raid shelter, do you know where the accused was?
A. He was on guard.

Q. Where?
A. On the bridge.

Q. Ponte Nuovo?
A. Yes.

Q. Ponte Nuovo, the bridge indicated here?
A. Yes.

Q. Do you know on what part of the bridge he was when you went to the air raid shelter?
A. He was in his little shelter there. He could not move.

Q. Indicate where that was on the bridge?
A. (Witness indicates)

Q. The X and the 'T' on the drawing indicates tower or the guard post referred to by the witness. Did anyone also, was anyone also with you in the barracks at the time the second alarm was sounded?
A. The sergeant major.

Q. What was his name?
A. Poriani.

Q. Who else?
A. There was Marani.

Q. Who else?
A. Marani, Neri.

Q. Who else?
A. Fiorentoni and Alberghini, Lodi.

Q. What did they do when the second air raid alarm was sounded?
A. The sergeant major hid in the shelter.

Q. State whether or not all of you who were in the barracks proceeded into the air raid shelter?
A. Yes, we all.

Q. Did the accused Magi go into the shelter with you at that time?
A. He could not.

Q. At any time later did Magi go to the shelter?
A. Yes.

Q. About how long after you and the others entered the shelter, did the accused go to the shelter?
A. Four or five seconds.

Q. Was he armed when he came into the shelter?
A. He had the musket-gun.

Q. State whether or not the bayonet was fixed on that musket-gun at the time he entered the air raid shelter?
A. Yes.

Q. How long did you remain in the air raid shelter?
A. Perhaps another four or five minutes.

Q. Then what did you do, see or hear?
A. As the planes had already left, we came out.

Q. When you left the air raid shelter what, if anything, did you see immediately?
A. Nothing.

Q. State whether or not you saw one of the airplanes on the ground, after you left the air raid shelter?
A. No.

Q. State whether or not you saw any unusual smoke after you left the air raid shelter, just yes or no?
A. When I came out of the shelter, I went on to the river bank.

Q. Did you have a weapon with you at that time?
A. No.

Q. What did you see, if anything, when you went to the river bank?
A. I saw smoke.

Q. Where was that smoke with reference to this chart located, place your finger on the board where you saw that smoke coming from?
A. Here (witness indicates).

Q. I have placed a X and SM to indicate smoke. Place your finger on the board indicating the place where you stood when you saw this smoke.
A. (Witness indicates)

Q. I place FS indicating the spot where you first saw smoke. How long did you stay at this place FS?

C O N F I D E N T I A L

A. When we saw the smoke we ran down into the barracks. We were there for about two minutes.

Q. You ran to the barracks indicated by B?
A. B (indicates on map)

Q. At the time you saw the smoke from point FB, where was the accused?
A. He was with us.

Q. When you went to the barracks where did Magi go, if anywhere?
A. He was there on the river bank.

Q. Why did you go to your barracks?
A. Because I wanted to go and see what it was that was burning.

Q. I don't believe he understands the question, repeat the question.

(Question repeated)

A. To fetch the musket-gun.

Q. What musket-gun?
A. The musket-gun, model 98 that we had.

Q. Did the accused go to the barracks?
A. No.

Q. Why not?

Defense: Objection.

Prosecution: If he knows.

Defense: The witness should only say what he sees or knows not what he thinks.

Q. State whether or not the accused had a weapon with him at the time the rest of you went to the barracks to obtain your musket-guns?

Defense: That is a leading question. You are putting it in his mouth.

President: He will answer the question.

A. Yes, he had the musket-gun.

Q. Was that the same gun that he had when he went into the air raid shelter?
A. Yes.

Q. And the same bayonet fixed on it that was fixed on it when he went into the air raid shelter?
A. Yes.

Q. After you left the barracks, after you had obtained your weapon and left the barracks, when did you next see the accused Magi? Put your finger - excuse me - (to interpreter) ask him to put his finger, as nearly as he can, on the spot where he first saw Magi after obtaining his weapon.
A. (Witness indicates)

Q. We will indicate the place where Magi was first seen after the witness obtained his weapon by X with the number 1. Where were you at the time you saw Magi here at No. 1? Where was Magi when you first saw him after obtaining your weapon from the barracks?
A. (Witness indicates) He went on to the bridge. He had gone on to the bridge.

Q. What part of the bridge?
A. Near his post. He could do about twenty meters.

Q. Magi was back at his post and you saw him from here?
A. Yes.

Q. Then what, if anything, did you see Magi do?
A. Magi, he was standing there.

Q. Did he stand there for any length of time? How long did he stand there?
A. Another three or four minutes.

Q. Then what did he do?
A. Later on ammunition exploded.

Q. Ammunition exploded. Where did the ammunition explode?
A. There (indicates)

Q. Then what did Magi do?
A. 250 or 300 yards away from where the ammunition exploded - I was afraid that something might fall on top of me so I went back without looking at Magi and then when I was there (indicating) I saw Magi coming down.

Q. Indicate that point again.
A. Here (witness indicates).

Q. X1 indicates where you first saw Magi. You moved to the right and where was Magi then?
A. I was walking.

Q. No Magi, where was Magi when you was here? What did you see Magi do?
A. He came down from the bridge.

Q. Indicate with your finger about the path he travelled from the bridge?
A. (Witness indicates)

Q. About like that?
A. (Witness draws on blackboard)

Q. Now how did Magi travel this path? Did he walk or did he crawl or did he walk part of the way and crawl the rest of the way, just how did he travel?
A. He ran.

Q. From either one of these positions had you seen any airplane up to this time?
A. No.

Q. Did you see the smoke here?
A. Yes.

Q. How how long did you remain at this second location?
A. I saw him once and he was going there.

Q. Were you still at this location when Magi was at this location?
A. No.

Q. Where did you go?
A. I was here (indicating)

Q. What, if anything, did you see from this location?
A. I saw Bonassi and Lodi who were dragging the body - they dragged that pilot.

Q. Did you see the airplane when you were in this position?
A. No, no plane.

Q. Did you see any smoke?
A. I could see the smoke but not the plane.

Q. How far were you when you were at this position from the smoke?
A. About fifteen to twenty meters.

Q. Where were you when you first saw Lodi?
A. There (indicating).

Q. Where was Lodi with reference to this airplane and the pilot's body when you first saw the airplane and the pilot's body?
A. Left of the body.

Q. Where was the accused Magi?
A. From about fifteen meters where I was, I could see Magi who had arrived and struck - -

Q. Struck what?
A. Between Bonassi and Lodi I saw him striking the pilot.

Q. With what?
A. With a musket-gun - bayonet on the musket-gun.

Q. Indicate to the Commission, by illustration, how the accused Magi struck the body of the pilot with the bayonet of the musket?
A. (Witness indicates by rising and thrusting downwards with his hands)

Q. Then what did you do?
A. I heard the people shouting.

Q. What were the people shouting?
A. Of this inhuman act. People were shouting, "He killed him."

Q. Did you see any German soldiers present at the scene of this incident?
A. Yes.

Q. What, if anything - did you see any German soldier immediately after you saw the accused attack this body with the bayonet?
A. He was near me. He ran over there and struck him with his fist.

Q. What did Magi do after the German struck him with his fist?
A. He went back.

Q. Did you hear him say anything at that time?
A. No, I didn't hear anything.

Q. Where, if anywhere, did you go from this position where you saw the incident which you have just described?
A. Until they had taken him away, I remained there.

Q. How close was the closest you were at any time to the pilot?
A. About sixty to eighty meters.

Q. Sixty to eighty?
A. Sixty to eighty.

Q. After Magi attacked the pilot with the bayonet did you have, at any time, occasion to observe the body of the pilot?
A. Not immediately.

Q. When did you have occasion to see the body of the pilot?
A. After they had taken him over there.

Q. Who took him over there?
A. Lodi and the German soldier who was there took him over there. I went there too.

Q. How far was that from the airplane?
A. He was about fifteen to twenty meters and then they took him another fifteen to twenty meters.

Q. Was it when he was moved the second time that you went up and observed the pilot - strike that - When did you observe at a closer distance than fifteen or twenty meters the body of the pilot?
A. I have not seen him --from about the distance of about fifteen meters - Lodi and the other one transported him from about fifteen to twenty meters from the plane and then they took him further away.

Q. When was it that you went up and looked at the pilot?
A. When they had taken him over there (indicating).

Q. What did you see when you looked at the pilot as to the condition of his head?
A. All this was missing (indicating part of the head and face).

Q. Do you know what caused that?
A. No, I saw Lodi doing like this with his foot and afterwards he said that he had struck the pilot on his head, kicked the pilot immediately after he was struck with the bayonet and before they took him away.

Q. Show the Commission just what you saw Lodi do with his leg and the heel of his foot.
A. I could see that he was doing like this, but I could not see exactly if he was kicking his face.

Q. Did you observe any other wounds on the pilot?
A. All this was missing (indicating right lower chest area).

Q. How large a hole did you observe in the body of the pilot, if any?
A. Like this (indicating about half a yard).

Q. When did you next see Magi?
A. At the barracks.

CONFIDENTIAL

Q. Did you see the weapon that Magi carried at the time this incident took place at the barracks, yes or no?
A. Yes.

Q. Describe the bayonet and what, if anything, you saw on it?
A. It was like this (bent)

Q. Was the bayonet dirty or clean?
A. Dirty with blood.

Q. Who cleaned the bayonet?
A. No, Magi.

Q. To whom did that gun belong?
A. To me.

Q. Did the accused ask you to clean the blood off of the bayonet?
A. He threw it down and I said, "No I don't want it." Magi threw it down. He took it and tried to straighten it out and did not succeed.

CROSS-EXAMINATION

Questions by the Defense:

Q. You mentioned you were going to tell this to the Sergeant Major. Did you, in fact, report it to the Sergeant Major?
A. No.

Q. Who was the Sergeant Major?
A. Forlani.

Q. Do you know whether the Sergeant Major conducted an investigation after the incident?
A. Yes.

Q. You made no report of this. Did you make any report of this to the Sergeant Major in this investigation.
A. No.

Q. Why not?
A. Because Magi told me to keep quiet, to swear not to say anything.

Q. At the time you were approaching the plane, rather approaching the smoke, did you hear any sounds of explosions?
A. The explosions started immediately.

Q. Do you know what it was that was exploding?
A. The ammunition that was on the plane.

Q. Did you see Bonazzi as he approached the plane?
A. No.

Q. Did you see Lodi as he approached the plane?
A. No, I only saw them when they went up.

Q. When you arrived at this point and saw the body in the vicinity of Bonazzi and Lodi, how long did you stay here to see the body in that position?
A. Twenty to twenty-five seconds.

Q. Was there any motion, any movement in this body?
A. I did not see that it moved.

Q. Will you describe the condition of this body, that is, the way in which it was lying?
A. When I arrived it was lying like this (witness indicates that the body was lying on its back, face up, arms to side).

Q. And you saw no motion, is that true?

Prosecution: If the Commission please, request the counsel to fix the time of this action.

President: Will you fix the time before or after the body was moved.

Q. Before the incident involving Magi that you described, did you see any motion whatsoever in this body?
A. No.

Q. At that particular time what were Bonassi and Lodi doing?
A. They had left him and then Magi arrived and struck him. Then they took him and transported him up there.

Q. Did you hear Bonassi make any remarks?
A. No, I didn't hear it.

Q. Did you hear Lodi make any remarks?
A. No.

Q. Who else, what other persons were in the vicinity of the airplane or body at this time?
A. At that moment there was Magi, Lodi, the German who had arrived and Bonassi.

Q. Did you see any civilians in the area?
A. No.

Q. Let us go back to the incident he describes involving Magi. Did Magi walk up to the body or run to the body, just how did he reach the body?
A. He ran.

Q. From which direction? Will you point out on the map the direction followed by Magi?
A. (Witness indicates on map)

Q. This is the body?
A. Yes.

Q. And you were standing here?
A. Yes.

Q. Did you see the blade of the bayonet enter the body?
A. No.

Q. Is it not possible it may have hit the belt of the pilot and glanced off?
A. I saw him striking with the bayonet, but I did not see whether it hit the belt or the stomach or other parts of the body.

Q. Did you observe any penetration of the bayonet?
A. No.

Q. There was only one such motion in the direction of the body, is that true?
A. Yes.

Q. And yet you say you saw a hole in the side of the pilot's body that size (indicates about 8 inches in diameter)?
A. Yes.

Q. Do you know whether the people who were gathered were making any remarks concerning Bemassi?
A. Yes, some of the people were making remarks about him.

Q. Will you tell the court the remarks you heard? Will you tell what Bemassi said first?
A. That he had lost his wallet.

Q. Did he say anything further?
A. No.

Q. What were the people saying?
A. The people came running to look.

Q. To the original investigator - the investigating officer to whom you first made a statement, the following statement was made, "People that gathered in the place were saying that the pilot had been killed by the militia Bemassi who had thrown against the pilot some hand grenades." Will you tell the court whether you made that statement to the investigating officer?
A. Yes, the people said so.

Q. Do you personally know anything about that incident?
A. Afterwards they told me about it.

Q. Regarding the condition of the body, did you observe before the incident involving Magi, did you observe a large hole in the body at that time?
A. No.

Q. He has related how Lodi kicked the head of the body. Did this happen before or after the incident involving Magi?
A. Afterwards.

Q. During the time that you were here and you heard explosions from the vicinity of the plane, did you hear Bonassi shouting to the other soldiers?
A. No, not from there.

Q. I refer to your statement made to the investigator in which the following sentence is contained, "I stopped behind a small mound of land as I heard some machine gun shots and some explosions. From the place where I was I heard that Bonassi, with a loud voice, was saying as follows: 'Come out, come out' and shortly after I heard two more explosions that I thought were caused by some bomb that might be in the airplane." Did you make this statement to the investigator?
A. Yes.

Q. Did you observe how the pilot was dressed?
A. No, I could not.

Q. Do you recall whether he was wearing a belt?
A. Yes.

Q. Do you recall the general weight and size of this belt?
A. About this width (indicates).

C O N F I D E N T I A L

Q. Do you, by chance, know what is meant by a parachute belt?
A. I have never seen one.

Q. You have testified that some time after this incident, Magi brought you a bayonet - a soilet bayonet - how long after the incident near the plane did this happen? How much time elapsed before Magi brought you the bayonet?
A. About two or two and a half hours later.

Q. Was the entire bayonet covered with blood, or only the end? Describe a little more fully the condition of the bayonet?
A. You could see the signs on it like lines.

Q. Would you say it was wet with blood?
A. No it was not wet; it was a little dirty.

Q. Did you or did you not tell the investigator in this statement that, "Two hours later the bayonet was bent and wet with blood?"
A. It was dirty.

Q. What is your answer to the statement that you said the bayonet was bent and wet with blood?
A. Yes, I said so.

Q. Why did you change your story?
A. Now change?

Q. In other words you now say that that is true, that the bayonet was bent and went with blood two hours later?
A. Yes.

Q. And you are certain of this?
A. Yes.

Q. Two hours later!

Defense: Your witness.

Prosecution: May it please the Commission, I would suggest an adjournment at this time for the redirect examination of this witness.

President: The Court will close until 0900 hours in the morning.

The Commission then, at 1720 hours on 25 October 1946, adjourned to meet at 0900 hours on 26 October 1946.

CLYDE W. WELLER
Lt. Colonel, INF.
Trial Judge Advocate

The Military Commission met pursuant to adjournment, at 0930 hours, 26 October 1946, all the members of the commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The interpreter, reporter and the accused were also present.

The witness on the stand at the time of the adjournment resumed the witness stand and was reminded by the Judge Advocate that he was still under oath.

RADIRECT EXAMINATION

Questions by the Prosecution:

Q. You are the same witness who testified yesterday?
A. Yes.

Q. State your name for the record, for identification:
A. Pasquali Tolmino.

Q. I would draw your attention again to the incident which occurred on the 17th May 1944. After the air raid alarm was sounded and after you went to the air raid shelter and after you proceeded from the shelter to the barracks and obtained your weapon, and after you proceeded towards where you saw the smoke ascending from the airplane, and after you saw - -

Interpreter: He does not understand.

Prosecution (to interpreter): Will you explain that I am merely attempting to refresh his memory, to get him back to a certain point for him to give the Commission additional information about what he saw and heard at the scene of the incident about which he testified yesterday. Ask him to listen carefully to what you are saying and when I want him to answer I will pause.

Q. Yesterday he testified that he proceeded towards the smoke and took cover at a place about, as I recall it, 200 meters from the smoke. Then he went across to another position about the same distance from the smoke. Then, very slowly, he went around to the position indicated by my finger and marked X. Then he saw the pilot removed from the smoke to a distance of about 30 meters from the burning airplane?
A. I could see from about 15 meters that they had dragged him.

Q. Then after the pilot was taken a distance of about thirty to fifty meters from the airplane - -
A. They stopped. Magi came then. After two or three seconds they took him further up.

Q. And when they moved him the second time, taking him further up, the pilot was then between thirty and fifty meters from the burning plane?
A. About thirty meters.

Q. And at that time he felt that it was safe for him to go on up to the body?
A. It was dangerous.

Q. Well did he - ask, now this is a question - did he then proceed up to where the pilot lay?
A. After they had taken him there.

Q. How close did he go to where the pilot lay?
A. From here to there (indicates a few yards).

Q. Was the pilot laying with the front portion of his body to the ground or was the front portion of his body turned up?
A. With the face up.

President: Objection over-ruled.

A. Not in that position.

Q. What position was the pilot in when you observed the wound that you testified about yesterday?
A. He was lying like this and I went to his side. I went round to his side.

Q. And that is when you observed the wound that you testified about before?
A. Yes.

Q. Did you see whether or not the pilot was wearing a belt buckle at this time?
A. Yes, the Germans unbuttoned him. They tore his clothes here. As they did not find the little chain, they looked behind - if it had slipped behind.

Prosecution: If the Commission please, request that the President instruct this witness to be more cooperative with the interpreter. He is very nervous we know but he can do better, we believe, than he is doing.

CONFIDENTIAL

Q. Did the Germans - were there any Germans present at that time?
A. Yes.

Q. Did the Germans move the body in any way when you were there?
A. When I arrived they were already standing around him and looking over him.

Q. State whether or not the Germans took any pictures of the body?

Defense: Objection. In redirect examination he must confine himself to the subjects covered by us on cross-examination.

President: Objection over-ruled.

A. Not at that moment when I was standing at that particular distance away from him.

Q. When did they take the picture?
A. Afterwards when the others had arrived.

Q. Was the pilot's body still in the same area when the photograph was taken?
A. Yes, always there.

Q. State whether or not the Germans removed any of the clothes?
A. No.

Q. Did you see a wound in the abdomen of the pilot?
A. At the time he was in this position on the ground - -

Defense: Objection. He has already answered that question in cross-examination yesterday.

Prosecution: If it please the Commission, there was testimony brought out yesterday in cross-examination with reference to a belt buckle and the purpose of this is to lead up to this. The witness apparently is reluctant or a little slow to comprehend and an attempt is being made to lead his mind up to that belt buckle so that we can bring out the buckle.

President: The interpreter will instruct the witness to be more cooperative, to answer questions more fully. The interpreter will instruct him to speak up so the whole court can hear what he says.

Questions by the Prosecution:

Q. Did you or did you not see a belt buckle on the pilot at this time you previously referred to? Answer yes or no.
A. Not then, they had already opened everything.

Q. Do you know where the belt buckle was?
A. Yes it was there at a short distance.

Q. How large was the belt buckle?
A. Like this (demonstrates about 3 inches).

Q. Yesterday you testified that you saw a wound on the head and a wound on the abdomen. What was the size of that wound on the abdomen?

Defense: Objection. He did not testify yesterday it was on the abdomen - a wound on the body in the side.

Q. Did you see any wound on the body at this time?
A. At the moment when I went near him I saw a wound here, here and on the leg.

Q. When you make the gesture to your right side similar to this, do you mean the stomach or the paunch?
A. All round here (indicates stomach).

Q. Did you see whether it was a hole or just a scratch?
A. No it was a hole.

Q. How large around was that hole, a meter?
A. About a meter.

Q. Did you see any penetration into the chest, abdomen or paunch of the pilot?
A. No.

Q. I ask you whether or not you did not see a hole about 3 inches in diameter in the paunch of the pilot?

Defense: Objection. He has already answered the same question.

President: Objection over-ruled.

A. No.

Q. How large was the hole, if any?
A. Like that (indicates right chest, large hole).

Q. I ask you whether or not you did not on previous occasions state that you saw a hole about like that in the paunch (indicates 3 inches).
A. No.

Q. When your first statement was made your attention was directed to yesterday, where were you when that statement was made?
A. In my village.

Q. State whether or not it was known at that time that your bayonet was the one used by the accused?

A. Yes.

Q. State whether or not you and the accused agreed that you would falsely state that the bayonet struck the belt buckle.

Defense: Objection, because he did not state that.

Prosecution: The belt buckle was brought in to this man on cross-examination for the express purpose of showing that the bayonet struck the belt buckle.

Defense: On the cross-examination yesterday he did not make any statement.

Prosecution: On cross-examination - -

Defense: On cross-examination he did not make that statement. I would have been delighted if he had. He merely stated that - -

Prosecution: As I understood the testimony yesterday, "Was there a belt, was there a buckle?" and the testimony prior to that had been that the man was bayonetted in the paunch, the direct inference being that the defense would show that the bayonet struck the belt buckle; therefore, the bayonet was bent.

Q. Whereabouts was he in his village?
A. On' de Fabbri at the Carabinieri.

Q. Were you a prisoner at that time?
A. No.

Q. And you been a prisoner?
A. No.

Defense: Objection: I do not see the relevance of this.

Prosecution: It is to show that this belt buckle story is a fabrication made by the accused and this man.

Defense: I wish to point out to the court that his original statement varies with this. In his original statement he says there was a hole.

Prosecution: We are not talking about the hole, about the belt buckle now. Yesterday he was questioned about this belt buckle. Is it not possible that the bayonet could have struck the belt buckle, on cross-examination - -

President: Objection over-ruled. Proceed.

Questions by the Prosecution:

Q. Have you been in prison with the accused?
A. Yes.

Q. Where?
A. Bologna.

Q. State whether or not you and the accused talked about this incident when you were in prison?
A. Yes.

Defense: He made no such statement. That might be our argument. We are delighted if we are putting these words in his mouth.

President: Objection over-ruled. Answer the question.

A. Yes.

Defense: Does he understand the question?

Prosecution: He answered it.

Defense: I think it might be well to make sure he does. It is a long question and the basis of it is that he entered into an agreement to falsely testify.

President: The reporter will read the question back to the interpreter who will repeat it to the witness.

(Question read by reporter)

A. No.

Q. Did the accused and the witness discuss the belt buckle and the bent bayonet while they were confined in the custody of the prison officials in Bologna?

A. Yes.

Q. Did he agree with the accused to make the statement that the bayonet had been bent because it struck the belt buckle of the pilot?

Defense: Objection. I think that is essentially the same question.

Prosecution: The word "falsely" is not in the question.

President: Answerd your question.

Prosecution: Will the reporter read the question back?

(The reporter read the question)

President: He will answer that question.

A. No.

Q. What, if any, conversation did you have with the accused about the bent bayonet and the belt buckle with reference to reporting the incident?

Defense: Objection to this line of questioning. You have nothing on which to base this and you are trying to prove some conspiracy, why, I don't know because he has testified honestly.

President: Objection over-ruled. He will answer the question.

A. Because the bayonet was bent like this, so I said to Magi, "You must have hit him on the belt." He said, "Well, probably, I hit him on the belt."

Q. Did you say that to Magi or did Magi say that to you?

A. We both said this previously at the guard post.

Q. Was that true or was it false?
A. How do you mean true or false?

Q. That the bayonet had struck the belt buckle?
A. I don't know.

Q. Why did you make that statement at the guard post?

Defense: Objection, what statement?

Prosecution: The answer to the second question previous, I believe, is what I refer to.

(The reporter read the last few questions)

Q. Was it true that you knew that the bayonet struck the belt buckle of the pilot, while he was on the ground, as you reported at the guard post?

Defense: Objection. His testimony always has been that he could not see, that he didn't know.

President: The question is all right. He will answer it.

A. No, I did not know it.

Q. Why did you report that the bayonet had struck the belt buckle, at the guard post?

Defense: Objection. It is a leading question. When did he report it?

Prosecution: He said he reported it at the guard post.

Defense: When did he say "reported."

Prosecution: Well he reported it when he said it.

Defense: Let us get the answer from the record.

(The reporter read the last few questions and answers)

Defense: "Said" it but not "reported" it.

President: Rephrase your question.

Prosecution (to reporter): Read the previous question.

(The reporter read the question)

Q. Why did you say that the bayonet had struck the belt buckle,at the guard post?

Defense: Objection. I think he said it might have, he did not say it did. He said it might have struck the belt buckle.

(The reporter read the previous testimony)

Q. State whether or not that Magi asked you to report that the bayonet had struck the belt buckle?
A. Yes, he said so.

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Defense: If it please the Commission, the defense would like to ask to reread the question asked of the witness yesterday afternoon, in which he stated, I believe, that he actually did not see anything except the motion of the accused's hand and, possibly, if that motion was completed which, to date, is unknown, it could have hit the ground or a rock or anything. All that we ask is can we go back to the basis of that one question asked yesterday afternoon, with the answer, as to what he actually saw at the time. He stated, as I recall, that he did not see any completion of movement of words to that effect.

President: The reporter will look up previous testimony. The court will adjourn for a five minute recess.

The Commission then recessed at 1020 hours and was reopened at 1100 hours, at which time all the members of the commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the witness, the interpreter and reporter were also present.

Questions by the Prosecution:

Q. State whether or not about the 11th July 1945 you made a statement, signed a statement, to the British sergeant investigating this case?
A. Yes.

Q. I ask you whether or not you made this statement: "I, the undersigned wish to add the following facts which I did not state in my previous

Q. Did you at any time make the statement that the bayonet had been bent because it had struck the pilot's belt buckle?
A. Not no. I say, "Who knows how it was?" I don't know.

Q. Did you ever believe that you would be accused of this offense?
A. Yes.

Q. And at that time while you believed that didn't you make a statement about what happened?
A. No to nobody.

Defense: If it please the Commission, the defense objects to this line of questioning. He is using the word "offense." The offense is only alleged and has not been proben or shown and I believe that yesterday afternoon the witness testified to the fact that from where he was standing he did not see any completed action of the accused in this alleged offense. Now you have brought in questions and answers of conversations that took place some months later, and then go back to a discussion in the guard house some hours later. It is believed that the Commission desires to know what the witness actually saw or heard at the time of the alleged incident. It is becoming confused and involved and placing inferences that are not there.

Prosecution: The counsel for the Government felt when the matter of the belt was brought into this, and matters that have not been brought in evidence yet with reference to that belt buckle, that the belt buckle would become very important, and that the reference to this belt and this buckle in the cross-examination yesterday was for the sole purpose - what other purpose could it be but for showing that the bayonet struck the belt or the belt buckle, by the defense. Otherwise, it is of no value whatsoever to interrogate this witness about a belt buckle and a belt, width and size and description, and probably it will become very important before this case is over.

statement made to the Special Investigation Branch, A.A.F. on 6 July 1945. I state that on the day that the allied aircraft crashed, the Fascist Guard Magi was in possession of my rifle type n.81 and of the bayonet. When he returned my rifle and bayonet it was about two hours after the crash. The bayonet was bent and wet with blood. I said to Magi, "What have you done?" and he asked me to swear that I did not see anything and that I did not see him bayonet the pilot and also that the bayonet was wet with blood. I removed the bayonet from the rifle and wiped it by pushing it into the ground. Magi told me that I had not to say anything to anybody what we had spoken about. I saw Magi hit the body of the pilot with the bayonet once. I went to where the pilot and Magi was shortly after this and saw that the pilot was dead. The pilot had wounds in the head, his side, and in one of his legs and blood was coming out of his wounds. The ground near the body was covered with blood." I ask you whether or not you signed that statement?

(The interpreter read the statement to the witness)

A. But this is not correct.

Q. I ask you whether or not you signed this statement?
A. But I was so agitated.

Q. I ask you whether or not that statement is true?
A. No.

Q. What part is not correct?
A. It says here I removed the bayonet from the rifle and wiped it by pushing it into the ground, and it says he removed the bayonet from the rifle - he removed it and threw it on the ground, and I took it and gave it to him and said I didn't want it.

Q. Is that the only part of the statement that is not true?
A. The fact of the bayonet that I didn't want it.

Q. Yes or no. Repeat the question.
A. I didn't clean it. The rest is true, that Magi said this to me.

Prosecution: Repeat the question again.

(The interpreter repeated the question)

Q. Yes or no.
A. (No response)

Q. Yes or no.
A. (No response)

Q. Yes or no. Repeat the question.
A. That one is not correct.

Q. Ask him if he understands the question?
A. I wrote this but it is not true.

Q. What is not true?
A. It is not true that I took the bayonet, removed it and cleaned it.

statement made to the Special Investigation Branch, A.A.F. on 6 July 1945. I state that on the day that the allied aircraft crashed, the Fascist Guard Magi was in possession of my rifle type M.91 and of the bayonet. When he returned my rifle and bayonet it was about two hours after the crash. The bayonet was bent and wet with blood. I said to Magi, "What have you done?" and he asked me to swear that I did not see anything and that I did not see him bayonet the pilot and also that the bayonet was wet with blood. I removed the bayonet from the rifle and wiped it by pushing it into the ground. Magi told me that I had not to say anything to anybody what we had spoken about. I saw Magi hit the body of the pilot with the bayonet once. I went to where the pilot and Magi was shortly after this and saw that the pilot was dead. The pilot had wounds in the head, his side, and in one of his legs and blood was coming out of his wounds. The ground near the body was covered with blood." I ask you whether or not you signed that statement?

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A. But I was so agitated.

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A. No.

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A. The fact of the bayonet that I didn't want it.

Q. Yes or no. Repeat the question.
A. I didn't clean it. The rest is true, that Magi said this to me.

Prosecution: Repeat the question again.

(The interpreter repeated the question)

Q. Yes or no.
A. (No response)

Q. Yes or no.
A. (No response)

Q. Yes or no. Repeat the question.
A. That one is not correct.

Q. Ask him if he understands the question?
A. I wrote this but it is not true.

Q. What is not true?
A. It is not true that I took the bayonet, removed it and cleaned it.

Q. Other than that part of the statement, is all the rest of the statement true?
A. The rest is all right.

Prosecution: Your witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. Referring to this passage which was just read to you, the previous statement of yours, was it true or was it not true that two hours later the bayonet was wet with blood. The bayonet was still wet?
A. Yes.

Q. Were you surprised to find the blood still wet?
A. Yes.

Q. Have you any time in your life seen fresh blood, wet?
A. Yes.

Q. Do you know how long it usually takes blood to dry?
A. No.

Q. Did it strike you as strange that two hours after the blood was still wet?
A. It was sticky.

Q. But it was still wet, you said?
A. Because there was also sand and it was dirty.

Q. Is it not possible that this bayonet had been put into an animal - a cat or a dog or anything else in the two hours which intervened?
A. No, no, that was from the struck - from the blood of the pilot.

Q. How do you know? Did you see the bayonet for the two hours intervening?
A. No, I only saw it when he struck.

Q. Then you don't know what might have happened to the bayonet during the intervening two hours?
A. No.

Q. Can you describe the type of bayonet which this one was, whether it was -- give the best possible description of it?
A. It was about that long plus the handle.

Q. With a narrow blade or a wide blade. Have him describe the thickness of the blade?
A. About that width, two inches. (Witness indicated a blade about 1½ inches and 2 inches wide)

Q. Was it the usual type of bayonet used in the Italian Army?
A. Yes.

Q. State whether Magi at the very beginning of this whole incident took your rifle?
A. He took it from the guard post when he went on guard.

CONFIDENTIAL

Q. Going back to your story, you related that when you reached this point you took cover, dropped to the ground behind this mound?
A. That's right and I could not see the plane.

Q. Why did you take cover. Why did he drop to the ground at that point?
A. Because from this point there were explosions and I was afraid that there were bombs in the plane, and that from the explosions something might fall on top of me. I was about 200 meters away.

Q. Also you related that as you were on your way to this point, you returned to the barracks to get your rifle, is that true?
A. No, I had already taken it.

Q. You had already taken your rifle?
A. From the shelter I had gone to the river bank and from there we all ran back to the barracks to get our rifles and then -

Q. So you took your rifle? Was each soldier assigned an individual rifle?
A. Yes.

CONFIDENTIAL

Q. And at that time you saw him, did you see him with your rifle?
A. I saw that he had the rifle, but I did not know it was mine.

Q. Going back to your story, you are approaching the body of the pilot, you stated that when you were at this point (indicating on map) you saw Benassi and Lodi removing the body from the plane or from the smoke?
A. Here was the smoke. I came to this point. The smoke was here and from here I could see across Lodi and Benassi who were dragging the pilot, and Magi who arrived.

Q. And now will you describe in detail how Benassi and Lodi were removing the pilot?
A. Benassi was in front and dragged him like this. Lodi was there.

Q. Did they drag him by the legs?
A. At the moment, I don't know. When I arrived he was like this.

Q. He said previously he saw Benassi and Lodi dragging the pilot from the smoke. I want a description of how they dragged him. What he meant by that.
A. When I arrived he was -

Q. But you said you saw them dragging it. Describe how they dragged him on the ground.
A. I saw them drag him on the ground. When I arrived I saw that Lodi kicked him like this (demonstrates).

Q. Lodi kicked him like that. At what point?
A. After the incident with Magi.

Q. When they were dragging, carrying the pilot, do you know whether they pulled him by the legs. Was the pilot dragging on the ground?
A. I could not see whether they - I could not see whether they dragged him by the legs or by the hand. Lodi told me that he gave him a kick. Lodi told me that he had kicked him in the head so that Lodi was here and kicked him, then the head must have been on the side.

Q. And you took your rifle?
A. I did not look which one it was.

Q. Are you not in the custom of taking your own individual rifle?
A. Yes, I took mine but at that moment there were a lot of rifles and we just took one. We were curious and we went out there.

Q. Did you take your usual rifle?
A. No, I just took one. It did not matter which one it was.

Q. Do you know whether this was your usual rifle?
A. No.

Q. You do not know?
A. At that moment, no. I took the gun and went here, went there. I did not look whether it was mine or somebody else.

Q. When you got to this point, did you find it was yours?
A. No.

Q. When did you find out that it was your rifle?
A. When I came to the barracks.

Q. You then found out it was not your rifle?
A. Yes.

Q. During this investigation were you afraid that you might be charged with some crime?
A. I was afraid to be admist those four or five; that the truth would not be known who the guilty one was.

Q. Consequently, when you were investigated by the Allies, did you not shape your statement to clear yourself?
A. Not this one.

Q. But in general, another statement then?
A. I made these statements to show that I had nothing to do with it.

Q. At the time you made these statements, did you not then think that Magi was dead?
A. Yes, at that moment.

Q. Had you received information indicating that Magi was dead?
A. At first I didn't know this. No, I knew that Magi had been killed. Finally I saw him in person.

Q. At the time of these investigations were you then under the belief that Magi was dead?
A. He was there with me.

Q. Do you remember when Magi arrived at this prison?
A. I saw him in the court-yard.

Q. Prior to his arrival in prison were you not investigated by an allied officer soldier?
A. Yes.

Q. How will you tell the court frankly and fairly if, at that time, you, in making the statement, were not trying to clear yourself thinking that Magi was dead and the statement could not react against him?
A. When I saw Magi, I thought that he and Lodi and Bonassi would tell things in such a way as to make me guilty and, therefore, I told things so that it could be seen I am sorry and, therefore, I told the things so that it could be seen how it was, how it really happened.

Q. Your primary motive in making this statement - was your primary motive in making this statement a desire to absolve yourself? Will you answer that yes or no?
A. I said in my declaration that I saw Magi do this or that, so that they would not suspect me.

Q. And at that time you thought Magi was dead?
A. Previously I had heard that he was dead, but I wanted to keep quiet all the same and not tell about the things. Later when I saw that they relied on me, that I had not seen the act and I was the only one who could tell what had happened and that the others were not there, then I thought that I had to tell the truth.

Q. Would you still state that there was blood on this bayonet if you knew that that statement would send a man to his death?
A. It was dirty with blood and bent.

Q. Is it not possible you could have been confused. It is a long time ago and many things happened that it - is there not some possibility you might have been confused?
A. I was confused but that fact I saw clearly.

Q. In the midst of all this confusion, do you recall any incident over the loss of a watch, excuse me, the loss of a bill-fold?
A. Yes.

Q. Do you remember who it was lost this bill-fold?
A. Bonassi.

Q. And you are certain of this, are you?
A. Yes.

Q. Do you know whether a watch was also lost?
A. No, not a watch. The watch belonged to the pilot. I didn't know this.

Q. What was the story about this watch which belonged to the pilot?
A. When I arrived there I saw Lodi and Marani near the pilot, near the body, and Lodi threw the bags down. The Germans had taken away the watch and had put it next to the bag.

Q. Did the Germans arrest anyone for taking the watch?
A. Yes.

Q. Do you know what happened? Did you know Bonassi well?
A. Yes.

Q. Have you seen him since in the last year? Do you know where he is?
A. No.

Q. Have you heard any reports as to his whereabouts?
A. No.

CONFIDENTIAL

Q. Do you know whether he is alive?
A. Maybe he is alive, maybe he is dead. I don't know.

Q. Do you know whether Lodi is alive or dead today?
A. People of his village told me that he had been killed.

Q. By whom?
A. That I don't know.

Q. Do you know whether the Germans - going back to this incident involving the watch - do you know whether the Germans took away anyone involved in that incident?
A. They hit these two while I was not there.

Q. You did not see the Germans taking away anyone?
A. Not that moment.

Q. At a later moment?
A. Later.

Q. How long later?
A. I saw from here. I had left that spot and gone down there and I saw that they had - they took down the names they told me.

Q. Did he see the Germans take anyone away, any one of the guards any time during that day?
A. In the evening.

Q. Who did they take?

Prosecution: If it please the Commission, possibly defense counsel can explain the purpose of this interrogation. It is not anything brought out before.

Defense: It may sound strange now but the relevance will be shown eventually because we will have a full report of this incident, and it is pretty significant that someone who is accused of taking a watch was taken away and no-one else.

President: Proceed.

A. At about 6 o'clock in the evening.

Q. Does he know whom was taken away?
A. Marani with Alberghini.

Q. Were they both guards?
A. Yes, guards.

Q. Do you recall whether Marani and Alberghini were released by the Germans?
A. Yes.

Q. How long after, how long after they were taken away were they released?
A. About a day or two afterwards.

Defense: Your witness.

Prosecution: No other questions. Does the court wish to ask any questions of the witness.

(The witness erased the drawing and made a larger one showing a large hole in the right side of the pilot's body about ten inches in diameter)

Defense: Have him draw the arms.

(The witness drew the arms)

Questions by the President:

Q. Now the spot on the drawing where you indicate the wound - you stated that portions of the body were entirely missing, is that correct?
A. You could see all the inside.

Q. Was much blood coming from it? Was the blood spurting out or oozing or what?
A. Not a big amount but a few drops came out because it was almost burned - small streams of blood.

President: Apparently the Commission has nothing further to ask. Are there any questions by the prosecution or the defense?

President: Yes.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. Going back to the point in your testimony when you viewed the body of the pilot, you testified that the clothing had been pulled down and that there was a large wound in the side of the body?
A. When I arrived, I saw the pilot on the ground and the Germans were already around to look over him.

Q. Now as you viewed this wound in the side of the body, in your opinion, how was the wound caused, by an instrument such as a knife, or a bayonet or an explosion or what?
A. I don't know. I think from a bomb or from the fall.

Q. What did the wound look like? Have him describe the wound.
A. It was big here (indicating the right side)

Q. Was the portion of the body missing entirely or what?
A. Yes, everything was missing here.

Q. Draw a picture on the blackboard there of the pilot's body and show about what was missing. What extent the wound was.

(The witness drew a picture on the blackboard of the body)

Defense: If it pleases the Commission, may we object to the size of this drawing and suggest that he use the blackboard to make a life-size picture.

President: He can't make a life-size picture on the blackboard. Erase the drawing on the blackboard.

Questions by the Prosecution:

Q. State whether or not there was any blood on the ground near the pilot's body?
A. Yes.

Q. Describe about how much blood you saw on the ground?
A. Just drops because the sand soaks it up. When they dragged him, you could see the blood that he lost but not very much he was bleeding.

Q. When you observed this had the Germans removed some of the pilot's clothes?
A. They had already looked at him.

Prosecution: Repeat the question.

(The reporter repeated the question)

A. They had already torn it here.

Q. And it was for this reason that he was able to view the wound that he saw?
A. No, you could see it anyhow.

Q. Didn't you tell the sergeant, the englishe sergeant, the night before last that you saw just a small hole in his side?
A. No.

Q. Where did you tell him the small hole was?
A. He had a hole here. Everything was missing and you could not see whether it was a man or a woman, and he had this hole here and his leg was broken.

Q. But he didn't tell the sergeant that he saw just a small hole in the body similar to this size anywhere in the body?
A. No.

Q. Didn't you tell the sergeant, in the presence of Colonel Wollem and the interpreter, that when you saw this body it had a small hole right here not larger than that? (The prosecution indicated a hole about 3 inches in diameter near the waist line)
A. No.

Prosecution: Any questions by the Commission?

President: Apparently none.

Prosecution: Request that the witnessmay be excused?

President: This witness will be available, won't he, for further questioning if we wish to bring him back?

Prosecution: Yes, sir, he will not be excused

President: The Commission is closed and will reopen at 0800 hours on the 28th October.

CONFIDENTIAL

The Commission then at 1210 hours on 26 October 1946, adjourned to meet at 0900 hours on 28 October 1946.

Charles W. Weller
CHARLES W. WELLER
Lt. Colonel, INF
Judge Advocate

The Military Commission met pursuant to adjournment, at 0940 hours, 28 October 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused, the interpreter and the reporter were also present.

May it please the Commission, prosecution desires to tender Prosecution's Exhibit No. 5, which consistsof a map of a general area surrounding Bologna, together with official reports that no other planes fell on or about May 17 in that general area. The reports are in Italian and the map has been Italian.

President: The documents will be admitted.

Defense: The defense has no objection. If it pleases the Commission, if the prosecution has no objection, I would suggest that, owing to the time factor, we summarize the various reports.

President: I think that is a good suggestion.

Defense: There are about ten or twelve of them, sir.

(The interpreter read the reports to the Commission)

Prosecution: The prosecution offers in evidence statement of Steven F. Capasso, Captain, QMC, Field Graves Registration Officer, together with a Report of Burial as Prosecution's Exhibit No. 6 for identification.

Defense: If it pleases the Commission, the defense has no objection to this report. However, desires to call to the attention of the Commission, in particular, the cause of death, as shown on this report, "Killed In Action - Decapitated."

President: The document will be admitted.

The judge advocate then read Prosecution's Exhibit No. 6 to the Commission.

Defense: If it pleases the Commission, the defense would like the few words, as shown on that report "Cause of Death" placed before "KIA - Decapitated".

Prosecution: If the Commission please, that question will come up on final argument.

Defense: You are reading there and just miss those words. You read, "Date of Death" giving date, then you went right into KIA - Decapitated, without reading the words underneath "Cause of Death."

CONFIDENTIAL

Prosecution: May it please the Commission, prosecution offers in evidence the testimony of Carabinieri of San Giovanni in Persiceto, re discovery of Lodi's body, as Prosecution's Exhibit No. 7.

Defense: The defense has no objection to this exhibit.

President: It will be admitted.

The judge advocate then read Prosecution's Exhibit No. 7 to the Commission.

Don Graziano Giol-Gratien was recalled by the prosecution, reminded he was still under oath and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. You are the same witness that formerly testified in this case?
A. Yes.

Q. Recalling to you the afternoon of May 17th, 1944 and particularly the airplane that fell in the River Reno on that date, I hand you herewith Field Manual of the United States Army and ask you if you can identify that plane in particular?
A. Yes.

Q. Well there are other pictures in there, if you care to look at them. What is the type of the plane?
A. I was told it was called the Lightning.

Q. This is the type of plane (referring to Field Manual 30-30)
A. Yes.

Q. I believe in your former testimony you stated that you observed the pilot's head?
A. The head, yes.

Q. Did you observe any wounds on the head?
A. I could not because the head was like this (leaning forward) and I saw only the skull and blond hair.

Q. Did the skull appear to be intact?
A. Yes.

Q. Did you observe the plane as to whether or not any part of it was buried in the sand?
A. I did not but I could make out that it was not quite underground - out of the ground. It was just flat on the sand.

Prosecution: That's all. You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. Will you tell the court again how far away from the body - your distance from the body?
A. The body from the plane?

Q. No, the body from you?
A. I took away the pieces of parachute to see the body because when I reached there it was covered.

Q. Will you describe the condition of the pilot's feet?
A. The feet of the left leg was twisted. My impression is that it was the left one which was reddish blackish.

Q. Why?
A. The spot of burned skin - spot.

Q. Was the shoe burned off?
A. The feet I saw without the shoe. I could distinguish the toes.

Q. As I recall you previously testified that the body was covered by the parachute so you were unable to observe the condition of the body?
A. No, the body - when I reached the head I uncovered it, then the German sergeant stopped me.

Q. Did you have a good opportunity to see the head?
A. I wanted to see it but I saw only the skull and the back.

Q. And the face was covered? Did the face appear to be covered with blood at that time?
A. I could not say. He was lying face down. I could not see the face.

Defense: Your witness.

Prosecution: Are there any questions by the Commission?

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. Did you have an opportunity to observe any part of the body?
A. Any part, I could not see.

Q. You were unable to observe any wounds of any description?
A. Except those black spots.

President: Apparently no further questions by the Commission.

Prosecution: May the witness be excused?

President: The witness may be excused.

There being no further questions the witness was excused and withdrew.

Settimio Piamonstelli was recalled by the prosecution, reminded he was still under oath, and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. Are you the same man who formerly testified in this case?
A. Yes.

Q. State your name for the record?
A. Ciancastelli, Settimio.

Q. Calling your attention to the afternoon of May 17th, 1944 and particularly to the plane that fell in the bed of the River Arno?
A. Yes.

Q. I will get you to state whether or not from the pictures shown in Field Manual 30-30, you recognize the type of plane that fell on that afternoon?
A. This one or that one (indicates).

Prosecution: The two pointed out are both diagrams of P38 Lockheed Lightnings, shown in Field Manual 30-30.

Prosecution: Any questions by the court?

President: Apparently none.

Prosecution: Request that the witness may be excused.

President: The witness is excused.

There being no further questions the witness was excused and withdrew.

Prosecution: May it please the Commission, I would like to have four or five minutes with the next witness before I place him on the stand.

The Commission then recessed at 1015 hours and was reopened at 1055 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: The witnesses were not in the hotel over the weekend, that is the reason I did not get to see them, at that time.

Armando Albertassi was recalled by the prosecution, reminded he was still under oath, and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. You are the same witness who previously testified in this case?
A. Yes, sir.

Q. State your name for the record?
A. Albertassi, Armando.

Q. Calling your attention to the afternoon of May 17th, 1944, when an airplane fell in the River Arno?
A. Yes.

Q. We now have a correct sketch of that location. Will the interpreter please point out the location of the various points on this sketch?
A. (Interpreter complied with the request)

Q. Do you recognize the spot where you were standing when you saw the plane crash?
A. Here under the bridge.

Q. Which side of the river were you on? On the Bologna side? The airport is in that position (indicates)
A. On this side underneath here.

Q. On the Bologna side?
A. On the side on Bologna.

Q. Point out the spot where you were standing?
A. There is a little arch here and I was under the bridge; in the shelter under the little arch of the bridge.

Q. Were you standing here (indicating position on the map)
A. Yes.

Q. Now from that location where was the airport located?
A. Over here.

Q. Mark the spot 'A'.
A. I don't understand this. I was not actually in the shelter. I was here under the arch of the bridge

President: Turn the map around this way. Over here, the way you had it before. You stand this way. I want to get the map opposite to what it was - now.

(The witness and the prosecution look at the map)

A. The plane came from here and it fell over here.

Prosecution (to interpreter): Did you point out the banks of the river to him?

President: Will it mix you up if we put the map back on the blackboard where we can all see it?

A. The plane fell on this side, on the opposite side from where the guard house was.

Q. You were on the Bologna side of the river?
A. Yes, on the Bologna side.

Q. Where, from your position here, did the plane fall?
A. (The witness indicated the position)

Q. Calling your attention to the fact that this represents one bank of the river and this the other - -
A. I crossed the bridge and there was a small road, small path leading up here which was on the other side from where the guard's house was. From there came the plane. It had to cross the bridge.

Q. In other words, the plane came from this direction and down and across the bridge. Is that right?
A. As far as I am concerned, as I was here it would appear that the plane would have had to come from here, crossing the bridge and falling on my side, whereas you tell me that the aerodrome is up here.

Q. Were you on the side of the river towards Bologna or on the side where the aerodrome was?
A. No, on the other side from the aerodrome. If this were the bridge, the

airport is here and I was this side. The plane came from here across the bridge and fell here.

Q. Did it fall on the opposite side of the river from you?
A. My side between Trebe. It would be up there.

Q. Where - locate the point here where you think the airplane finally came to rest.
A. To tell you the truth, I don't understand anything about this map, so I will tell you my opinion. If you say that the aerodrome is up here, then I must have found myself on this side. It would have crossed the bridge and it would have fallen down here. The plane went north.

Q. It must have fallen some place on this side of the bridge, is that right?
A. Here it would have fallen then.

Q. You were on the opposite side of the river at the time?
A. Yes.

Q. And the plane was flying north at the time of the crash in the river?
A. Yes, it was going down - north.

Q. I would like to have the witness locate the aerodrome - it is a little irregular.
A. The guard house on the other side of the river was on the side where the aerodrome is. It should be the other way round. This guard house should be this side of the bridge and that guard house should be that side of the bridge.

Q. All right, assuming that the guard house is on the north side of the bridge, where were you standing?
A. I crossed the bridge and stopped here and going home I crossed the bridge and then stopped here.

Q. Was there any water in the river at that time.
A. Yes.

Q. With reference to the two banks where was the water located?
A. It was about here.

Q. Now with reference to the water in the river, did the plane fall on the east side of the water or the west side?
A. It came towards the water and fell here (indicating) about 80 or 90 meters from the water.

Q. 80 or 90 meters west of the water?
A. It came out towards the water but on this side, about 180 meters from what I judge - from the bridge, 80 or 90 here and 180 here (indicating)

Q. Was the plane pointed north, east or west when it fell?
A. Towards north.

Q. Would you recognize the type of plane from a picture?
A. Yes.

Q. I hand you herewith United States Field Manual 30-30 and ask you if that is the type of plane that fell on the afternoon of May 17th, 1944?
A. This one or that one?

Q. They are both the same plane, different views.
A. They had the fuselage like this (indicating).

Prosecution: He has designated a P38 Lockheed Lightning.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. You say you were standing at this point when the plane crashed, is that true? Where was he standing?
A. I don't understand. If I stood here - the plane had to cross the bridge. I stood here and it fell here. It does not seem right. It would have had to come here.

Q. Tell him to forget where the plane was supposed to come from but to tell us where he saw it come from.
A. I came from Bologna along the road which crosses the bridge. I crossed the bridge and took the first little street to the left, stopped here and the plane rolled around, then it appears to be that it came from here and rested on this side.

Q. At what point did it come from?
A. From the aerodrome.

Q. From which direction, here or here?
A. The plane crossed the bridge about here.

Q. Will you have him draw a line showing the course of the airplane and where it fell?
A. Supposing here - that the aerodrome were here, this is where the plane had been hit.

Q. Tell him to forget about the aerodrome - to draw a line as he saw it come in and forget about the aerodrome. Have him draw the line.
A. I was here and I saw it coming out over the bridge.

Q. Where did he first see the plane when he first saw it? Where was it?
A. He says right over the bridge.

Q. Did he see it when it was on this side of the bridge? He saw it over here coming from this direction (indicating)?
A. It came from here, but I saw it when it was already crossing the bridge.

Q. He did not see it on this side then?
A. No.

Q. Tell him not to imagine things but to tell them as he sees them.
A. I imagine it came from the airport because I could see from the airport, but I discovered it here.

Q. In his previous testimony he stated that the plane came from this direction and landed here on this side of the bridge, isn't that true.

Prosecution: Objection to that question. I believe he stated the plane came across the bridge.

CONFIDENTIAL

Defense: Do you wish the record read? My clear understanding is that the map was on the other way and he had the plane on this side. Should we read the record, or does the court remember.

President: Read the record.

(The reporter read previous testimony of the witness)

Defense (Captain Burek): The location at time of cross-examination is not clearly indicated. Do you recall, Colonel Lafayette, where it was located?

Defense: (Colonel Lafayette): I recall on that sketch the airport was west of the bridge, up here in this direction here. The bridge at that time was sketched with the plane landing on its side here. As we were facing the sketch, the airport was above here and the plane landed with the water on this side right above the water.

Interpreter: He (the witness) repeated, "If Bologna is here and Irebo here, then the plane, according to me, would have come from here, crossing the bridge and coming to rest on this side of the bridge, the north side of the bridge."

Defense (Captain Burek): As Colonel Lafayette points out at one time he placed it on one side of the river. That was a substantial part of the testimony. That was the point I was trying to bring out. He has vacillated.

Prosecution: Any questions?

President: Apparently none.

Prosecution: Request the witness be excused.

President: The witness is excused.

There being no further questions the witness was excused and withdrew.

Don Gragiano Giol-Gratien was recalled by the prosecution, reminded he was still under oath and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. You are the same witness who previously testified in this case?
A. Yes.

Q. I call your attention to this sketch of the New Bridge, the vicinity of the New Bridge on the Reno River, outside Bologna, and to the crash of the airplane on the afternoon of the 17th May 1944. With this in front of you, will you locate the position of the plane after the crash?
A. (Witness indicated the position)

Q. Mark this point XA. In which direction was the nose of the plane pointing?
A. North

Prosecution: Any examination from the defense?

CONFIDENTIAL

CROSS-EXAMINATION

Questions by the Defense:

Q. You didn't, as I recall - did you actually see the plane in the air?
A. No, I didn't see it in the air.

Q. It was some time after. It was already on the ground then?
A. Yes.

Prosecution: Any questions by the Commission?

President: Apparently not.

Prosecution: May the witness be excused?

President: The witness is excused

There being no further questions, the witness was excused and withdrew.

Enzo Guzzoni, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Guzzoni, Enzo.

Q. Where do you live?
A. San Vitale.

Q. What is your occupation?
A. I am a peasant.

Q. Where did you live in May 1944?
A. San Vitale.

Q. Where were you on the afternoon of May 17th, 1944?
A. I was working on the field.

Q. Where at?
A. In my field near the bank.

Q. Was there an air raid alarm that day?
A. Yes, after mid-day there was an alarm.

Q. Was there a plane shot down, do you know?
A. Yes it was hit and then it fell.

Q. Did you see the plane before it fell?
A. Not before it fell.

Q. Did you go to the scene of the crash after the plane fell?
A. Yes, after about ten minutes, quarter of an hour.

Q. Who was present when you arrived, if you know?
A. Other people

Q. State whether or not you saw the body of the pilot at the plane?
A. Yes, I saw it.

Q. Was it covered up?
A. Covered. He had his clothes on.

Q. Where was the body with reference to the plane?
A. About 15 to 20 meters from the plane.

Q. How close to the pilot's body were you?
A. Four, five, six meters.

Q. Did you observe the body closely?
A. Yes.

Q. Did you notice any wounds about the head or face?
A. Yes, one in the face.

Q. How large a wound was that?
A. It had it about here (indicating right cheek).

Q. What was the nature of that wound? A scratch on the cheek or a deep cut?
A. I didn't look well.

Q. Did you notice the pilot's legs?
A. Yes.

Q. What was their condition?
A. He had a big wound here (indicating wound on left leg, below the knee).

Q. Did you notice any wounds or cuts on the body?
A. The body had a hole like this (indicating point on left side).

Q. Was the hole above or below the belt?
A. Two or three fingers above the belt.

Q. What do you mean two or three fingers?
A. Just a little above the belt.

Q. How large was that hole? How long was the cut or hole, two inches?

Defense: Objection. Let him describe in his own figures.

A. A little more (indicating about three inches).

Q. How wide?
A. About the same (about three inches).

Q. Did you notice any other wounds about the body?
A. Nothing else. I saw only this.

Q. Was there blood on the ground?
A. Blood you could not see. With the sand, I could not see anything.

Q. Do you know whether, or did you see the pilot's body move?
A. I didn't see anything.

Q. Calling your attention to the sketch on the board, these lines represent the banks of the River Reno, this the New Bridge, San Vitale.
A. Yes.

Q. Bologna?
A. Yes.

Q. This is approximately north?
A. Yes.

Q. The shelter underneath the railroad?
A. Yes.

Q. With that description, can you locate the approximate position of the airplane on the bed of the River Reno?
A. Over here.

Q. Assuming that this is the water in the river at that time, was the plane on the Bologna side of the river or on the Calderara side?
A. The water was here and the plane there.

Q. West of the stream of water?
A. Yes.

Q. Will you mark on the map the approximate location of the plane as near as you can place it?
A. With this map one can't do really as one ought to, about here.

Q. Mark with XG. Now where was the body of the pilot with reference to the plane?
A. The plane was like this. The front of the plane was like this.

Q. The front of the plane pointing north?
A. The pilot was here.

Q. About how many meters from the plane?
A. Fifteen to twenty.

Q. Towards the water?
A. Yes, towards the water, because later on they pulled him over here because the plane exploded.

CROSS-EXAMINATION

Questions by the Defense:

Q. As you approached the plane, when you first ran towards it, did you hear the sounds of any explosions?
A. No.

Q. When you arrived, you stated that you saw other people. Who were these other people?
A. Who knows? There were s o many people. They came from one side and another. Who knows?

Q. How many were there? How many people?
A. There were so many, who can say? I cannot say that precisely.

Q. Can you say whether there were five or fifteen? Can you estimate?
A. There may have been one hundred to two hundred people. There were so many.

Q. That's your best estimate, one hundred to two hundred?
A. Put one hundred and fifty, I don't know precisely. Who knows?

Q. Did you know a guard by the name of Bonanni?
A. No.

Q. You stated that you saw a wound on the leg below the knee. Did you see a broken bone protruding?
A. The leg was all wounded. I didn't pay much attention. When I saw this I went back.

Q. In other words, you didn't take a very good look at this body?
A. I observed it a little. I looked at it then I went back.

Q. Did you observe - yes or no - a bone protruding from the leg?
A. No.

Q. You do not know?
A. No.

Prosecution: Objection. The witness has answered the question.

Q. By your answer do you mean you didn't see it or you don't know if there was a bone protruding?
A. I didn't see it.

Q. Will you describe the condition of the feet of the pilot?
A. The feet were stretched out on the ground. I saw this wound and nothing else.

Q. Did the feet appear to be burned?
A. Yes, the shoes.

Q. Was his face covered with blood?
A. No, because there was sand on it and I could not see.

Q. You could not see whether there was blood or not?
A. No, I could not see it because there were always sand.

Q. Could you recognize the features of the pilot?
A. I saw that he was blond, that's all.

Q. How much sand was covering the face - how much of the face was covered by sand?
A. There was sand, dust of sand, and the left side of the face was covered.

Q. You describe a wound on the torso of the body. Are you sure that that was on the left and not on the right side?
A. Yes here (indicating left side).

Q. How do you know for sure?
A. I am sure it was here.

Q. Has he ever been wrong?

Prosecution: Objection, if the court please.

Q. Does he know if there was a wound on the right side of the body?
A. I only saw that one.

Q. What was the condition of the pilot's clothes on the left side of the body?
A. They were burned.

Q. Could he see the open flesh of this wound?
A. Not the flesh. You could only see these clothes and the sand on top of it. You could only see the torn clothes and the wound.

Q. How do who know there was a wound of that size? What did he observe which led him to believe there was a wound of that size?

Prosecution: Objection, if the court please. He does not say there was a wound of that size.

Defense: Well whatever size it was. Will you draw a picture of the body from the waist up, of this pilot and put in the wound in its exact size.

The witness complied with the request.

Defense: Draw it the exact size, just as you saw it.

Q. Did you see any of the insides of the body?
A. As I said before, I could not see anything. I saw this hole with sand on it and the torn clothes.

Q. In your opinion what instrument might have caused a wound such as this, a hand grenade?

Prosecution: If the Commission please, we object to that question.

President: Yes. Use some other examples.

Q. In his opinion how might such a wound have been caused?
A. I could not say. When I arrived the hole was there.

Defense: Repeat the question.

A. How can I know that?

Defense: Drop the question.

Q. Do you recall seeing German soldiers on the scene?
A. Yes.

Q. Does he recall seeing Italian soldiers on the scene?
A. Italian soldiers yes, dressed in militia uniform.

Defense: Your witness. Just one more question.

Q. How old were you at the time, on this date?
A. 18 years old.

C O N F I D E N T I A L

Prosecution: Any questions by the Commission?

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Minor:

Q. This hole he testifies about, was the hole in the clothing that he saw?
A. Of course, if there was a hole in the flesh, how do you think there could not be a hole in the clothes?

Q. Was it one complete opening or several openings in that general shape and size?
A. As I have already said before, I could not see it because there was sand covering it. I only saw the torn clothes and this hole covered with sand.

Q. Did this hole have any depth?
A. It was about two fingers, one and a half inches deep. There were the clothes on top of it and you could not see well.

President: No more questions.

Prosecution: Request that the witness be excused?

Defense: We have one more question.

RECROSS-EXAMINATION

Questions by the Defense:

Q. At the time you observed this body, precisely how far away from the body were you?
A. Five or six meters.

Q. Five or six meters. How far is that in relation to this court-room? Was he further away from the body than he is from me?
A. About that.

Q. About this distance?
A. Yes.

Q. How long did he look at this body?
A. Five or six minutes because the militia men sent us away.

Q. While he was watching, weren't people passing back and forth obstructing his view, possibly?
A. No, because there were the militia men who made us go a round.

Q. At this distance is it not rather difficult to see accurately wounds?

Prosecution: If the Commission please, we object to that question.

President: Objection over-ruled. He can answer that.

A. I can see well and saw. I saw it. It is easy to see. I see well and, therefore, I saw it.

Prosecution: Any further questions by the Commission.

President: No further questions.

Prosecution: Request the witness may be excused!

President: The witness is excused.

There being no further questions the witness was excused and withdrew.

President: The Commission is closed. We will reopen at 1400 hours.

The Commission then recessed at 1250 hours and was reopened at 1420 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Riccardo Cappelletti, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Cappelletti, Riccardo.

Q. Where do you live?
A. Bologna

Q. On the 17th May 1944, where did you live?
A. Always there.

Q. On the 17th May 1944, at about 1450 hours, do you remember where you were?
A. I was working.

Q. Where?
A. Outside Porto Lame.

Q. Do you remember whether at about 1450 hours on the 17th May 1944 there was an air raid alarm?
A. Yes, because I ran away.

Q. Where were you at that time?
A. In the work-shop.

Q. Do you know where the bridge is that is called Ponte Nuovo?
A. Yes.

Q. We have here a diagram, and the marks here - these marks parallel with perpendicular lines indicate a railroad. The lines on the outside indicate a bridge.
A. Yes.

Q. The line here and the line here indicate the banks of the River Reno.
A. Yes.

Prosecution (to interpreter): Also explain to him not to confuse these lines here as being a bridge. This is a railroad. The bridge ends here.

CONFIDENTIAL

Q. When you heard the air raid alarm, what did you do?
A. I took my bicycle and I went by Via Lamo.

Q. When you were by Via Lamo, do you mean you went in a northerly direction or a southerly direction?
A. In this direction here. When I arrived here, I turned off.

Q. What did you do when you turned off?
A. When I arrived here, I came up here.

Q. Then what did you do?
A. Then I laid down on the ground because the gun fire came.

Q. Ask him to place his finger on the spot where he took cover.
A. (The witness complied with the request). About 800 meters from here.

Prosecution: I am placing an X on the map and marking the X 38.

Q. What, if anything, did you see in the air?
A. As soon as I arrived there, I saw planes coming across over my head. I fell to the ground because the planes were arriving already.

Q. Do you know how many planes were in the air?
A. I saw two.

Q. Do you know whether or not either one of the two planes you saw was in trouble?
A. There was smoke coming out from the back behind.

Q. Will you show to the Court about where this plane was that you saw smoke coming from with reference to this map?
A. A white smoke came out from the back and I said to myself, "This is a parachute", but actually it turned out to be smoke.

Q. Where was the plane when you saw it?
A. About here. It came from the aerodrome.

Q. It came from the aerodrome. Where did he see the plane? Where was it with reference to this map, possibly out here?
A. I saw it before this guard house.

Q. When it came into the area covered by this drawing, where did you first view it?
A. About here.

Q. I ask you whether or not when you saw the airplane entering the area pictorially described by this chart, that the airplane was just north of the guard house on the west side of the chart?
A. North or west of the guard house.

Q. Just north of the guard house on the west side of the river?
A. Yes.

Q. Tell the Commission after you saw the airplane here, just what did you see the airplane do? Explain to the Commission.
A. It came down like this (indicating with his hand).

Q. Did it stop or did it continue on?
A. It pointed towards the ground.

C O N F I D E N T I A L

Q. And did it stop on the ground?
A. It flew towards the ground and then remained there.

Q. Did it nose directly into the ground or did it slide?
A. It was like this.

Q. Do you mean like this, that it did not nose into the ground, or it slid on top of the ground?
A. As it touched the ground it struck, and then later I saw in front of it something which departed from it.

Q. Now will you show the Commission on this diagram, this being the bed of the river, this representing approximately where the water was, will you show them approximately where this plane came to rest?
A. About here, approximately. I don't know exactly.

Prosecution: I place an X on the map and mark it QA indicating the place where this witness indicates that the plane came to rest.

Q. Did you see this plane at the instant it touched the ground?
A. Yes, just when it came to rest on the ground.

Q. And were you approximately at the point marked TC at that time?
A. Yes.

Q. State whether or not there was a bank between you and the place where the plane came to rest?
A. Yes, this one. I hid behind it.

Q. Explain to the Commission how you could see this plane if there was a bank between you and it at the time it touched the ground?
A. Because I lifted my head and looked across.

Q. And when you lifted your head and looked across state whether or not the plane was burning?
A. Yes.

Prosecution (to interpreter): Ask him to be seated.

Q. Immediately after the plane touched the ground and came to rest, did you see any people in or around the plane?
A. I saw one coming from here and running down.

Q. Did you see anyone in or around the airplane? Not here, not there, but in or around the airplane?
A. No, because immediately after the plane had crashed, I took my bicycle and I dashed away.

Q. Where did you go to?
A. I turned back across the fields and I went into Via Lamo, then there is another little path across here and I went along that path.

Q. What did you do here?
A. I tried to run away so as not to be machine-gunned.

Q. How long did you stay away?
A. Perhaps ten minutes to quarter of an hour.

Q. In your position here, after you left, could you still see the airplane?
A. No.

Q. Did you return to where you could see the airplane?
A. From Via Lame I came back and I went back to about here.

Prosecution: I will mark the place that you returned to with a X and 202.

Q. Could you see the airplane when you were in that position?
A. I saw big smoke coming up. Nothing else.

Q. State whether or not at any time you saw anyone come in or get out of the airplane?
A. When I was here and saw the plane crash, I saw something which came out and made an upheaval of dust. I could not see what it was.

Q. What did it look like?
A. From where I was, I could not discover what it was. There was a great upheaval of dust on the ground and I thought it might be a parachute.

Q. I ask you whether or not on the 28th day of July 1945, you made and signed a statement to and in the presence of Sergeant Smet of the S.B.I. and in order to refresh your memory I will ask that the interpreter read to you the sentence that I have placed in parenthesis from that statement. There is a question whether he made the statement or not. I ask you whether or not you made and signed the following statement: "I saw that from the smoke that surrounded the airplane the pilot came out standing and was trying to tear away his clothing, as they were burning. Some moments after, the pilot threw himself on the ground and crawled trying to go towards the water near where he was."
A. That's right. I said so.

Q. Was that statement true?
A. That thing which I saw coming out seemed to be the pilot and I saw that when it came out, it looked as if it were tearing away his clothes or a parachute.

Q. Which direction was the nose of the plane pointed with reference to this map - north, south, east or west?
A. North.

Q. Facing north, which side of the airplane did this object come from? The right or the left?
A. On the west side.

Q. Is it correct that the object came from the left-hand side of the plane as you face north?
A. Yes, and it crawled on the ground there.

Q. State whether or not that object was a man?
A. To me it seemed a man.

Q. How did it move? Did it walk, crawl, roll or how did it move?
A. With the hands on the ground.

Q. It crawled?
A. It crawled. If it was a man it was impossible for him to stand upright because his clothes were all burning.

Q. Show the Commission what, if anything, this man did in an effort to remove his clothing?
A. He went towards the water.

Q. Ask him to turn round and show the Commission what he saw this man do to remove these burning clothes.
A. He rolled on the ground in order to reach the water.

Q. To refresh his memory, the witness has testified that he saw the man going through some motions that indicated that he was trying to remove his burning clothes. Ask him to show the Commission what he saw that made him think he was trying to remove his clothes.
A. He seemed to tear away his clothes.

Q. How?
A. Do you want me to tear my trousers?

Q. No, I want you to show the Commission, without doing any damage to your clothing, the motions that indicated to you the man was trying to remove his burning clothes.
A. If you burn your skirt what do you do to take it away?

Prosecution: Request the court remind the witness that he is under oath and this is a serious matter. We only want him to show what motions he saw.

President: The witness will answer the questions and indicate the motions that he was asked to demonstrate.

A. He rolled on the ground and while he was rolling on the ground, it seemed that he was trying to tear away his clothes. I don't know how to express myself. I expressed myself as best I can.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. You previously testified that you left due to machine-gunning. Why and what machine-gunning were you afraid of?
A. The machine-gunning by the planes that were in the air.

Q. Did you hear or see any explosions or other noise from the direction of this plane that was hitting the ground?
A. Yes.

Q. Now this object that you have testified to seeing getting out of the plane - are you sure in your own mind here, under oath, that was a man, or possibly some object from the plane, the motor?
A. That I cannot say because I was far away and I could not discover it.

Q. You are not sure then actually what was happening at the plane?
A. No, because one had to take cover because there was machine-gunning.

Q. Have you heard other witnesses talk about this case?
A. Yes, discussed it a bit.

Q. Then possibly this object that you describe could have been picked up by hearing discussions from other witnesses. Is that true or not true?
A. I only say what I know and what I don't know, I don't say.

Q. Then why do you say that the object you saw was coming out of the left side of the plane, or nose of the plane, whatever it might be, attempting to get to the water, when the water was on the opposite side?
A. It passed in front of the plane, rolled in front of the plane.

Q. How far away were you at this time? What do you estimate the distance you were away from the plane when you observed this - 400, 500, 600, 580 meters?
A. It may have been 7 or 800 meters away.

Q. 700 or 800. Then according to your previous testimony, you are not sure what you did see at that distance. Is that true or not true?
A. I said that it seemed to me. I didn't say it was.

Q. It may have been a radio, part of the plane, possibly a piece of the motor or a part of the fuselage or something like that. It was just some object. You are not sure it was a man or anything pertaining to the human race.
A. I saw him burning and I saw that he tried to take his clothes away, as I said before, because they were burning.

Q. At first you testified that you could not observe or see actually what it was. Now why do you say it might be a man.

Prosecution: If the Commission please, I object to the argumentative questioning. A question would be right but to argue with the witness. We object to that.

Defense: If the Commission please, we are trying to establish in the witness' mind whether he actually saw something or did not see something. If you recall, he testified he did not see what it actually was. Then as the prosecution dwelt on this man, this pilot, you will recall it more or less seemed he was forming in his own mind it was this man.

President: You will rephrase your questions and ask questions of the witness. Don't argue.

Questions by the Defense:

Q. You are not sure what it was you did see - strike that - you are not sure from that distance, from 700 to 800 meters which is over half a mile, that you could actually see a man. Is that true or not true?
A. As I said before, I was not sure.

Q. Now how long - strike that - From the first moment that he saw this airplane in the air, what does he estimate the speed of the plane at that time - at 300 kilometers an hour, 240, 380, 425?
A. That I cannot say because I was hidden. I could not notice his speed because the moment I discovered him, I hid my head because from the direction that he came, he seemed to come down where I was.

Q. That one moment you did see the plane, was it going fast, slow, very fast, very slow, in your estimation - for that one moment.
A. Not very slow, but slow. It decreased in speed.

CONFIDENTIAL

Q. For that one moment you observed the plane before hiding yourself, what damage did you see to that plane? Was it smoking or not smoking?
A. There was smoke behind.

Q. A lot of smoke?
A. Behind the plane one could see quite a bit of smoke, black and white. I didn't stop to look at it.

Q. How many minutes from the first moment that you saw the plane to the moment it struck the ground do you estimate that time to be? One minute, two minutes, three minutes, one and a half minutes - your own estimate?
A. Just a moment.

Q. How soon after the plane struck the ground, if you recall, did you see it again then?
A. I saw it come down, then I saw this rolling out. Then I hid myself again because there was another plane overhead.

Q. Did you see the plane strike the ground?
A. Yes.

Q. Using this table, at what angle did you see the plane strike the ground - your hand as an airplane?
A. (The witness demonstrated).

Q. Did the nose of the plane, from what you could see, seem to bury itself into the ground to some extent?
A. From that distance I could not see it.

Q. Did you see any explosions at the moment the plane landed or struck, or soon after see or hear any?
A. Immediately after the plane had struck the ground, it started to -- things started to burst and whistle around.

Q. From the plane itself?
A. I don't know from where they came. It seemed that they may have come from the other place. Overhead it was all a terrific noise. I tried to keep my head covered.

Q. In this original statement that you made, how do you explain this sentence, which you have certified as being true: "I went again in the ditch and I came out about two minutes later and I saw that from the bed of the River Reno, Calderara side, and about 200 meters away from the Ponte Nuovo, was rising a column of smoke?"

Prosecution. If the Commission please, we object to the form of the question. To "explain" is argumentative. Is the statement true or is it false would be perfectly correct. To "explain" would be argumentative.

Defense: Strike that question.

Q. This sentence I am about to read, in which you made a statement certifying it to be true. Is that true or not true?
A. Yes, there was a column of smoke.

Q. Is that true or not true?
A. Yes, there was smoke

Prosecution: I would suggest you read that in english so we can all understand it.

Defense: I have read it already. (The sentence was read again by the defense).

Prosecution: I object if off the record. If a question let's have it in the record. Record the question, if the court please. We understand that he said "Yes."

Defense: No, he just said that there was a column of smoke.

Q. Did you remain under cover or did you actually see what was going on?
A. I tried to run away. After the plane had crashed, there was another plane circling overhead and I tried to run away.

Q. At the moment the plane crashed, did you actually have your head buried or did you actually see what was going on at the moment the plane crashed?
A. I saw - I saw it touch the ground and make a big smoke.

Q. Why did you say in this statement - -

Prosecution: I object. "Why" is argumentative, if the Commission please.

Q. You made a statement that you stayed in the ditch for two minutes. Is that true or not true?
A. As soon as the plane had come down and the other one was overhead, I hid myself again.

Q. How long did you stay hidden? One minute, two minutes?
A. Two to three minutes. Immediately afterwards I took my bicycle and I was in such a precarious position, it was better for me to run away.

RADIMOT EXAMINATION

Questions by the Prosecution:

Q. What is your occupation?
A. Railway worker.

Q. What was your occupation in May 1944?
A. I was a railway worker at a point outside from where the locomotives assembled.

Q. Are you well acquainted with the bridge over the River Reno, here known as the Ponte Nuovo?
A. Each time an alarm was given - -

Prosecution (to interpreter): No, repeat the question.

A. Yes, I crossed it two or three times each day.

Q. Can you make an estimate as to the distance from the bank on the Bologna side of the river along the bridge to the bank of the Calderara side of the river?
A. I have never measured it.

CONFIDENTIAL

Prosecution (to interpreter): Repeat the question.

A. 150 to 200 meters.

Q. Indicating with my index finger the bank of the river on the Bologna side and crossing over along the line representing the bridge and the bank on the Calderara side, how far do you estimate between each bank as to distance?
A. 100 to 150 meters.

Q. Directing your attention to the cross marked TO representing your position at the time you saw the airplane came in contact with the ground, and also directing your attention to the point where you indicated the airplane came to rest in the bed of the river, I ask you whether the distance between these two points is greater or less than the total distance across the river? Yes or no?
A. Much larger, greater.

Q. Which is greater?
A. He said yes, much greater.

Q. From here to here than from here to here?
A. That's right.

Q. What do you estimate the distance between CA and TO?
A. 400 or 500 meters.

Q. Is this point on the bank of the river?
A. This is the height of the bank which slopes down and here is the water.

Q. How far is the slope down to the water?
A. 10 or 15 meters.

Q. Ask him is this map a reasonably correct representative of the river, the bank, the bridge and that area?
A. I think it is all right.

Q. How far is it - to refresh your memory - how far is it across this bridge from bank to bank across the bridge?
A. As I said before 100 to 150 meters.

Q. How far is it from the bank at this point of the river to the bank at this point of the river?
A. The same.

Q. Then how far is it from point CA to point OT?
A. About 500 meters.

Q. I ask you is this bridge 150 meters and this 500 meters?
A. If I go up 500 meters here, the air line is always less. About 110.

Q. I ask you using this piece of paper as a measure, across the bridge and this indicating 150 meters - ask him if he understands that this is 150 meters - ?
A. 110 meters.

Q. 110 meters then, all right, now using the same measure about how far is it? What is the greater distance, the bridge or those two points?

A. According to you, this ought to be about 90, from here to there 500 meters, if this is 500 meters. I walked about 500 meters to where I stopped, then this must be about 500. So it shows I must have gone further up.

Q. Ask him, repeat the question please, ask him to look carefully and answer this question yes or no. Is this map a reasonably correct pictorial representation of the area in and around the bridge and Via Lama, reasonably correct?
A. Yes, this is correct. I insist on this point - that if I go up here 500 meters, then this must be 500 in air line.

Prosecution: The witness has testified that the map is reasonably correct and to continue with this question is wasting the time of the Commission. The Commission can readily see the map, so I do not care to continue any further with the question.

CROSS-EXAMINATION

Questions by the Defense:

Q. With reference to your previous testimony, how do you figure that you were 500 meters from there?

Prosecution: I object to that form of question, "how do you figure?" Can he estimate, yes. It is argumentative.

Defense: We are trying to establish what basis he used for figuring the distance.

Prosecution: I believe he said it was an estimate.

President: Reword your question.

Q. Explain your basis for this estimate of 500 meters?

Prosecution: The counsel for the Government requests a five minute recess (the electricity failed).

The Commission then recessed at 1540 hours and was reopened at 1600 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the witness, the interpreter and reporter were also present.

Questions by the Defense:

Q. Explain your basis for this estimate of 500 meters?
A. If from down there up here along the bank of the river, I went up 500 meters, then the point from where I was to the point from where the plane was would be 500 meters. I tried to get away.

Q. What do you estimate the distance to be from your point to that road, from the point where you were standing to the road? What do you estimate the distance to be from this road to where you were?
A. About 500 meters.

Q. Then, in your opinion, this entire picture here is entirely out of scale. Is that true or not? Figuring these distances on this sketch here, if these distances you state or estimate are true, this picture, as shown here, is entirely out of scale to the actual distances?
A. I think they are not correct, but if they made it, I suppose it must be correct.

Q. Yes or no, in his opinion?
A. In my opinion, they are not correct.

Q. You started to testify that you saw a militia man start to run towards the plane, will you describe, in your own words, what you saw this militia man do, or his actions?
A. I saw a man coming down, through a certain moment, I hid myself, then I did not see any more, so I didn't see where he went.

Q. Did you see him again later?
A. No, I didn't see him again because I ran away. I went to Via Lame and tried to get away.

Q. What did you see him do while you were looking at him?
A. He came running down.

Q. Did you see him at any time during the time he was within your view fire a rifle or throw any grenades in the direction of the plane?
A. Whilst he was running, I saw him raise his hands and it looked as if he was throwing something, but from that distance I could not see what he did.

Q. From that distance it did look as if he were throwing something?
A. It seemed as if he were throwing stones or something.

Q. You first testified that you thought you saw an object falling out of the plane that was the parachute. What was your basis for believing that this was a parachute?
A. I saw something rolling on the ground and could not distinguish from that distance what it was. I could not distinguish it and I lifted my head only a very little.

Q. Will you please answer the question?
A. It was something white. I could not discover what it was because I hid myself immediately.

Q. Then at that moment you could plainly see that the object was white, is that correct?
A. It seemed black to me, not white. When it fell it made a lot of dust, so one could not see exactly what it was.

Prosecution: Does the Commission wish to have any questions asked of the witness?

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. When this object came from the plane you stated that there was a lot of dust when it fell. Did the object come with a certain amount of force and speed from the plane or did it come out slowly?

A. The plane came down like this, touched the ground. As it touched the ground you could almost immediately see this thing coming out.

Defense (to interpreter): Didn't he use the word "instantly?"

Interpreter: Yes, instantly.

President: Apparently no more questions.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. To review the witness' testimony, state whether or not you testified that this object left the plane which was headed in this direction north, in a northerly direction, proceeded north and then turned in front of the plane towards the water.
A. It came out here in front of the plane (indicating on the map).

Prosecution: Request that the witness be excused.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

Fernanda Geriolo, an Italian national, a witness for the prosecution, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Geriolo, Fernanda.

Q. Where do you live?
A. Via Lame 650, Bologna.

Q. Where did you live in May 1944?
A. Via Lame 712, Bologna.

Q. What is your occupation?
A. Working girl.

Q. Do you know the accused in this case, Pietro Magi?
A. Yes.

Q. Do you see him in this court-room?
A. Yes.

Q. Will you point him out?
A. (The witness indicated the accused).

Q. Where were you on May 17th, 1944, if you recall?
A. I was working.

Q. Was there an air alarm on that day?
A. Yes.

Q. What was said?

Defense: Objection. Hearsay - incidents which happened a day or two later cannot be considered. If it is admitted, it is pointed out that it is pure hearsay and ought to have a very low credibility.

Prosecution: I will rephrase the question, strike it out.

Q. What did Magi say at that time?

Defense: Same objection.

President: Objection over-ruled.

A. He said he saw the plane crash and the pilot was dead, and seeing that he was dead, he stabbed him with the bayonet. When he said that about the bayonet, I asked him, "Why did you do that, it is an ugly deed?" He said, "They are Barbarians. They wanted to machine-gun us so I wanted to do it."

Q. I will ask you if you made a statement to Flight Sergeant Mont on 18/7/45 at your home in regard to this case?

A. Yes.

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Q. Did an American plane crash at or near the New Bridge on that day?
A. Yes.

Q. Did you see it crash?
A. No.

Q. Did you go to the scene of the crash later?
A. Yes.

Q. How long after the plane had crashed, if you know, did you go to the place, the scene?
A. At about 6 or 6.30 in the afternoon.

Q. Did you see the accused on that day?
A. No.

Q. Did you talk to him a day or two later?
A. Yes.

Q. Where at?
A. Near to his house.

Q. Who was present?
A. There were quite a number.

Q. Do you remember any other persons being present other than you and the accused?
A. So much time has elapsed that I would not know. There were his companions.

Q. At that time did you talk to him or did you have some conversation with him regarding the American pilot shot down on the afternoon of May 17th, 1944?
A. Ido.

Q. I will ask you, at that time, if you didn't make this statement: "Two days after this, when I was crossing over the New Bridge, I saw the Fascist guard, Magi, bending his head in shame. I asked him why he was ashamed. Magi did not answer. I said, "I know why you are ashamed, because you have done an ugly action against the pilot. Is it true?" Magi answered, "Yes, I was forced to go where the airplane crashed and I saw that the pilot was coming out of the airplane. He tried to point his pistol at me, so I took out my pistol and shot him and killed him. They are barbarians. They came here just to kill the people and even if the pilot had not tried to defend himself, I would have killed him."". Is that true?

A. Yes.

Q. Were you at any time threatened if you testified in this case or made a statement in this case?

A. Yes.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. You say you were threatened. By whom?

A. The one who said was his fiancee.

Q. When did this happen?

A. I don't remember exactly. Quite a time has passed. It was after I had made the verbal statement and they came to my house. I don't remember the exact date.

Q. Have you seen Pietro Magi since you made the statement?

A. No, after I had made the statement no.

Q. Did he make you any threats?

A. No, not he.

Q. In connection with this statement you made to the investigator, when you made the statement, did the investigator lead you along? Did he suggest answers to these questions?

A. No.

Q. The evening, the day when Magi is supposed to have made this statement, do you recall whether marshal Forlani was present among this group of people?

A. I don't remember. Quite a time has elapsed since. I don't remember.

Q. Do you know Giuseppe Bonassi?

A. Yes.

Q. Did he ever make any statements to you?

A. Yes, he spoke to me too.

Q. Do you recall what he said?

A. He told me that he had thrown hand grenades and I asked him who was the one who struck him with the bayonet and he said it was Magi.

Q. Is it not likely that Bonassi was trying to clear himself?

Prosecution: If the Commission please, we object to that question. This witness does not know what Bonassi was attempting to do or trying to do.

President: Objection sustained.

Q. Do you know Pietro Ladi?
A. If I saw him, I may know him, but I don't know him by name. By sight I know them nearly all. If I could see him, I would probably recognise him.

Q. Did any of the other Fascist guards besides Bonassi make statements as to their participation in the events of that day?
A. Yes, there were, but if I would have to say who it was, I don't remember well. I think there was a Sergeant Vanes.

Q. Do you recall whether or not Bonassi made statements about losing his wallet?
A. Yes.

Q. Did he tell you how he lost it?
A. Yes, as he wanted to get straight to the pilot, he passed through the water and he wetted his clothes, and he thought that he had lost it in the water, and he said he didn't mind losing his wallet with five thousand lire in it, as long as he could have his vengeance against the pilot.

Q. Did he explain what he meant by his vengeance against the pilot?
A. Yes, he said they came to machine-gun us.

Q. Did he explain how he took his vengeance?

Prosecution: If the Commission please, we object. We would like to try him too but we don't have him. We are trying Magi and these statements have no bearing on this case.

President: Objection over-ruled.

A. Throwing hand-grenades at him.

Q. State whether or not Bonassi made any boasts about killing the pilot?
A. Yes, very much.

Q. By "very much", what do you mean? On many occasions?
A. Actually I only saw him that one time. I did not see him again.

Q. On that one occasion what does she mean when she states that very much he boasted?
A. He wanted to show himself up. He wanted to show that he had done something wonderful.

Q. State whether or not Pietro Magi said that the pilot was dead when he approached him?
A. I don't remember this point very well, but I think he said so. I don't remember this point very well.

Q. Do you know Pietro Magi very well?
A. Yes, I knew him. I had seen him two or three times.

Q. Did he visit you as a girl friend on occasions?

Prosecution: If the Commission please, we object.

President: On what ground?

Prosecution: I think this is absolutely immaterial and irrelevant to the case.

Defense: I think it is very material. If he is courting a girl, it is only natural he would do a little boasting, even about trivial things. You must remember there was a war on.

President: Objection over-ruled.

A. He came in a friendly way. We knew each other.

Q. Did he walk home with you on occasions?
A. Never.

Q. Did you feel that he was trying to attract your attentions, your feminine attentions?
A. No.

Q. Is it possible that he was telling you these things so that you would think he was a big man, an important soldier?
A. I never understood that he said so to show himself up as a good soldier.

Prosecution: Any questions by the Commission?

President: Apparently not.

Prosecution: May the witness be excused?

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

Don Graziano Giol-Gratton was recalled by the prosecution, reminded he was still under oath and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. You are the same witness who previously testified in this case?
A. Yes.

Q. On the 17th May 1944, according to the record, you went to the scene of an airplane crash and viewed and heard certain incidents that occurred there. I ask you whether or not you saw an Italian soldier by the name of Bonassi at the scene of the crash. I ask you to tell the Commission what, if any, conversation you had with Bonassi at that time?
A. As I said previously, when I met this man coming rushing towards the aircraft, he saw me and, thinking that I was able to speak German, he asked me to tell those two German soldiers who were there - asking them if they found the pocket money with three thousand lire it was his. So, instead of answering the Germans that thing, as I could not, I did not know German, I asked him, "Why did you kill that man?" meaning, in Italian, you altogether. I did not mean Bonassi. I meant you soldiers, why have you killed this man, and was answered, "Because if we did not, he would have killed us."

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Q. Father, would you repeat in Italian his reply?
A. Because if we would not have killed him, he would have killed us.

Q. What is the Italian verb?
A. Perche se noi non l'avessimo ucciso.

Q. Now if the reply had been "I would have killed," what would the Italian word have been showing that he as an individual would have killed?
A. Se io non l'avessi ucciso - -

Q. But he used the pronoun "ioi"

CROSS-EXAMINATION

Questions by the Defense:

Q. You, when you put the question to him, used "voi" meaning several instead of you specifically. Then is it not only natural that he would answer in the plural "noi?"

Prosecution: Objection. You are arguing.

President: Rephrase the question.

Q. When you asked him the question you used the word "voi" which means several of you. That's true. If, however, you intended to ask him specifically, would you have used the word - what words would you have used?
A. "Voi" ordinarily, being a priest I would have said "tu."

Q. Is it not true by the use of the word "voi", you intended a plural answer?

Prosecution: I object. He does not know what was in the other man's mind.

Defense: He suggested the question.

Prosecution: He can tell what he did. He does not know what the other man did.

Defense: He phrased the question.

Prosecution: He does not know what the other man thought.

Defense: I am not asking what the other man thought. I am asking what he thought. By phrasing the question with "voi" instead of "tu", the question was directed at several individuals.

Q. Father, is it not true you were a Partisan or working with the Partisans?
A. Yes.

Q. When Bonassi gave this answer, did it occur to you that he might be trying to pass the blame to others before you a Partisan.

Prosecution: I object to that. That calls for a conclusion.

A. He did not know I was a Partisan. If he knew he would have killed me. Nobody knew I was a Partisan.

Q. I ask you, as one conversant with the Italian language, that when a question is put to a man at that time using the word "voi", as you said meaning "several", is it not perfectly natural to answer in the plural "noi"?

A. "Tu" you never answer. If he meant "voi" he should have answered "noi" in the answer. You cannot have the same ambiguity in the answer as in the question.

Q. My point is that when you used the word "voi" in the normal course of Italian conversation, would that not suggest a plural rather than a singular answer.

Prosecution: Objection. He has been over this and the witness has answered the question previously.

Defense: We want to clarify a point that seemed piquyme at the very beginning, but since it has been brought out, it seemed necessary to clarify it.

Prosecution: Does the Commission have any questions it wishes to ask this witness?

EXAMINATION BY THE COMMISSION

Questions by Major Hightower:

Q. At the time you had this conversation with Bonassi, how many other persons were present or in the vicinity?

A. There were two in the vicinity. There was a German policeman.

Q. At the time there were two?

A. There were two, but busy with the crowds, keeping away the crowds

There being no further questions, the witness was excused and withdrew.

Prosecution: May it please the Commission, we have the original statements made to Flight Sergeant Mat. They are all in Italian. We received them yesterday. If any member of the Commission is interested, or if the defense desires that the original statements be placed in the record, we now have them.

Defense: We don't desire them.

President: The original statements may be placed in the record. They don't have to be read.

Prosecution: May we have a recess to sort the statements them that have been admitted and other statements the witnesses have already testified on the stand. The prosecution is perfectly willing to put the whole record - -

President: At this time we will have Bonassi's statement read again. It can be interpreted from the Italian statement.

Defense: Does that include the accused's statement?

Prosecution: Yes, we have a statement of the accused.

Defense: We object strenuously to that being entered at this time.

Prosecution: Does the President refer to Marani's statement?

President: Bennasi's statement.

Defense: If it pleases the Commission, so that our stand is thoroughly understood at this time, we object to any of the original statements being placed in the record.

President: What is the reason for your objection?

Defense: Because we feel that the witnesses have been called. They have testified here. There has been a long period of time between these statements and their actual testimony. If they are read, as they were stated at the time, the individual reading them may gain an erroneous impression of the testimony that actually took place at this time. That is thought there may be an added confusion and mix-up; that should not be so.

President: Objection over-ruled. They will be admitted.

Prosecution: Bennasi's statement apparently is not here.

Defense: Since these are admitted, if it pleases the Court, I would like to point out that it might be a good idea to review these statements and it will show how absolutely different they are to what the people tell in court. It gives you a very good idea of how these people will tell a story to an investigator, but to the court it is different.

President: The Commission will weigh these statements.

Defense: Does that include the accused's statement? We object to having the accused's statement included in this, if they are to become available to the Commission at this time.

Prosecution: This is the entire file received from the MAF at this time.

President: At this point the court desires to have Marani's statement and Maniscai's statement reread.

Prosecution: I will ask the interpreter to read the names at the top of these statements for the record.

Interpreter: Maniscai, Giuliano.

Prosecution: Under the order of the court, request the reporter attach these originals to the copies originally put in the record.

Interpreter: Marani, Edoardo.

Prosecution: The original statement of Marani is tendered to the recorder, under order of the President of the Commission, to be attached to the English copy.

Defense: If it pleases the Commission, the defense cannot understand why these statements must be read again, since they have already been read.

President: Because the Commission desires it.

Defense: Well it seems that there will be an extra weight added to statements when the individual is not even present.

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President: The interpreter will read the statements.

Prosecution: I move that the second statement of Manicasi be admitted into evidence. This is a new statement received as Prosecution's exhibit No. 8.

President: It will be admitted and read.

The interpreter read the first statement of Manicasi, Giuliano.

President: Is this the second statement that has not been previously introduced into the record?

Interpreter: This is the statement that has been translated into English.

Defense: That is the original of the statement you just read?

Prosecution: Then you have a second statement that has not been translated.

Interpreter: That has not been translated so far.

Defense: It has not been translated.

President: Has it been accepted into the record?

Prosecution: Yes, a few minutes ago.

President: Read it in Italian, then translate it.

The interpreter read the second statement of Manicasi, Giuliano in Italian, then in English - Prosecution's exhibit No. 8.

Prosecution: May it please the Commission, I move to withdraw this exhibit from the record. It has no bearing on this case.

President: The record will be withdrawn.

Prosecution's exhibit No. 8 withdrawn from the record.

The interpreter read the statement of Marani, Edoardo, in English.

Defense: If it please the Commission, the defense would like to point out that the use of these statements - double emphasis which comes from double reading - is in violation of the accused's rights under the Bill of Rights and Constitution of the United States, particularly the Sixth Amendment which provides, in all criminal prosecutions, the accused shall have the right to be confronted with the witnesses against him. It has been one of our fundamental principles of justice, American and English justice, for one hundred and fifty years, and that provision was put in for a good reason. It is overly easy for people to make statements, particularly when they are not cross-examined and particularly when they may have some reason to cover up. So, for the purpose of the record, the defense would like to make an objection to the use of these statements as in violation of the Constitution.

Prosecution: May it please the Commission, this Commission is governed by Circular 114 which, I am sure, all members are familiar with;so far as the Constitution is concerned, during the period of the War, it is out. The Commanding General has fixed the rules and regulations under which this Commission proceeds.

Defense: I always was under the apprehension that we in the Army are to support the Constitution and it has always been my feeling that no-one, not even the Commanding General of the theater, could promulgate rules surpassing the Constitution of the United States.

Prosecution: I do not desire to take the time of the Commission, but the Supreme Court has ruled time and time again that during the period of war, the President, through his commanders, has full power and authority and they can over-rule the Constitution, if necessary, in order to carry out their military objective.

Defense: Can you offer evidence that the President has authorized these rights?

Prosecution: Request that the reporter mark this diagram Government's Exhibit No. 9.

Defense: We have no objection to the introduction of this, provided it is made clear that we do not agree that - we do not agree that this is according to the scale, as the last witness pointed out. The distances may be considerably off. We are permitting it to be introduced as a rough picture of the area.

Prosecution: I ask the Commission that this may be admitted into evidence.

President: It will be admitted.

Prosecution's Exhibit No. 9 admitted into evidence.

Prosecution: It is now 5.30. Does the Commission desire to hear another witness tonight?

The Commission then recessed at 1735 hours and was reopened at 1748 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

The Commission then, at 1750 hours on 28 October 1946, adjourned to meet at 0900 hours on 29 October 1946.

Clyde W. Wallace
CLYDE W. WALLACE
Lt. Colonel, INF.
Judge Advocate

The Military Commission met pursuant to adjournment, at 0810 hours, 29 October 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The interpreter, reporter and the accused were also present.

Prosecution: The prosecution rests.

TESTIMONY FOR THE DEFENSE

Defense: The defense, at this time, if it please the Commission, moves that the Commission make findings of not guilty on the charges, on the ground that the prosecution's evidence is not legally sufficient to support the charge. In this, as in all criminal proceedings, it is the duty, it is the burden of the prosecution to prove every element of the event beyond a reasonable doubt. This the prosecution has not done. It is felt that several elements have not been proven, but, at this moment, we just wish to dwell upon one. Naturally, before charges such as these can be supported by evidence it must be found that the pilot was alive at the time of the alleged action against him. Naturally, if the pilot was dead, there can be no murder; there can be no homicide, and these charges, however, they are phrased, are basically essentially charges based upon homicide - upon murder, in that, "The accused did kill summarily 1st Lieutenant Morehead by bayonetting him." Obviously, if the pilot was dead before the accused could approach Lieutenant Morehead, there can be no murder. He could not kill, because you cannot kill a dead body, that is basic fundamental law. The prosecution's only evidence has not only failed to prove that the pilot was alive - again I repeat that it is their burden to show the pilot was alive and to show that fact beyond a reasonable doubt. If there is a reasonable doubt they have failed in their burden. The defense points out that they have not only failed to support their burden, but their evidence, in fact, has proved to the contrary. It has proved conclusively that this pilot was dead at the time Magi could have approached him. Take the prosecution's second witness Federzoli. He was one of the two witnesses who really came close to this body, observed the body and gave credible competent testimony regarding the condition of the body. Federzoli, as you may remember, was that young business man from Bologna, who gave all the appearance of being an intelligent and honest witness. You will remember that he arrived on the scene before Magi. You will remember that he testified that for five minutes - this is before Magi arrived - that from a distance of three meters he watched the body; that for five minutes he saw no movements, no sign of motion. That is for five minutes he showed no sign of breathing. He described the gory condition of the body, with the bloody unrecognizable head, wounds in the torso and burned feet. I again repeat that he testified that he arrived before Magi, before anyone came who pointed a bayonet or a gun at the body. You will remember he said that he did not see anyone striking the body. He saw no action in the direction of the body and this, you will recall, was after he observed the condition of the body for five minutes. This witness alone seems to be conclusive on the point.

Again there is this Tolmino, Pasquali, who is the young Italian soldier who was on the stand almost a day and who testified about many things, some of which appear to be damaging to us, some to the other side. The fact is that his testimony as to the condition of the body is the best that we have as to the nature of these wounds. As I recall, he testified that he was right at the body. He was there when the Germans took off the clothes. For half an hour he was in the immediate vicinity to the body and he gave a

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most accurate description about the depth and severity of these wounds. He described in detail this tremendous hole, the insides showing. A hole which could not have been caused by any alleged bayonet. He described the sorry condition of the burned feet and the face, but this hole here makes it evident that that pilot met his death by other means than bayonetting. What these other means are we can only assume, because there has been no really competent evidence to show precisely how he met his death. It could have been by any one of a number of ways - the crashing of a plane which in any normal event will kill a pilot; we know the chances are pretty slight. But assuming he did come out alive, every witness has testified there may have been explosions of ammunition. No witness who was really there denied that the ammunition was exploding. But, more important, there is the course of conduct of two other guards, Bonassi and Lodi. Particularly, Bonassi. We have the testimony of a great part of these witnesses that Bonassi launched hand-grenades or hand bombs, apparently two of them, in the direction of the pilot of the plane. Remembering the type of wound and this undoubted fact that Bonassi did launch hand-grenades, the court can draw a reasonable inference from that as to the cause of the death. Bonassi also did some shooting. These were not bullet wounds, his wounds which have been described. Anyway, there were three good possible reasons why the pilot could have been and was dead before Magi approached - the crash, the explosion of the ammunition in the plane, and Bonassi's action. So, in summary, I again repeat that the prosecution has not shown that he was alive, beyond a reasonable doubt; to the contrary, the prosecution has proved that the pilot was dead. There could be no murder of a dead pilot.

Prosecution: May it please the Commission, the defense counsel's arguments would be appropriate probably at the conclusion of this case, if he stated the facts correctly. However, on his motion at this time all the prosecution is required to do is show a prima facie case. If there is evidence before this Commission that this man killed the pilot, that is sufficient to over-rule this motion. All the prosecution is required to do at this time is make a prima facie case. We are not required to do it now beyond a reasonable doubt; merely a prima facie case. We must remember that at the time of the alleged act of Magi, there were five persons on the sands, on the dry sand of the same river: the pilot, who is dead - whose lips were sealed by this man's act - Lodi, who is dead; Bonassi who is either dead or escaped, and Magi who has talked to you through the witnesses here. The witnesses have told you that he said he killed him, and if he did not kill him - if the pilot was not alive why did he strike him with the bayonet? Why did Lodi kick him on the head if the pilot was not alive. Now the fifth man, Mario, has made a statement. He was approximately five meters away from the scene of this accident. He was the next closest to the four men at the point where the pilot was lying. We have the three Fascist guards and Mario about five meters away. He says positively that the pilot was alive; that he turned his head, moved his head; that this man bayonetted him four or five times. That is sufficient to sustain our case without anything else. Clearly the evidence shows that this man stabbed or bayonetted the pilot. Any number of witnesses have testified to that. There was a further short space of time between the time he was dragged out of the plane to the point where he was bayonetted, at the most fifteen meters. That would require approximately thirty seconds at the most. A man walking will walk 100 meters a minute at any time. We had two men there. They moved out ten to fifteen meters approximately in thirty seconds. If the pilot had been wounded, mortally wounded, prior to that time, there is a presumption that he was still alive. I am quoting now from Wharton's Criminal Law: "The presumption that a person proved to have been alive at a particular time is still so, holds until it is rebutted by the lapse of time, or other satisfactory proof." And again Morton: "The presumption of con-

tinuance of life, which exists in cases where a person living a given time since is inferred to be living now, is necessarily variable, readily yielding to the presumption, already noticed, derivable from the expiration of a period beyond which the continuance of life is improbable. The presumption of innocence, as has been already noticed, may be invoked in criminal prosecutions, either to weaken or to strengthen the presumption that the life of a particular person continues. But where a party is shown to have been alive at a stated time, the presumption is that he still lives, until the contrary is shown by testimony." Now there is no testimony that the pilot was dead until after he was bayonetted by the accused. The prosecution feels that we have made a prima facie case. There is no doubt but that the pilot was alive when he landed. There is no doubt that he got out of the plane. There is no doubt that he started towards the water and, from the time that he apparently fell on the sand until these men ran a few yards and then dragged him fifteen meters, there could not have been more than a minute elapsed and the presumption is that he was still alive at that time until it is shown conclusively by proof, and there was nobody there at that time around the body except the three Fascist guards and the pilot himself and Marani who was five meters away. The other witness Pasquali has testified he was about fifteen meters away at that time. Federzoli was some distance away and the bayonetting had taken place before he arrived at where the body was located. This one other point I want to bring up in connection with this: "Accelerating Death - Wharton's Criminal Law, Volume 1.: Accelerating death of dying person is homicide. Accordingly where intervening, concurring or independent causes contribute to the death of a person whom the defendant has wounded, it is held by the courts that accelerating a death of a person diseased or wounded is homicide." In other words, even though the pilot was mortally wounded, clearly a bayonet wound ten inches deep in his body would accelerate the death. Even though he had died anyway, it is still murder if this act accelerated his death.

Defense: There are just a few points, if the Commission please. I would like to bring out the other side to some of the statements made by the prosecution. First of all the passage in which he states that there is a presumption of continuance of life until the contrary is shown. Well, the acts showed the contrary, but even beyond that, these statements do not complete the full picture. True enough, there is a presumption of continuing life. That is one of the basic presumptions of the law, but, on the other hand, there is a presumption in every criminal trial for prosecution, that the accused is innocent until his guilt is shown. It so happens that this is one of the unusual cases where the two presumptions collide. That raises the question which presumption prevails. One will have to go. One will supersede the other. I quote a standard text on criminal law. "A man is presumed to be alive until his death is shown." So the presumption of the continuance of life must give way before that of innocence. In other words, if that presumption detracts from any of the rights of the accused, that presumption fails and it is necessary for the prosecution to sustain the burden of showing this man is alive. Other points: it is obvious from what the prosecution has said that their main reliance is on this alleged statement of Marani. True enough, if you read that statement, it is pretty bad for our side. Well, so were lots of these other statements until the witnesses got on the stand. Marani was not here in the court. I understand he was fearing prosecution. He also got himself involved in a stolen watch deal, or at least the Germans thought he was involved in stealing a watch. Half of his statement is an explanation of his conduct. There is a man who obviously was fearing criminal prosecution, who was obviously trying to clear his own skirts. The prosecution says he is the only one who was right there. Well, I don't think that is true, but everyone of the prosecution witnesses as I recall, and there were many of them, who saw this incident from the distance or from close, reported only one thrust in the direction of the accused with the bayonet. Incidentally, nobody has testified that he saw the bayonet enter. Everyone of the prosecution witnesses I believe saw one thrust, yet this man Marani says there were three or four thrusts. Well it seems strange to me that one out of the many, the one who is not here, should be the one stating that. That is

one of the reasons why we have urged all along that a minimum of consideration should be given to these pieces of paper because taking statements - it is my normal duty to take statements from Italian people as a Claims officer - and I know they will tell you anything as long as their pocket book is not concerned, but when they come in the court-room and testify that is quite a different story. Getting back to the Colonel's question as to what is the point and the nature of this motion - what it involves, his position is that the prosecution is merely required to make out a prima facie statement. This is true, but in a prima facie statement there must be evidence, credible evidence, competent evidence, upon which this court, if the court should adjourn now, if we should say we have nothing more to offer, competent evidence in which this court could predicate a finding that this man was alive before this action occurred, as what a prima facie case means is that there is evidence, beyond a reasonable doubt, that this man was alive.

Now there is a further thing that I would like to clear up. The prosecution states that the second witness arrived after Magi. He saw the condition of this body after this alleged incident. If there is any doubt in the mind of the court on that point, I suggest that before retirement, they would check the record which was testified to almost a week ago. He was the second witness but he clearly testified that he saw this body before this militia man arrived who motioned against the body, but that is something which can be verified from the record. Further argument I don't think will serve.

President: The Commission is closed.

The Commission then retired at 0955 hours and reassembled at 1000 hours.

President: The Commission has met in closed session and, after giving due consideration to the motion of the defense, denies the motion in all things and directs that the trial continue.

Defense: If the court please, we expect to call four witnesses for the defense.

Oliviero Gottardi, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. What is your name?
A. Gottardi, Oliviero.

Q. Where do you live?
A. In Calderara.

Q. What is your occupation?
A. Mechanic.

Questions by the Defense:

Q. Recalling the events to your mind during the month of May 1944, did you see an airplane crash during that month?
A. 17th May.

Q. Will you tell, in your own words, from the moment you first saw this plane in the air exactly what you did see during the time that you were observing the incident concerning this crash. Now, I want you to talk slowly and, from time to time, I will ask you a question, but don't lose track of your story. First what was your position when you first saw this plane in relation to the bridge known as Ponte Nuovo?
A. I was just near the bank, near the bridge.

Q. Now what did you see, starting at the beginning?
A. I saw the plane in flames at about 50 meters high and I then saw it fall into the river bed.

Q. What do you estimate, in your own opinion, was the speed of the plane as you saw it in the air? An estimate - 200, 300 kilometers?
A. I don't know. It is impossible to estimate that. I don't know the speed of planes.

Q. Did you notice any damage at that particular moment to the plane? Could you see any visible damage, such as the motor?
A. It was in flames.

Q. It was in flames. Continue with your story.
A. I saw the plane crash. I left the point at the dyke where I was standing and ran towards the plane but I could not see it for a moment because there was another dyke in between me and the plane. Whilst I was approaching the plane, I heard the explosion of the ammunition. When I arrived at the plane, I saw the plane burning - the plane which was burning and the pilot dead, at a distance of about fifteen meters from the plane. At a distance of about one meter there was a radio of the plane. I saw that the pilot had his left leg burned and also the left arm burned, a wound in the paunch of the size of fifteen centimeters and also one in the face, so that he was unrecognizable.

Q. What action did you take yourself in regard to the feet that were burned?
A. I put the flames out with sand.

Q. And what was the actual condition of the feet and legs?
A. The leg was almost carbonized; the arm not much.

Q. Describe this hole you saw in the body - describe -
A. It was like this (indicating right side).

Q. Which side of the body was it on?
A. On the right side.

Q. Was this a jagged hole and did you see anything else?
A. You could see the hole, but it was dirty with sand. You could see the insides, the intestines.

Q. What was the appearance of the wound on the head? The injury on the head?
A. The cheek was missing.

Q. Was it burned?
A. No.

Q. Now what did you see next?
A. I saw two or three people. I don't know who they were because I don't know them.

Q. How many were there at the time you arrived?
A. Three or four.

Q. Were they militia or civilian?
A. There were also militia men. One or two I don't remember. There were one or two civilians.

Q. Were there any Germans there when you arrived?
A. No.

Q. How much later did they come or did you see them?
A. About quarter of an hour later.

Q. Now what else did you see after this body you have just described?
A. I saw when the Germans arrived that they took documents away.

Q. Did you see any other actions by any other individual from the time you arrived until the time the Germans arrived?
A. No.

Q. What did you see after the Germans arrived?
A. I saw that they took documents away. As a matter of fact I saw they cut his clothes off because they could not open them owing to the wounds.

Q. Did you see the body after the Germans had removed the clothing from the body?
A. Yes, I saw it. I stayed there for a bit.

Q. Were you looking at the body at the time?
A. Yes.

Q. Describe the injury to the wound, to the torso, that you saw after the clothes were removed?
A. It was always the same as before.

Q. Did you see any knife or bayonet wounds on the body?

Prosecution: If the Commission please, we object to that question because it calls for a conclusion of this witness and he is not an expert on wounds.

President: Rephrase the question.

Q. Did you see any other wounds on the torso?
A. No.

Q. The time the plane crashed, what were your actions? Did you start directly for the plane, the scene of the crash from your position at that time?
A. My reaction was to go to the place.

Q. You went immediately to the scene of the crash?
A. Yes, immediately.

Q. How long do you estimate that took till you reached the actual scene of the crash?
A. Four or five minutes.

Q. Were you looking in the direction of the crash at all times while heading towards the plane?

A. Yes, I looked in that direction all the time but I could not see it.

Q. Recalling now when you were helping to put out the fire on the pilot's feet and legs, did anyone else help you?
A. I don't remember.

Q. This radio that you saw, can you describe it, what it looked like?
A. A normal radio like, for instance, cars are.

Q. Did you see any item of clothing on the pilot, such as a belt or something similar to that?
A. I think I saw a belt but I don't know whether it was of leather or of anything else?

Q. Can you describe, as you recall, this belt as to the width of it, using your fingers?
A. Like this.

Q. How thick?
A. The thickness I don't know.

Q. Was there any sort of a buckle on this belt?
A. I don't remember the buckle.

Q. This wound in the torso that you testified to seeing first, how long did you observe the body after first seeing it?
A. For about half an hour.

Q. Half an hour?
A. Yes.

Q. This wound that you described in previous testimony that was in the torso, in your opinion how do you think that that occurred?

Prosecution: If the Commission please, we object. This man has not shown himself an expert, either medically, or on explosives, firearms or knives. It calls for a conclusion.

President: Objection sustained.

Defense: The same question has been allowed in connection with other witnesses. It is only his opinion.

President: Answer the question.

Q. What do you think caused this wound that you described in the torso?

Prosecution: If the Commission please, we object to that question. This witness can tell what he saw, but "think" or "opinion" is the same thing as to what caused it.

Defense: If it please the Commission, we will rephrase the question.

Q. In your opinion, as a layman, what could have caused this?

Prosecution: If it please the Commission, this is still the same question.

Defense: We are only asking for his opinion as a layman, as we would ask anybody, not as a medical expert. Usually when an individual sees a wound, he mentally pictures how that could have happened. It is just as normal as putting your breeches on in the morning or anything else of that nature.

President: Record your question.

Defense: If it please the Commission, the defense desires to call to the attention specifically of the Commission that this witness is or was a prosecution witness.

Prosecution: If the Commission please, this witness has never been a prosecution witness.

Defense: They brought him here but did not use him.

Prosecution: We object to statements of the defense counsel. If the defense counsel wishes to take the witness stand and testify in this case O.K.

Questions by the Defense:

Q. When you were interviewed by an investigator some time ago, did you or did you not make this statement to this investigator: "The body of the pilot had a wound at the venter about 20 cm. large and I believe it was caused by the explosion of some hand grenade, and another wound in the face so large that the pilot was unrecognizable?"

Prosecution: If the Commission please, we object to the reading of this statement and move that the data be stricken from the record. The witness is present and can testify.

Defense: These are very strange words from the prosecution who have been bringing in these statements for five days and now when the other side is coming on - -

President: Over-ruled.

The interpreter read the statement to the witness.

A. Yes.

Q. Your answer is yes. Why did you have this opinion that it was caused by an explosion of the hand-grenade.

Prosecution: If the Commission please, we object to that question. It is argument and asks for a conclusion.

President: Objection over-ruled.

A. Because when I arrived at the spot I heard people say that bombs had been thrown.

Q. Who instructed you to report to this court?
A. The Questura of Bologna.

Q. Who did you report to originally when you arrived in Florence?

Prosecution: If the Commission please, we object to the questions.

Defense: We are only asking for his opinion as a layman, as we would ask anybody, not as a medical expert. Usually when an individual sees a wound, he mentally pictures how that could have happened. It is just as normal as putting your breeches on in the morning or anything else of that nature.

President: Answer your question.

Defense: If it please the Commission, the defense desires to call to the attention specifically of the Commission that this witness is or was a prosecution witness.

Prosecution: If the Commission please, this witness has never been a prosecution witness.

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A. Because when I arrived at the spot I heard people say that bombs had been thrown.

Q. Who instructed you to report to this court?
A. The Questura of Bologna.

Q. Who did you report to originally when you arrived in Florence?

Prosecution: If the Commission please, we object to the questions.

President: What point has the defense?

Defense: The point in question is to establish the fact that he was not called for the defense due to the short time that the defense had to prepare. He was originally called through the Questura for the prosecution.

President: But he has been called by the defense now.

Defense: Yes, we have taken him over.

President: Will the reporter repeat the question?

The reporter repeated the question.

Q. Who did you report to originally when you reached Florence?
A. To the manager of the Hotel Anglo-American.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. You have testified as to making a statement to a sergeant who was investigating this case, yes or no?
A. Yes.

Q. The facts that you stated to the sergeant at the time that you made this statement, were they true or false?

Defense: Objection. You should read specifically the facts. He cannot remember now. Can you remember what you said a year ago?

Prosecution: Should you address your remarks to the Commission?

Defense: He is asking whether it is true or false to the whole statement. It was taken a year ago and he cannot remember. If they want to challenge any part, they should read that part.

Prosecution: Please address your remarks to the Commission. Let the Commission decide. Don't argue with the Commission.

Defense: I am not arguing with the Commission. I am pointing out facts and I would appreciate it if I could present these facts without interruption. The question is that he is asking true or false to an entire statement which has not been put to the man.

President: Objection sustained. Read parts to the man.

Q. I will ask whether or not you made and signed a statement on the 4th July 1945?
A. I signed it but I don't remember the date.

Q. I will ask the interpreter to read this statement to the witness and ask you whether or not that is the statement he signed?

The interpreter read the statement to the witness.

A. Yes, it is correct.

Interpreter: Do you want me to read it in English?

The interpreter read the statement in English.

Q. You have heard the statement which you made and signed on the 6th July 1945, both in Italian and in English. Are the facts contained in that statement true or false?
A. They are as I declared them.

Prosecution: I will ask the reporter to mark this Prosecution's exhibit No. 10 for identification.

President: The document will be admitted.

Defense: The defense has no objection; in fact we are delighted. Everything there is consistent with what we want.

Prosecution: If the court please, when the court closes it will be time enough for the argument.

President: Confine your argument to the end of the case.

Questions by the Prosecution:

Q. Now in this statement the expression "ventor" is used. What portion of the body is that?
A. Here (at the waist line).

Q. Are there two ventors or one?

Defense: Objection. I think that is within the knowledge of a medical man.

President: Objection sustained.

Defense: If the Commission please, I wonder if you would direct the stenographer to indicate that he has always pointed to the right side when indicating this hole.

President: Indicate the right side.

Prosecution: If it please the Commission, the defense brought this out. It was not the prosecution that brought it out and clearly we have a right to cross-examine this witness on this particular question.

President: Answer the question.

Prosecution: Do you know where, on the human body, that part exists which you call the ventor?

Defense: Objection. He has already shown.

President: Objection over-ruled.

Q. Do you know where, on the human body, that part exists which you call the ventor? Just yes or no. He knows or he doesn't know.
A. I don't know whether they call it differently here. Over the hip.

Q. Over the right hip or over the left hip?
A. Right.

Q. A ventor could not exist over the left hip?

Defense: Objection. That is a matter for medical testimony. We object because this is a question for medical testimony, whether it could exist over the left or the right. He says it could exist where he designates it.

President: Objection sustained. Answer the question.

Prosecution: If the Commission please, this witness has stated that the body had a wound at the ventor - at the ventor, about twenty centimeters large. The only effort being made here is to locate where - what part of the body the ventor is. He don't know whether it is right, left, middle or where it is. Now if he can tell us if a ventor is a hole or just what is meant by ventor, that is all we are trying to arrive at. If he will answer the question:

Q. Do you know in what part of the human body the ventor exists, if one does exist?

President: He will answer that.

A. As far as I am concerned, I consider it to be here (indicating waist line).

Prosecution: If the court please, may the interpreter, for the record, define the meaning of the word "ventor" for the record?

Interpreter: According to the dictionary it says "belly, abdomen."

Q. On yourself what part of the body do you mean when you refer to my venter?

Defense: Objection, because he made motions there which practically told the answer.

President: Objection over-ruled.

A. The paunch.

Q. By paunch, do you mean what we call in english the abdomen. Show with your hands what part of the body you mean when you say "paunch."
A. Here (indicating the upper abdomen and stomach region).

Q. Now when you were at the scene of this incident, did you recognize anyone in this room who was also there?
A. No.

Q. I ask you whether or not you ever saw this man before - the accused?
A. No, I have never seen him.

Q. And you were at the scene of this incident?
A. Yes, I went to the place.

Q. And you talked to an Italian soldier?
A. No, I did not speak to an Italian soldier.

CONFIDENTIAL

Q. Did an Italian soldier speak to you?
A. No.

Q. In your statement previously read, didn't you say, "The Fascist guard insisted on saying that he had killed the pilot" ?
A. Yes, that's right that I said that.

Q. Well, didn't he hear an Italian soldier say that?
A. Yes, I heard it.

Q. Then did you see who spoke these words?
A. At that moment I saw him but I don't know him because I didn't know anybody.

Q. Isn't it a fact that this man right here is the man who spoke these words and look at the Commission when you answer this question?
A. As far as I am concerned it is not so because I don't know him, so I cannot say that it was he.

Q. Describe the man who made this statement.
A. I don't remember.

Q. You well remember the time that this incident occurred, yes or no?
A. Yes.

Q. And you were present at the scene observing for thirty minutes, yes or no?
A. Yes.

Q. And you have testified that when you saw the plane on the ground, you went about 200 meters to the scene and at all times you kept your eyes on the plane?

Defense: Objection. He didn't testify that at all times he kept his eye on the plane.

President: Objection sustained.

Q. So that in substance - in order to save time I will withdraw the question - In your statement you say the Fascist guard insisted on saying that he had killed the pilot. What do you mean by that? Did he say it more than once? How did he insist?

A. Yes, he said it more than once.

Q. Where were you standing with reference to the body of the pilot when he said that?

A. I was near to the pilot. I was there putting out the flames.

Q. Where was the Fascist guard standing with reference to you and the body?

A. About twenty meters away when I arrived, approximately.

Q. To your right or your left?

A. I don't remember that now because I too was lying on the ground because the ammunition was exploding.

Q. You would not tell this Commission that this was not the man who said that, would you?

Defense: Objection.

CONFIDENTIAL

Prosecution: This is cross-examination.

Defense: Objection. The question is ambiguous. I have difficulty in following it.

President: Make the question a little clearer.

Q. State whether or not this is the man that you heard make the statement that he had killed the pilot?

Defense: Objection. He has already stated otherwise.

President: Objection over-ruled. He will answer.

A. No.

Q. Do you know this man?

Defense: Objection. Going over the same questions which have already been answered. This can go on endlessly.

President: Objection over-ruled.

A. No.

Q. Do you know the man who made the statement?
A. No.

Q. Then can you say that this man did not make that statement?

Defense: Objection. Argumentative, calling for a conclusion and many other grounds.

President: Objection sustained.

Q. Where were you when the plane fell?
A. I was behind the dyke.

Q. How far do you estimate the distance from where you were to where the plane met the ground?
A. Two or three hundred meters.

Q. How long do you estimate it took you to get from where you were when the plane met the ground until you reached the plane?
A. Four or five minutes.

Q. When you proceeded from the place where you were behind the bank, how did you proceed to where the plane was on the ground? In what manner?
A. On foot. I was running.

Q. When did you take your prone position on the ground?
A. As soon as I arrived.

Q. How far away were you from the plane when you took the prone position?
A. Near to the pilot.

Defense: I just wish to clear up one small point. At the time you arrived and took this prone position near the pilot, were there explosions coming from the airplane?

Witness: Of course, there were explosions. The ammunition that was on the plane.

Questions by the Prosecution:

Q. When did you first hear these explosions of the ammunition in the plane?
A. It was before I arrived at the spot, whilst I was running.

Q. Did you continue to run when you heard that, or did you go down to the ground for cover after you heard that?
A. No, I continued to run because I was hidden, sheltered by a dyke.

Q. How far was this dyke from the body?
A. Maybe about thirty meters - thirty to forty.

Q. Then after he passed the dyke, did he continue to run or did he take a prone position?
A. I did not continue to run because when I had passed the dyke I was already near the pilot.

Defense: No further questions.

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Knobloch:

Q. Can you tell me, tell the Commission, how much water was running in the Rhine River about the 17th May?
A. There was little water because in the line where water would run, in parts there was water and in others there was not.

Q. When you arrived at the body of the pilot and you noticed those wounds, were the wounds bleeding?
A. They bled a little because there was sand on them.

Q. Well, have the witness stand up and point to the center of the wound that he saw; the center of the wound on his own person.
A. (The witness indicated the right side near the waist).

Questions by Major Muhbach:

Q. During opening testimony you made the statement that after the plane crashed, I ran towards it and saw the plane burning and the dead pilot. Where was the pilot in relation to the plane at the moment you first saw him?
A. Fifteen to twenty meters.

Q. And how many minutes was that after the plane had actually crashed?
A. Four or five minutes.

Q. There were other people around the body at the time?
A. There were four or five people.

Q. Including soldiers, Italian guard soldiers?
A. Guards.

Major Muhbach: That's all.

Questions by Major Hightower:

Q. Did you assist in moving the body or see anyone else move the body further from the plane prior to the time the Germans took it away?
A. No.

Q. In your estimation what is the distance between the plane and the stream of water in the bed of the river at the scene of the crash?
A. About one hundred meters.

Major Hightower: That's all.

Questions by Major Muhbach:

Q. These soldiers you spoke of being around the body when you arrived, did they carry muskets, do you recall?
A. I don't remember.

Questions by Lt. Colonel Mines:

Q. Did you notice a militia man with a wet uniform present at the scene?
A. No.

Q. How much of the body of the pilot did you see without clothes, after the Germans had cut the clothes away?
A. Without clothes, no part.

Q. How much flesh of the body did you actually see?
A. Of the wound?

Q. Of the body?
A. I only saw the wound.

Q. Did you see the body after the Germans had uncovered it by cutting away the clothes?
A. Yes.

Q. What portion of the body did he see?
A. The body - I could see the whole of the body, but of uncovered parts I could only see the wounds because the Germans had only cut the jacket in order to take away the documents.

President: No further questions by the Commission.

REDIRECT-EXAMINATION

Questions by the Defense:

Q. Where the wound was, what was the condition of the clothing? Had it been burned away? What was the condition of the clothing? Describe it in his words.
A. They were wet with blood.

Q. Was the clothing torn away? He says he could see the wound. What was the condition of the clothing around the wound? Was it torn or cut or what?
A. They were missing.

CONFIDENTIAL

Q. How much of the clothing was missing?
A. The size of the wound.

Q. Show with your hands the exact amount of clothing missing.

Prosecution: If he knows, I object. It has not been shown that he knows the exact amount

Defense: He has just said he knows.

Prosecution: First ask him if he knows how much was missing.

President: Ask him that question.

Q. Do you know how much of the clothing was missing?
A. Yes the part was missing where the wound was.

Q. Will you show with your hands which part of the clothing, using your own jacket, was missing?
A. (The witness indicated the right side). And furthermore on the leg it was burning.

Q. The clothing was missing on the leg which was burning?
A. Yes.

Q. How about his shoes?
A. I don't remember his shoes. He had one but he didn't have the other one.

Q. What was the condition of the foot which was lacking the shoe?
A. It was carbonized. It was black.

Q. The skin - by that does he mean that the skin was black?
A. Yes.

Q. Could he recognize the form of the foot, with his toes?
A. Yes, I remember that it was burned. For the rest, I don't remember.

Defense: Will the Commission direct the reporter to enter into the record his description of the clothing which was missing, if that has not been done.

President: The reporter will enter into the record a description.

(The witness described over the right part of the stomach an area with a diameter of around fifteen to twenty centimeters - about six to eight inches).

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Erwin:

Q. Ask him if he saw this German strike anyone of the militia men there?
A. No, I was not there any more. I went away.

Q. When did he leave the scene of the accident?
A. After half an hour.

Q. Had the Germans taken the body away then?
A. No.

Q. Where did he go after he left the scene of the crash?
A. Home.

Q. Where is his home?
A. I live right near the bridge, near the dyke, at about one hundred to one hundred and fifty meters.

Q. After this accident - has he ever discussed this accident with anyone, after this?
A. No.

Q. And he still does not recognize the accused as being at the scene of the accident?
A. I don't know him. I did not know anyone.

Q. He lives near the bridge and he has never seen this man near the bridge at any time?
A. No, because very often I was not at home.

Questions by Lt. Colonel Anoblech:

Q. What side of the river did you first see the airplane from? What side of the river?
A. On the side of Calderara.

Q. Ask him, did he have to cross any water to go to the airplane?
A. No.

Q. When I asked the last sentence I meant, was there a stream habitually with water in it that he could go around when he passed that particular point to go to the airplane?
A. No, I did not circumvent any water because the plane fell on the part in the river bed towards Calderara, whereas the water runs on the side towards Trebo.

President: No more questions by the Commission.

Defense: The defense asks that the witness be excused.

President: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Defense: The defense requests a five minute recess.

The Commission then recessed at 1155 hours and was reopened at 1165 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Grisoli, Mario, an Italian national, a witness for the defense, through the interpreter, was sworn and testified as follows:

Questions by the Prosecution:

Q. State your name?
A. Griseli, Mario.

Q. Where do you live?
A. Bologna.

Q. What is your occupation?
A. Workman of a sugar manufacturing concern.

Questions by the Defense:

Q. Do you recall seeing an airplane crash in the vicinity of the Reno River on the 17th day of May 1944?
A. Yes.

Q. Where were you at the time of the crash?
A. On the fifth floor of the house.

Q. Where was this house located?
A. It was my home, about five kilometers away.

Q. Five kilometers away from where?
A. From the plane.

Q. What did you do after you saw the crash?
A. I ran over there to see where it had crashed.

Q. About how long after the crash did you arrive at the scene of the accident?
A. There were about five kilometers to do on foot. I arrived after about one hour.

Q. State whether or not you were permitted to approach the airplane?
A. No.

Q. Who stopped you?
A. The Germans and the militia men.

Q. When you were so stopped, how far away from the plane were you?
A. About four hundred meters.

Q. While you were at that point, did you hear anyone speaking about what had happened?

Prosecution: Objection, if the Commission please. The statements, unless made in the presence of the accused would not be admissible.

Defense: If it please the Court, it has heard the prosecution admit so many hearsay statements during the past few days - this is rather a strange statement.

President (to reporter): Repeat the question.

The reporter read the question.

President: Objection over-ruled.

A. I saw, whilst I was standing there, I saw a man coming up from the water and he said that he had lost his wallet. He had lost it but he had had the satisfaction of having killed the pilot.

Q. How was this person who made the statement dressed?
A. Gray-green, greenish-gray.

Q. Was it the uniform of the Fascist militia?
A. Yes.

Q. Can you describe this man?
A. A little plump, well set, rather fat face, about that high - 5 feet 10 inches.

Q. Did you know that man by name?
A. No.

Q. Had you seen him before?
A. Never, because I had arrived there just then and I immediately left again because the Germans came and rounded people up.

Q. Will you tell the Commission whether or not you can recognise this man you have described, this Fascist guard, in this court-room today?
A. No, that is to say I could recognise him because I was there, but I was only there a few moments as there were Germans and I went away.

Defense: Your witness.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. I believe you stated you observed the plane from your home?
A. Yes.

Q. You were on the fifth floor of your home at that time?
A. Yes.

Q. Can you tell us where you first saw the plane that crashed?
A. I saw that he was coming from the airport on the side of Cuidorara. I then saw him over the bridge and saw that it was in flames over the bridge and then fell into the river.

Q. Could you see the plane at the point of the crash, that is when it struck the ground?
A. No, because from that distance one could not see it. I saw it coming down but when it actually struck the ground, it was very far away.

Q. About how far above the bridge was it when it crossed the bridge?
A. It was very low over the bridge, about 150 meters I should say.

Q. Did it appear to be out of control?
A. I did not see anything there. I only saw the plane in flames and nothing else.

Q. The plane left the airport, came down, passed the bridge, described a circle going back north, is that correct? Is that what I understand?

C O N F I D E N T I A L

A. No, I only saw it coming from the side of the airdrome, crossing the bridge, then coming down.

Q. What was the position of the plane, the last you saw of it? Was it pointed downward or was it gliding towards the area?
A. I saw it in flames in the sky and then I saw it come down, coming immediately straight down, then I ran out of the house and run to see.

Q. Was it coming straight down or on the slope?
A. As I saw the plane, it did not come down straight but like this. He flew pointing down, neither sliding, but just like this, rather pointed towards the ground than parallel with the ground.

Prosecution: The witness says the plane was coming down at an angle of about 30°. Does the court agree that he says 30°?

President: It seems to me to be more like 45°. Do you still want to say 30?

Prosecution: I believe that was the angle at which he held his hand.

President: Have him demonstrate it.

The witness demonstrated an angle of 45°.

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Knobloch:

Q. Will you ask the witness what kind of a day it was?
A. A nice day.

Q. Can he habitually see the bridge from where he lives?
A. No.

Q. If the bridge was sitting higher, say about fifty feet high, could he see the bridge?
A. Yes, because from the fifth floor one can see the bridge down there.

Q. I asked that question and he said he could not see the bridge?
A. No.

Defense: If it please the Commission, I believe the witness answered if the bridge was approximately ten meters he would be able to see it.

Q. I asked him if he could see the bridge from where he lived and he says, "No." He said he lived on the fifth floor.

Defense: He testified he was on the fifth floor.

Lt. Colonel Knobloch: Well, I thought he lived on the fifth floor.

President: No more questions by the Commission.

Defense: May the witness be excused.

President: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

The Commission then recessed at 1215 hours and was reopened at 1415 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Defense: The defense calls as its next witness Feriani, Antonio. The Commission will recall that Marshal Feriani has already taken the stand as the prosecution's first witness, at which time he gave rather limited testimony as to the location and the accident itself. At this time the defense wishes to make this man its own witness and to proceed accordingly.

Antonio Feriani, a witness previously called by the prosecution, was then called by the defense, reminded he was still under oath and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. Are you the same Antonio Feriani that formerly testified in this case?
A. Yes.

Q. You are reminded that you are still under oath.
A. Yes.

Questions by the Defense:

Q. At the time of the incident to which you previously testified what was your rank in the Italian militia?
A. I was a sergeant.

Defense: I challenge the interpretation. I think he said a sergeant major.

Interpreter: Sergeant major.

Q. Were you in charge as a sergeant major of the 12th Arches Detachment of the militia then stationed at the Ponte Nuovo?

Interpreter? What is "Arches"?

A. Ask him what was the name of his unit?
A. I commanded both No. 1 and No. 2 at the New Bridge.

Q. By that do you mean you commanded the detachments on both sides of the bridge?
A. I was always at the No. 1. They were called like that.

Q. Ask him if he was in command of the militia on both sides of the bridge?
A. I inspected the two groups.

Q. Were you the non-commissioned officer in charge of the guards at each of these two points?
A. I commanded the two sergeants that were in charge of these commands.

Q. Was that in the chain of command? You were the superior non-commissioned officerpresent at this post?
A. Yes.

Q. Will you name the soldiers who were under your command at these two posts?
A. At the first post there was Sergeant Lodi, Magi, then there was Marani, Alberghini, Pasquali, Neri, at the first post. At the second post there was Sergeant Mandini, Major Corporal Mellina, Melocchi, Bonazzi, Maccaferri, Pierantoni. These were the ones.

Q. Was the Mandini sergeant in charge of group No. 2?
A. Yes.

Q. Do you know the full name and rank of Bonazzi?
A. Giuseppe and he was a soldier.

Q. After the crash of this airplane in the bed of the Reno River, did you stay at your post on the bridge?
A. I remained at the guard post.

Q. Why did you stay at the post instead of going to the scene of the crash?
A. I was in civilian clothes.

Q. Was there any other reason?
A. No..

Q. Did you later learn of the incidents which surrounded and followed this crash?
A. I called Sergeant Lodi to hear about the facts.

Q. Why did you call Sergeant Lodi?
A. Because he was the non-commissioned officer who had gone there.

Q. What did you ask Lodi, if anything?
A. What had happened.

Q. What did he report?
A. He replied that -

Prosecution: May it please the Commission, the prosecution objects because of this hearsay testimony. It was not in the presence of the accused.

Defense: We wish to point out one fact here - that this is one of the categories under Circular No. 114, specifically prescribed, which states that where an officer or a person with a duty to make an investigation, has made an investigation, that the results and the testimony in that investigation are admissible in evidence.

President: Objection over-ruled.

A. He replied that Bonazzi had thrown the bomb.

Q. What bomb?
A. A bomb, we call it Calilla bomb.

Q. What is a Calilla bomb in military parlance?
A. The smallest bombs there are, offensive bombs.

Q. How large is this bomb?
A. More or less like a lemon.

Q. Like a lemon.
A. (No answer)

C O N F I D E N T I A L

Q. Will you name the soldiers who were under your command at these two posts?
A. At the first post there was Sergeant Lodi, Magi, then there was Marani, Alberghini, Pasquali, Neri, at the first post. At the second post there was Sergeant Rondini, Major Corporal Mellina, Melocchi, Bonazzi, Maccaferri, Pierantoni. Those were the ones.

Q. Was the Rondini sergeant in charge of group No. 2?
A. Yes.

Q. Do you know the full name and rank of Bonazzi?
A. Giuseppe and he was a soldier.

Q. After the crash of this airplane in the bed of the Reno River, did you stay at your post on the bridge?
A. I remained at the guard post.

Q. Why did you stay at the post instead of going to the scene of the crash?
A. I was in civilian clothes.

Q. Was there any other reason?
A. No..

Q. Did you later learn of the incidents which surrounded and followed this crash?
A. I called Sergeant Lodi to hear about the facts.

Q. Why did you call Sergeant Lodi?
A. Because he was the non-commissioned officer who had gone there.

Q. What did you ask Lodi, if anything?
A. What had happened.

Q. What did he report?
A. He replied that -

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A. More or less like a lemon.

Q. Like a lemon.
A. (No answer)

C O N F I D E N T I A L

Q. Did Lodi report the details of this incident?
A. He reported to me and I reported to the commander of the company.

Q. I don't think he understood my question. Will you tell the court precisely what Lodi told you and tell the court everything?
A. Lodi told me that when at first he arrived at the spot, he indicated the surrender of the pilot who was lying on one wing, and then he threw a bomb.

Q. Did Lodi give any other details of this?
A. No, because then the officer came and he talked to the officer.

Q. Did you call Bonassi for an explanation?
A. Yes.

Q. What did you ask Bonassi?
A. I asked for his motive for throwing the bomb because one knew international law and one knew that one must not act against a prisoner of war.

Q. What explanation did Bonassi give to you?
A. Bonassi said, "I knew the international law quite well, but the pilot was pointing his revolver at me and I did not want to get myself shot." And after that I thought it was a matter for the officer to deal with . and has no more to do with me.

Q. Did Sergeant Lodi report to you whether or not Pietro Magi was involved in any part of this incident?
A. No, nobody spoke to me about Magi.

Q. Did Bonassi, when you discussed this matter with him, make any mention of Magi in connection with this incident?
A. Nothing.

Q. Did you, after hearing the reports of your two soldiers, did you make any report to your superiors of this incident?
A. Yes.

Q. To whom did you make this report?
A. Lieutenant Collins.

Q. Was he your immediate superior officer?
A. Yes.

Q. Did you make a report to any other officer or officers?
A. The commandant of the company transmitted the report to the commandant of the battalion.

Q. Do you have a copy of this report?
A. I only have the small minutes, just notes.

Q. Ask him whether or not, yes or no, does he have a true copy of the report which he transmitted to Lieutenant Collins, the report he made? Does he have a true copy of it?
A. Not an exact copy, only notes.

Q. Only notes! Does he have these notes present?
A. I gave these copies to you or to them.

CONFIDENTIAL

Q. Is he referring to the statement, the rough statement, he made a year later after - the notes he made a year later?
A. Yes.

Q. But he has no report or notes which he made at the time he made the report?
A. No, because it was handed over to the man at the command.

Q. Do you remember the contents of his report?
A. Yes, what I have said now.

Q. Will he, to the best of his memory, state word for word the contents of that report?
A. This day, 17th May, at 1450 hours, a plane was shot down by the German Anti-Aircraft at the aerodrome. It fell in the river bed near the Ponte Nuovo, over the Reno. The men Lodi, Bonazzi and Maccaferri, without any orders, went to the spot. As far as I understood, Bonazzi threw hand grenades. After that I handed the matter over to the lieutenant.

Q. That's the end of the report?
A. The report ended there. After that there were notes which I made.

Q. Did he, in any part of this report make any reference to the accused Pietro Magi?

Prosecution: If the Commission please. That's already been covered. This is a direct examination, not cross-examination.

Defense: When has it been covered, Sir? It is a surprise to me. I asked during the interrogation whether there had been any mention by Bonazzi. Now I am asking whether there is any reference in the report itself, which is a different thing.

President: Objection over-ruled.

A. No, because I never knew anything about Magi, never.

Q. Were you present at this guard post during the next few days succeeding this incident?
A. Some days, yes. Some days, I went home, but one never spoke about that incident.

Q. Does he mean that? I think there is an ambiguity in the interpretation which means - It is not clear whether anyone spoke about Magi or about the incident. Did you in the succeeding days engage in any discussions with other members of the guard or civilians about this incident?
A. No.

Q. When, for the first time, did you first hear that Magi's name was being mentioned in connection with this incident?
A. In prison when he told me. I was interrogated and then I asked him, "What did you do there?" so he told me. Before that I did not know anything about it.

Q. Did it come as a surprise to you?

Prosecution: If the Commission please, we object to that question. This is entirely irrelevant and whether or not it came as a surprise has nothing to do with the evidence in this case.

President: Objection over-ruled.

Q. Did it come as a surprise to you that Magi's name was mentioned in connection with this incident?
A. No, I was surprised to know something - to hear about Magi. Bonassi, yes, but I was surprised to hear that Magi had anything to do with it.

Q. As a non-commissioned officer in charge of this detachment of guards, did you, was it your duty to make an investigation and report of all incidents occurring among members of your command?
A. Yes, I had to advise the headquarters.

Q. Do you recall whether there was any other investigation involving the loss of a watch or a bill-fold?
A. Not about the wallet, about the watch, yes. The loss of the wallet had not been reported. Bonassi spoke about it to the Lieutenant, the Commandant of the company.

Q. Who was supposed to have lost a bill-fold?
A. Bonassi.

Q. Regarding the watch, what were the circumstances as they were reported to you?
A. That a German militia man handed over a burned watch to the soldier Alberghini. Alberghini handed it over to Marani, another German sergeant noticed that, took it away and hit them both. Then in the evening they came to fetch them and put them into prison, the militia men. I have made a report to the lieutenant because they said the watch has been given to me. I did not take anything, they gave it to me. The lieutenant went to the aerodrome and as a matter of fact the German sergeant had given it to him and so they set them free.

Q. Do you know what has happened to Bonassi?
A. I don't know because afterwards I took leave and I never knew any more about it.

Q. Has he heard any rumours as to Bonassi's whereabouts?
A. They killed so many, who knows?

Q. You have testified that on this day in question you were at your post in civilian clothes. We are curious to know why?
A. I was going on leave. I had twenty-four hours leave. I stopped for a moment because the alarm came and immediately afterwards I left.

Q. Going back to the episode involving the watch, did the Germans take anyone away, cart anyone away with them?
A. I don't know.

Q. Do you know whether they took away Marani or Alberghini?
A. Both, but in the evening.

CROSS-EXAMINATION

Questions by the Prosecution:

Q. I believe you stated that you and Magi were in jail together?
A. Yes.

Q. You did not see any of the incidents that you have described?
A. No.

Q. And you were prepared to go on leave at the time it happened?
A. Yes.

Q. And you did go on leave?
A. The next morning.

Prosecution: That's all. Your witness.

Defense: No more questions.

EXAMINATION BY THE COMMISSION

Questions by Major Nightower:

Q. You testified that Magi told you about this incident while you were in jail. What did he tell you?
A. I asked him - I wanted to know what he had done and he said he struck him with a bayonet which hit the bolt and then I don't know.

Questions by Lt. Colonel Minor:

Q. You stated that you did not go to the scene of the crash but remained at the guard post. Was that guard post on the Bologna side of the river or the Calderara side of the River Reno?
A. Calderara side.

Q. Could you see the crashed plane from the guard house?
A. No, one could not see it. There were mounds of earth and one could not see it.

Q. Was it part of your duty to inspect the condition of the arms of the two detachments of guards under your command?
A. I ordered the sergeant to see to it that they were clean.

Q. Did you make any personal inspection shortly after this incident of the arms of the two guards detachments?
A. After I returned from leave I made an inspection of the ammunition.

Q. Did that include an inspection of the muskets and the bayonets?
A. No, only ammunition.

Q. During the period shortly after this incident, did any of the soldiers of those two detachments draw a new bayonet or report a bayonet in bad condition?
A. No, nobody.

Q. Did a German soldier make any report to you of this incident?
A. No.

CONFIDENTIAL

Q. Did Tolmino Pasquali make any report, official or unofficial of the report to you?
A. He never said even half a word.

Questions by Major Hightower:

Q. You have testified that when you questioned Bonassi relative to his actions, if he knew what the international law was regarding prisoners of war?
A. Yes.

Q. Did all the soldiers in your detachment know international law, or were they familiar with it?
A. I think they did. Bonassi said he knew it.

Q. At the time you and Magi were in prison together and he reported his part or his action at that time, did you ask him if he knew the international law at that time?
A. I did not bother about it any more because one did not have to make any more reports.

Questions by Lt. Colonel Mines:

Q. At the time Magi reported his part in this incident to you, while the two of you were in prison, did he mention any result his bayonet had?
A. No, he said the man was dead. That's what he said. So I said, "What on earth did you do?"

Questions by the President:

Q. When Bonassi reported to you that he threw a bomb at the pilot, did he indicate what damage that bomb caused the pilot?
A. No.

President: No further questions by the Commission.

REDIRECT EXAMINATION

Questions by the Defense:

Q. Did Ledi tell you the effect of the bomb which had been thrown?
A. No, because Ledi had arrived a little later.

Q. In connection with your questioning of Bonassi, did you make an inspection to determine if there were hand grenades missing?
A. Yes.

Q. What did you find?
A. Two were missing. I saw that two bombs were missing, and it was said that one had been thrown a few days previously from behind the bridge. Bonassi said that one had been thrown from behind the bridge a few days previously.

Q. Did you question Bonassi as to whether his action had any effect on the pilot?
A. No, I only asked him, "What did you do, you did something which would have consequences. The war will be lost and you will have to answer for this." And he said - he did not know what to say.

CONFIDENTIAL

Q. Did he attempt to pass the blame to anyone else?
A. No.

Q. Did Iodi report to you where the pilot was found, the exact place where the pilot was found?
A. Yes, they took him away from the wing of the plane, amidst the flames and explosion because they were afraid the plane might explode. That's what he said.

Q. Did Iodi tell you whether the pilot was dead or alive?
A. He said that when they took him away from there, he was dead, but I can not be sure of that.

Q. Your report stated that when you were in jail you discussed this episode with Magi. Will you state in more detail the nature of your conversations with Magi and how he described this incident?
A. He only told me that he had struck him with the bayonet and I shouted at him and said, "Because of your act, I had to go to prison, because if you had told me something about it, I would have made a report."

Q. Let's get this clear, it is somewhat confused. Magi, did Magi say precisely what did Magi say about the bayonet and the belt? You reported he said something about the bayonet and the belt, but do you know his exact words?
A. He said, "I was there, somewhat agitated and I just struck him without really knowing what I was doing." That's what he said.

Q. What did he state about where the instrument hit?
A. He said on the belt of the parachute.

Q. From that did you infer that the blade had not entered?

Prosecution: If the Commission please, we will object to that question.

President: Answer the question.

Q. Did he tell you whether or not any blade - the blade entered the body?
A. No, he said, "No."

Q. You made some remark, ambiguous remark, about, "It is too bad that that was not reported and if that were true, I would not be in jail today." Will you have him explain in more detail what he meant by that?
A. If I had advised my command, they would have been responsible for it and they would have had to take appropriate action.

Q. What effect would that action have had upon Magi, in his opinion?

Prosecution: If the Commission please, we object to that question. The witness is not qualified to answer it.

President: What point are you trying to bring out?

Defense: I think he is trying to show it is too bad he did not make a report of this and he would have been entirely cleared.

President: The question may be answered.

A. That I cannot say because my superiors would decide that.

Q. Did Magi express his regret that you had not made a report, had not included him in this report?
A. He was glad that I had not included him in the report.

EXAMINATION BY THE COMMISSION

Questions by the President:

Q. Did any of the militia men in your command at any time indicate to you how the pilot was killed - by bomb or by the crash of the airplane or by some other cause?
A. No, because they are all uncertain about this fact.

President: No other questions of the witness.

Defense: May the witness be excused?

President: The witness is excused.

There being no further questions the witness was excused and withdrew.

Defense: If it please the Commission, the defense has no further witnesses at this time to offer.

President: Have the rights of the accused been explained to him?

Defense. The rights of the accused have been explained to him and the accused desires to remain silent.

President: I will again read those rights to him. The Commission will read the rights of the accused.

President: You, Pietro Magi, the accused, are advised that you have the rights as to the specification, first to remain silent, in which case the Commission can hold no prejudice against you and no inference adverse can be drawn, if you choose to remain silent it will not be construed as an admission of guilt, or, second you may testify under oath, as a witness in your own defense, subject, however, to cross-examination on the subject of your direct examination or any matter bearing thereon, or, third to make a statement, oral or written, not under oath, in denial or defense or excuse, or your counsel may make a statement in your behalf and the Commission will give the statement such weight and value as the Commission believes it has the right to receive. Do you understand your rights, as I have explained them to you; first, to remain silent and say nothing at all; second, be sworn as any other witness and testify but subject to cross-examination; third, to make an unsworn statement. Knowing your rights as the accused in this case consult with your counsel, then tell the Commission what you desire to do.

The accused: To remain silent.

Defense: The defense rests.

President: Has the prosecution anything further to offer?

Prosecution: If the Commission please, we would like to have about five minutes to consult.

The Commission then recessed at 1555 hours and was reopened at 1550 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: The prosecution offers as its first rebuttal witness Ponturo, Carmelo.

Ponturo, Carmelo, an Italian national, was recalled by the prosecution, in rebuttal, reminded he was still under oath, and testified as follows:

TESTIMONY IN REBUTTAL FOR THE PROSECUTION

DIRECT EXAMINATION

Prosecution: The prosecution offers in evidence original statement, in Italian, made by Pietro Magi, together with the English translation, as Prosecution's Exhibit No. 11, for identification.

Defense: Will you state, for the purpose of the record, for what purpose you are introducing this after the prosecution has rested?

Prosecution: The witness Feriani was permitted to testify as to statements made by Magi while they were in jail together, many months after the time of the alleged crime. This is offered as rebuttal evidence of these statements.

Defense: First of all, if it is read to the court, it will be our position that there is nothing here which rebuts anything in that testimony and if the court so thinks then I think it should not be admitted into evidence, inasmuch as the prosecution has already rested and can only introduce rebuttal testimony.

President: It will be read to the court.

Questions by the Prosecution:

Q. I hand you Prosecution's Exhibit No. 11, for identification, and ask you to state what it is, if you know?
A. It is Magi, Pietro's statement.

Q. When was it made?
A. July 1944.

Q. Who was present at that time?
A. Magi, Flight Sergeant Meat and the Brigadier of the Public Service of Bologna.

Q. Did you write the statement?
A. Yes, sir.

Q. State whether or not the accused Pietro Magi signed the statement in your presence?
A. Yes, sir.

Q. Was he warned before making the statement?
A. Before putting it down in writing.

CONFIDENTIAL

Q. I hand you the English translation and will get you to state whether or not that is your translation of the original document made?
A. Yes, it is.

Q. Did you translate that to the best of your knowledge and ability?
A. Yes, sir.

Prosecution: I request the Commission's permission to read this?

Prosecution's exhibit No. 11 was read to the commission.

Prosecution: I ask that this original statement in Italian and the translation be admitted in evidence.

Defense: The defense has no objection to this; in fact, they believe that it is not actually a rebuttal but confirms the various facts that the defense has been trying to bring out for the interest and evidence of the Commission.

President: The statement will be admitted as evidence.

Prosecution's exhibit No. 11 admitted into evidence.

Defense: One point. We do not feel, however, that he quite clearly read Bonasi, Giuseppe in this statement as the name. It is so mentioned. We would like to emphasize that point.

Prosecution: You can have the witness.

Defense: May we have the original statement in Italian so that the accused - -

Defense: No questions.

Prosecution: Does any member of the Commission have any questions?

President: Apparently none.

Prosecution: Request that the witness be excused.

President: The witness is excused.

There being no further questions the witness was excused and withdrew.

Prosecution: The prosecution rests.

Defense: The defense has nothing further at this time. The defense rests.

President: The Commission wishes to recall the witness Tolmino.

Tolmino, Pasquali, an Italian national, was recalled by the Commission, reminded he was still under oath, and testified as follows:

EXAMINATION BY THE COMMISSION

Questions by Lt. Colonel Mines:

Q. As I recall your testimony, you testified that after you had secured your arms and started to approach the plane - the crashed airplane - you stopped and took cover during some explosions of ammunition or something?

A. Yes, behind that mound of earth from where one could see.

Q. And then you continued onward to approach the airplane still closer and reached a position where you saw the pilot?

A. No.

Q. When did he continue on from that point until he had reached a point until he could see the pilot?

A. After twenty to thirty seconds, I started from there, where I was, and slowly, gradually approached the spot.

Q. During the time you were walking from the place where you took cover till you reached the place where you could see the pilot, did you hear any shots which sounded to you as though they might have come from a model 91 Italian rifle?

A. No, I heard those explosions of the plane.

Q. You heard nothing that sounded like a round fire from an Italian rifle similar to the one you had yourself?

A. No.

Q. When you arrived at the point where you could see the pilot, did you see a German soldier also in the vicinity of the pilot?

A. He was in front of me.

Q. How far were you from the pilot?

A. From here to there (indicating).

Q. About six meters?

A. From the pilot I was seventy to eighty meters.

Q. According to the testimony, past testimony, I believe you stated at one point you came to approximately within twenty meters of the pilot?

A. No, I was seventy to eighty meters distant.

Q. How far were you from the pilot when you saw, as you have previously testified, Magi bayonet the pilot?

A. There on that spot seventy to eighty meters.

Defense: It is a little late to object to the question but I don't think that he has ever testified that he saw Magi bayonet the pilot. He saw the motion towards the body. I think that was the limit of his testimony, sir.

Prosecution: If the Commission please, in the statement that was made by the witness and was read to him, which he stated was true, he stated that he saw Magi bayonet the pilot.

Defense: The word bayonet is a legal conclusion which the court is seeking to achieve through all the evidence. It is the conclusion. He has made other statements that he never saw any penetration, so that from his previous testimony, I don't think it follows he meant the legal conclusion but the simple expression made in ex parte statements. I think his actual testimony merely goes as far as to show that he saw the motion but no penetration.

CONFIDENTIAL

Prosecution: If the Commission please, it is not a legal conclusion if a man runs a bayonet into another man's body.

Defense: If there is any doubt on this question, I suggest that before the court convenes, or after, his testimony be checked, where he made it clear that he did not see any penetration, only the motion.

President: The Commission will give such weight to his testimony as it may warrant, having clearly in mind what he previously testified.

Questions by Lt. Colonel Hines:

Q. From this point where you saw Magi make a motion with his rifle and bayonet toward the body of the pilot, at that moment how far was the German soldier from the pilot?
A. He was four or five meters away from me, so he was about sixty to sixty-five meters away.

President: Read the statement of this man to the Commission.

The interpreter read the statement in English and Italian as follows:

Statement made by Fascist Guard Pasquali Tolmino son of Amedeo and of Zamboni Marcella, born at Ca' de Fabbri, Bologna, on 12 June 1924 and living at Ca' de Fabbri n. 1 via Sovenella, member of the Guardia Nazionale Repubblicana to the Special Investigation Branch, Royal Air Force:

I, the undersigned, wish to add the following facts which I did not state in my previous statement made to the Special Investigation Branch, R.A.F. on 9th July 1945.

I state that on the day that the allied aircraft crashed the Fascist Guard Magi was in possession of my rifle type n. 91 and of the bayonet. When he returned my rifle and bayonet it was about two hours after the crash. The bayonet was bent and wet with blood. I said to Magi, "What have you done?" and he asked me to swear that I did not see anything and that I did not see him bayonet the pilot and also that the bayonet was wet with blood.

I removed the bayonet from the rifle and wiped it by pushing it into the ground.

Magi told me that I had not to say anything to anybody what we had spoken about.

I saw Magi hit the body of the pilot with the bayonet once. I went to where the pilot and Magi was shortly after this and saw that the pilot was dead. The pilot had wounds in the head, his side, and in one of his legs and blood was coming out of his wounds. The ground near the body was covered with blood.

Sergeant Lodi, the Fascist Guard Bonassi and perhaps the Fascist Guard Maccaferri witnessed what Magi had done and that the bayonet was wet with blood. I heard that the Fascist Guard Bonassi was saying to Marshal Poriani that he had thrown two hand grenades against the allied pilot because the pilot had pointed his pistol at him.

People that had gathered around were saying that the Fascist Guard

Magi had given the last blows that has caused the pilot's death.

(Signed) Pasquali Telmino

Bologna, 11 July 1945
Jail of St. Francesco

This statement has been written down by me at the request and dictation of Pasquali Telmino.

(Signed) Brigadiere F.b. Ventura Carmelo

The above statement was translated by me to the best of my ability.

(Signed) Ventura Carmelo

Statement witnessed by me.

(Signed) G. G. Mat, F/Sgt.

Questions by the President:

Q. You have previously testified that you advanced slowly towards the airplane crash and that you finally reached the point where you could see the militia men dragging the pilot. At that point and at that time when you first saw the pilot's body, will you, in your own words, explain to the court exactly what you saw, all activity that took place?

A. When I arrived at that point I saw people. They had already arrived at a distance of fifteen meters. Anyhow, I saw people dragging out the body of the pilot.

Defense: Didn't he say the names of the people?

A. As they were already at fifteen meters away, Magi arrived and struck with his bayonet. Then Lodi he kicked the pilot with his feet, in the face, that is on his head. Later, when we returned to the guard post, he said, "Look, I am full of blood." Then the German arrived who hit Magi. This actually should come later. When Magi had struck with his bayonet and Lodi had kicked him - when the German saw Magi making that movement with his bayonet, he immediately came running towards him and hit him. From there they dragged him further away, about thirty meters from the plane. People arrived then - Marani, Alberghini, Maccaferri, Neri. There was Fiorentoni and further behind Bonassi and Lodi and the two Germans. From there I arrived and I stopped at a distance from here to there to the pilot. From there I saw they unbottoned him, moved him. They wanted to see whether he had his dog tags. From there I could see that he was burned, that he had those wounds. I could see that the flesh and the clothes gave out smoke. He had those wounds here (indicating). Another one here (indicating) and the leg, I think, broken, anyway bent. I then put some sand on top of it because the flesh burned gave out smoke. (The witness indicated the top of his leg). Then I saw Lodi going there and taking the wireless. Then I saw him take a box and also money which the pilot had.

Q. By wireless, do you mean radio?

A. Yes. Then I had been there for a while and then the priest arrived whilst I was throwing sand on him. The Germans took photographs, then I went away.

CONFIDENTIAL

Q. Did you observe the pilot make any movement or did you hear him utter any sound before Magi made this striking motion towards him - during the time that Magi made the striking motion towards him and after the time that Magi made the striking motion towards him?
A. No, I didn't hear anything. I did not see that he moved.

Q. Do I understand that the witness testified he did not see the pilot move or he did not hear the pilot utter any sound during this period?
A. I did not hear anything and I did not see that he moved. I didn't see whether he did like this or like that.

Q. Did you see the pilot move or did you hear him utter any sound before Lodi kicked him, during the time he was kicking him or after he finished kicking him?
A. No, I did not hear anything. He didn't complain.

Interpreter: I asked him, "Did you see whether he moved?" and he said "No."

Questions by Lt. Colonel Hines:

Q. How far was Marani standing from you?
A. At first I did not see Marani, I did not look at Marani when I first arrived. They were hidden. Then later I saw Marani there.

Q. Can you say how far Marani was from the pilot's body at the time Magi struck the body?
A. Twenty to twentyfive meters.

Q. Was Marani between you and the pilot's body?
A. It was Fierantoni who was twenty to twentyfive meters away.

Q. Where was Marani at the time Magi made the motion towards the pilot's body with the rifle and bayonet?
A. That I don't know. I saw them later when they came out.

Questions by Major Mubbach:

Q. Could you see the body of the pilot clearly at the time of the Magi attack - all of the body?
A. Lodi and Demassi were dragging him like this and when he arrived they left him.

Q. Could he see the body plainly at the time he stated previously he saw Magi make a motion with the bayonet at the body of the pilot? Did he see the complete body at that instant?
A. No.

Questions by Lt. Colonel Hines:

Q. Do you know whether any of the soldiers present at this incident found at that time or later an American pistol, revolver or automatic?
A. No.

Q. Was such an American pistol found by anyone at the time of this incident or later, do you know?
A. Yes.

Q. Who found it?
A. A corporal.

CONFIDENTIAL

Q. Where did he find it, if you know?
A. He told me but I don't know because I didn't see it. He told me he found it at a short distance from the plane.

Q. Did he say whether it was behind the plane, at one side of the plane or in front of the plane?
A. He said, "I found it there," but I don't know.

Questions by Lt. Colonel Erwin:

Q. Ask him what this corporal did with the pistol?
A. I don't know who kept it.

President: No further questions by the Commission.

Defense: If the Commission please, the defense has a question or two.

CROSS-EXAMINATION

Questions by the Defense:

Q. You have previously testified that you observed one striking motion by Magi in the direction of the body. Are you absolutely certain that there was only one?
A. I saw that he struck him and that the German ran towards him and struck him.

Q. That was not exactly the question, the answer to the question. How many did he see, only one blow or one movement on Magi's part towards the body? Did he see only one?
A. Yes, one only.

Q. Is he absolutely certain that there was not more than one?
A. I saw him hit, strike once, then I looked at the Germans who came running, then I looked around.

Q. After this one blow which he saw, isn't it true that the German soldier grabbed Magi?
A. From where I was seventy or eighty meters away, I saw the Germans running towards Magi.

Q. In conclusion you observed only one blow, is that the fact?
A. Yes.

Defense: If it please the Commission, there are many other things which this witness brought out on the previous examination, which consumed almost a day, and several things which we think are vital and since this ex parte statement of his has already been read, I raise the question of whether some of the pertinent parts of the record relating to his testimony also be not read, particularly the parts where - we do not want to read the whole thing, it would take hours, but there are three parts of the record which might throw light. The first part is where he testified that when he saw this motion he saw no penetration. The second part, which may pertinently be read, is that he saw no - the body was later undressed from this part up - and he saw no bayonet wounds. And the third part of the record, his testimony as to the gaping hole. The defense feels that, at this time, to counteract some of the things in this ex parte statement which has been read, it might be well if these parts are read.

President: The recorder will read the record.

CONFIDENTIAL

Defense: If the Commission please, the request was made for these certain passages in order to interpret properly this statement which was already read for the second time. There are certain legal conclusions. As I pointed out there are three occasions where his subsequent testimony amplified and explained certain altogether too brief passages in that statement which was read for the second time, and last night I spent considerable time with the reporter in finding these passages, according to the instructions of the court, and she is ready to go ahead.

President: The reporter will proceed and read the passages that have been indicated.

The reporter read the previous testimony requested.

Prosecution: May it please the Commission, the prosecution would like to know the relevancy of having this part of the record reread. It has nothing to do with the testimony of this witness yesterday.

Defense: The prosecution brought the witness back in. The statement had many conclusions. For example, "bayonetting" when he said "bayonet"; he meant a striking in the direction of the body, but he testified there was no penetration. Also the fact that there were no small holes is also

Defense: A recess might be in order to enable her to find the appropriate parts.

President: The Commission is closed until 0900 hours tomorrow morning.

The Commission then, at 1700 hours on 29 October 1946, adjourned to meet at 0900 hours on 30 October 1946.

OLYDE E. HALLAM
Lt. Colonel, INF.
Judge Advocate

The Military Commission met pursuant to adjournment, at 0930 hours, 30 October 1946, all the members of the Commission being present as well as the personnel of the prosecution and the defense, who were present at the close of the previous session in this case. The accused, the witness, the interpreter and the reporter were also present.

Tolmino Pasquali, a witness who was testifying at the close of the previous session, resumed the stand, was reminded he was still under oath, and testified as follows:

Prosecution: May it please the Commission, I believe the last motion before the Commission was for the rereading of certain testimony of the witness now on the stand. The Commission, of course, has a right to have any evidence reread that they desire, or to have all the evidence reread, or to have the reporter reread all the evidence in closed session. However, we feel that we are getting into difficulty here if we have part of the evidence reread on the part of the defense, then the prosecution would be entitled to have certain evidence read to rebut that. The purpose of having the testimony reread is to emphasise that particular testimony, so if we get into this, I don't see any end to it.

proof there was no penetration. In other words this elaborates upon it. In other words now the court has the full picture starting with that statement.

President: There are no further questions by the Commission.

DIRECT EXAMINATION

Questions by the Prosecution:

Q. Calling your attention to previous testimony, you testified that you saw the accused Magi make motions with his bayonet in the direction of the body of the pilot. Tell the Commission how far you were from the body at the time you saw the accused make the motion with the bayonet?

A. Seventy to eighty meters.

Q. And at a distance of seventy to eighty meters, did you hear the pilot make any sound?

Defense: Objection. He answered the same question yesterday for the court several times.

President: Objection sustained.

Q. How long after you saw the accused Magi make the attack with the bayonet did you approach more closely to the body of the pilot?

A. Two or three minutes.

Q. And after you arrived where the body was - -

Defense: If it please the Commission, before the next question, the defense is not quite clear whether the prosecution is going to completely recommine this witness. We would suggest that if it is necessary we go back to the original testimony and have the court reporter read it. We are not quite clear what - -

Prosecution: The purpose of the first interrogation was to show the distance that the witness was from the body, as he had been interrogated as to what he heard and what he saw, and to show the Commission how far he was away from this body at the time the incident occurred, so the Commission would be advised whether a person reasonably could hear what took place at that time from such a distance.

Defense: The defense believes that this has been covered in great detail and if there is any question, it would be in the hands of the Commission to ask for clarification.

Prosecution: If the Commission please, that was the exact argument presented to the Commission before this record was read.

President: Objection overruled.

Prosecution: Strike the question.

Q. When you first saw the body, how far was he from the plane?
A. About fifteen to twenty meters.

Q. And was it in that position when you saw the accused attack it with the bayonet?
A. The pilot was there. They dragged him. Semassi and Lodi arrived and dragged him and then Magi arrived. He was always there at fifteen meters.

Q. Was that where the accused Magi attacked the body, at that point?

Prosecution: If the Commission please, if the defense objects I will retract the statement, but I believe it has already been testified that this body was moved about fifteen meters, as I recall it, from the plane, and it was at that point that the incident occurred. Now I am asking him to fix the point if that is correct or not?

A. Yes.

Q. After that happened was the body again moved?
A. First they dragged him with their hands, then when I arrived I saw Magi who struck him.

Q. After Magi struck him did they move the body again?
A. Yes.

Q. And was it after the second movement of the body that you went up and viewed it from about fifteen meters, as you previously testified?
A. It was the second time.

Q. Could you see any indication on the ground where the body had been moved?
A. Yes, the signs but when I arrived later.

Q. What were those signs?
A. There was some brain and one could distinguish drops of blood.

Q. Was there sand along the path where this body had been moved?
A. In the river there was all sand from where I saw it.

Q. In spite of the sand you could still see the trail of blood?
A. There were the spots where the sand had soaked it up.

Q. Who dragged this body?
A. I saw it afterwards when they had already dragged him here.

Q. What are the names of the people who dragged the body?
A. Lodi and Semassi.

Q. Did you ever talk with Lodi and Semassi about the circumstances that occurred at the time they dragged the body?
A. Yes.

Q. State whether or not the clothing on the body was burning at the time it was dragged?
A. I saw it afterwards.

Q. State whether or not the clothing was burning at the time they dragged the body the second time?
A. I didn't see it.

Prosecution: The prosecution has no further questions.

Defense: The defense has none.

Prosecution: Request that the witness be excused.

President: The witness is excused.

There being no further questions the witness was excused and withdrew.

Prosecution: If the Commission please, the prosecution desires to recall Mr. Mast to the stand.

Defense: If the Commission please, the defense would like to ask for an explanation of the purpose of bringing this witness, who was not an eye witness, or any type of witness to anything which is relative to this case?

Prosecution: At the conference a few moment previous, the Commission requested any information that might throw additional light on to this matter. If the questions propounded to this witness are improper, at due time an objection may be made.

Charles G. Mast was recalled by the prosecution, reminded he was still under oath and testified as follows:

Q. But did Lodi or Bonassi say that it was burning at that time?
A. Yes, they did and then when I arrived I could also see that his trousers - one could understand they were burning.

Q. Ask him to pay particular attention to this question. Is it not a fact that Lodi or Bonassi told you that the pilot suffered from the heat of the fire on his clothing while they dragged him away from this place and that his body drew similar to this (indicating reaction to pain)?
A. No.

Q. Nor anything similar to that?
A. Bonassi told me that the pilot was lying on the wing of the plane and he was then moving about in pain because of the heat and Bonassi called, "Come out, come out" and he then threw the bombs.

Prosecution: Your witness.

Defense: If it please the Commission, as asked by the prosecution in the beginning, we do not have any objection to this testimony since it conclusively proves that the pilot was dead before the alleged thrust by the accused.

Prosecution: Is there a motion being placed before the Commission or an argument?

Defense: I believe the prosecution said if we had any objection to this question - -

Prosecution: The objection should have been made before the question was asked. It is a little late.

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State whether or not you have interrogated one Tolmine Pasquali?
A. I have.

Q. Have you interrogated him more than once?
A. Three times in all.

Q. When was the last time you interrogated him?
A. On or about the 26th October 1945.

Q. In that interrogation did you ask him questions concerning what the condition of a wound was on the body of an American pilot?
A. I did.

Q. Tell to the Commission what and how Pasquali described this wound to you?

Defense: Objection. The reason we object to this is these investigations preceding the trial are usually designed by one side to bring out what it wants to bring out. I do that myself in my normal duties and I know I can bring out from a witness what I want and he will put his name to it. This was far away from testimony in court and I think anything outside of court is irrelevant.

President: Objection overruled.

Prosecution: The Commission has ruled that you may answer the question.

A. During the questioning I asked Pasquali whether or not he saw a wound in the region of the stomach. The questioning was done through the medium of an interpreter Ponturo, Carmelo. Pasquali described a wound in the stomach by the use of his hands and it was to this effect -

Q. About how great a distance in diameter would you estimate he indicated?
A. I would say four and a half inches.

Prosecution: You may have the witness.

CROSS-EXAMINATION

Questions by the Defense:

Q. Is it true that you have been an investigator for a considerable period of time?
A. It is true.

Q. For how many years?
A. Five years.

Q. I presume you have questioned many witnesses in that period?
A. I have.

Q. Can you give an estimate as to the number?
A. Several hundreds.

Q. Several hundreds, suppose it might be thousands.
A. I cannot definitely say.

Q. A large number in other words, is that right?
A. That's true.

Q. Answer yes or no whether you can remember the details of what people you have examined have told you? Are you able to remember all the details of what people have told you?

Prosecution: I object to that. Fix one detail if he is attempting to test the memory of this witness as to time or who the questions were asked of, to show to the Commission if this man has a good memory.

President: Objection sustained.

Q. On June 16th, 1945 who did you interrogate if anyone?
A. I cannot give you exact names on that date?

Q. On June 12th, 1945?

Prosecution: Does the witness have a diary?

Witness: I have certain notes that I kept whilst I was investigating this case, which I later typed, and I have a typed copy outside in my raincoat.

Prosecution: If the Commission wishes, the witness should be able to refer to his notes to refresh his memory.

Defense: May I ask one question first?

Q. Did you refer to your diary before coming to this proceeding and answering this question?
A. I did not refer to my diary today. I have looked at my notes during the proceedings of this trial, yes.

Defense: I will withdraw the previous question so as not to make it necessary for him to go for his diary.

Prosecution: Possibly could we have the questions?

Q. Do you remember questioning - -

Prosecution: If the Commission please, if the questions are withdrawn could we have the questions and answers stricken from the record?

Defense: The previous questions?

Prosecution: Yes.

Defense: Yes.

Q. Do you recall questioning, at any previous date, a certain Sottardi?
A. Yes.

Q. Do you recall his testimony before you as to the size of the wound which he saw?
A. To the best of my belief it was a wound which he described in the venter and I cannot remember the exact number of centimeters in diameter. I recall that this witness described the wound.

Q. Do you remember whether it was a small wound or large?
A. I cannot recall. It is some eighteen months ago since I saw this man on that point.

Q. Have you read his statement since in connection with this?
A. I may have done. There are many, many statements I have in my possession.

Q. And in connection with this one particular incident, the events arising out of this crash at Punto Nuevo, how many witnesses did you interview?
A. How many persons you mean? It was somewhere in the region of eighty or over that number.

Defense: Your witness.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. This last interrogation that you refer to when Pasquali described the size of this wound as about four and a half inches in diameter -
A. He did not describe the measurement but merely by his fingers.

Q. Indicating you estimate about four and a half inches? That was how many days ago?
A. It was on or about the 24th October 1946.

Q. Five or six days ago?
A. That is so.

Q. And about how long did you take to make this interrogation with reference to the size of this hole?
A. This interrogation went over a period of over an hour, maybe two hours.

RECROSS EXAMINATION

Questions by the Defense:

Q. How many questions did you ask Tolmino Pasquali about this wound?

Prosecution: If he knows.

A. I cannot remember that. I went right over the period of the time that the aircraft crashed and his movements during that day.

Q. Well you asked him first whether, as I recall, he observed any wound or wounds about the stomach and that he gave that answer to you? Then did you passon to other subjects of questioning?
A. Yes.

Q. In other words there was only this one question on this subject of this wound, is not that right?
A. I have not said and I don't say that.

Q. You said you passed to another subject?
A. I have said that, yes.

Q. Did you return to this subject later, do you know? Do you remember?
A. I cannot remember because when I was questioning this man Yasquali I was taking down notes, rough notes.

Q. Is it not true that to the best of your memory you asked only this one question?
A. I am not prepared to commit myself that it was only one question as I may have gone - -

Q. You may have but you are not certain?
A. I am not certain because the questioning covered other aspects of the case besides this one movement.

Q. You say you were busy taking down notes. Is it not possible that while you were busy writing, you did not observe his full motions in describing the wound?
A. I am talking about a wound, regarding questioning that I put to Yasquali, in the region of the stomach. I have not been asked concerning other wounds, but merely this wound in the stomach.

Q. Already the question is related to that wound.

Defense: Repeat the question

The reporter repeated the question.

Witness: May I explain to the Commission how a person is questioned through the medium of an interpreter? The question is put to the interpreter. The interpreter then speaks to the person. It is then that the investigator pays attention to the witness' reactions and also to the reply that the interpreter gives and, therefore, I would be paying attention to whatever reply I was given.

Defense: Your witness.

REDIRECT EXAMINATION

Questions by the Prosecution:

Q. What was the name of the interpreter that you used when you made this last interrogation?
A. Pentura, Carmelo.

Prosecution: The counsel for the Government has no further questions.

Defense: We have no further questions.

Prosecution: Does the Commission have any questions they wish to propound of this witness?

President: Apparently not.

Prosecution: Request that the witness be excused.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

CONFIDENTIAL

Defense: If it please the Commission, the defense would like to make a brief statement extraordinary, but we feel that the procedure is a little unusual, and I would like to make a two sentence statement which the court can throw out.

Prosecution: If the Commission please, we object to any statement at this time because in the regular manner of procedure at the close of the case both counsel are given opportunity to argue whether one side has failed to make a case or whether they have not failed, and the record is all before the court, and it is not essential for justice at this time for either side to make an argument.

Defense: May I state the reason for the request at this time. First of all these proceedings are much more formal and do not enable the court in an informal manner to know the facts which may be of more interest to the court now than two hours later.

Prosecution: If the court please, a motion has been made to the Commission that arguments be held until all of the evidence is in and at the proper time. If the Commission wishes to hear arguments at this time, we are very willing to offer argument.

Defense: This is to counteract an unusual procedure.

Prosecution: Then it may be referred to in the final argument.

President: You will refer to it in the final argument.

Prosecution: At this time, in order to save time, we could bring Penturo, Carmelo, the interpreter, in here to testify to what transpired at this interrogation. If the defense will agree, we can save time by stipulating that the testimony of Penturo, Carmelo would be, in substance, the same as Sergeant Mast's. Will the defense so stipulate?

Defense: We won't stipulate and we object to producing this other witness. It is an attempt by the prosecution to tear down the testimony of its own witness, to impeach its own witness, which is in violation of the rules set down in the Manual of Court Martial, and this could go on for ever. We have to bring an end to it sooner or later.

Penturo, Carmelo, an Italian national, was recalled by the prosecution, reminded he was still under oath, and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your name?
A. Penturo, Carmelo.

Q. Have you previously been sworn in this case?
A. Yes.

Q. State whether or not you have acted as interpreter for Sergeant Mast?
A. Yes, sir.

Q. State whether or not you interrogated one Pasquali, Telmino?
A. He was interrogated by Flight Sergeant Mast through me.

Q. How many times?
A. I cannot say. About four or five times.

Q. When was the last time?
A. The last time, it was about five or six days ago.

Q. State whether or not you propounded any questions to Pasquali with reference to the size of a wound in the abdomen of an American pilot who was shot down near Bologna, near Ponte Nuovo, on or about 17th May 1944?

Defense: Objection, for the reasons which I previously stated. It is an attempt to impeach the prosecution's own witness. You are challenging his statement.

President: Objection overruled. You will proceed with the question.

A. Yes.

Q. And the name of the man to whom you propounded these questions was Tolmino Pasquali?
A. Right.

Q. State whether or not Tolmino Pasquali answered any questions with reference to the size of any wounds in the abdomen of the pilot, that he saw?
A. He said that when he reached the place where the body of the pilot was, he saw a wound at his head and in the side and in his right or left leg.

Q. Did he demonstrate the size of this wound in the abdomen?
A. Yes.

Defense: Objection. He said the wound was in the side, not abdomen.

President: Objection sustained.

Q. Did he indicate where this wound was?
A. He was not quite sure about it except the spot here or here and the size was just like this.

Q. Can you estimate the diameter of the aperture he indicated with his hands, the diameter?
A. The diameter, it is about five or six centimeters.

CROSS-EXAMINATION

Questions by the Defense:

Q. Is that five or six centimeters correct?
A. For me it is about ten centimeters.

Q. About ten centimeters. When did he make this statement? On what date?
A. He did not make the statement. He answered questions.

Q. When did he make this answer? On what date?
A. It was about four or five days ago. I can't remember exactly.

Q. Is it not true that one of the counsel of the prosecution, in the last few days, has come up to you and asked you, "Did he make a statement?" or words to this effect? "Did Pasquali make a statement indicating a small wound?"
A. Yes.

Q. Which of the prosecution counsel asked you?
A. The Captain.

Q. Can you remember his exact words?
A. I remember this. "Do you remember what Tolmino Pasquali answered when you submitted the question?" and I told him yes, I remembered.

Q. Did he come up to you and suggest, "Did Pasquali say there was a wound of this size?"
A. No, he did not suggest this.

Q. You were present at two earlier questionings of Tolmino Pasquali, is not that true?
A. Yes, that's true.

Q. When you questioned him, did you question on the 8th July 1945?
A. July, yes, about the 8th or 10th, I can't remember exactly.

Q. Do you recall what Pasquali told you at that time?
A. If you can put me some questions, perhaps I can answer.

Q. I saw that he had a large wound at his side?
A. In his first statement, yes.

Q. A large wound at his forehead and a broken leg. That's what he told you the first time?
A. The first time, yes.

Q. Did he describe at that time, do you recall, what he meant by a large wound on the side?
A. He was not able to establish if the wound was on the left or right side of the pilot, but he was describing this wound just like so.

Q. Will you show the court how he described it the first time in size? Show the court how round it was in that first investigation? What diameter would you say, what diameter was the wound?
A. It was a large wound, just like so.

Q. A large wound on one of the sides and you are not certain which side he told you it was on?
A. No, I am not certain.

Q. Now on the second time you questioned him - I believe that was the 11th July 1945, do you recall how he then described the wounds?
A. No.

Defense: Your witness.

Prosecution: Does the Commission have any questions it wishes to propound to this witness?

President: Apparently none.

Prosecution: Request the witness be excused.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

Prosecution: Does the Commission desire any other witnesses called or recalled?

President: The Commission does not desire any more witnesses to be called.

Defense: The defense has no more witnesses. The defense asks for a five minute recess before final arguments.

The Commission then recessed at 1055 hours and was reopened at 1105 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Prosecution: May it please the Commission, request that the witnesses be excused or allowed to come into the court room at this time?

President: Yes.

Prosecution: May it please the Commission, the prosecution does not desire to make an opening argument, but does reserve the right to close the argument.

Defense: In that event the defense now wishes to make - exercises its right to make an argument.

Captain Arthur A. Burek, Assistant Defense Counsel, presented an argument.

Prosecution: If the Commission, please, it is now 12 o'clock. Does the Commission desire to proceed now or continue after lunch?

President: The court is closed and will reopen at 1400 hours.

The Commission then recessed at 1200 hours and was reopened at 1410 hours, at which time all the members of the Commission, personnel of the prosecution and defense, who were present before the recess, resumed their seats. The accused, the interpreter and reporter were also present.

Lt. Colonel Clyde B. Sellers, Judge Advocate, presented the closing argument.

Defense: The defense has nothing further.

President: Has the prosecution anything further?

Prosecution: Nothing further.

President: Has the defense anything further?

Defense: Nothing further.

President: The Commission is closed.

The Commission then retired at 1445 hours and reassembled at 1520 hours.

President: Is the court interpreter here? Will you have the accused come up?

The President then announced the findings and sentence, through the interpreter, as follows:

FINDINGS:

The military commission in closed session, and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds the accused:

Of the Specification of the Charge: Guilty
Of the Charge: Guilty

SENTENCE:

And again in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences the accused:

To be confined, at hard labor, at such place as the reviewing authority may direct, for a period of twenty years.

The military commission then, at 1525 hours on 30 October 1946, adjourned subject to the call of the president.

AUTHENTICATION:

CLYDE W. HALLER
Lt. Colonel, INF
Judge Advocate

WILLIAM E. ELA
Colonel, QMC
President

Examined by Defense Counsel before authentication:

KENNETH F. LAFRAMBOISE
Lt. Colonel, CAV
Defense Counsel

CONFIDENTIAL

HEADQUARTERS
PENINSULAR BASE SECTION
APO 702

3 January 1947

In the foregoing case of Pietro Magi, formerly a member of the Fascist National Republican Guard acting with and in support of Combatant Forces of the German Reich, a belligerent enemy nation, the sentence is approved and will be duly executed. [illegible] Disciplinary Training Center or elsewhere as the Secretary of War may direct is designated as the place of confinement.

K. T. Blood

K. T. BLOOD,
Brigadier General, U. S. Army,
Commanding.

SECRET
(Equals British Most Secret)
WAR DEPARTMENT
HEADQUARTERS ARMY AIR FORCES
WASHINGTON
MISSING AIR CREW REPORT

REPORT: This report will be compiled in triplicate by each Army Air Forces organization within 48 hours of the time an aircraft is officially reported missing.

1. ORGANIZATION: Location Salsola, Italy; Command or Air Force 15 AF
Group 1st Fighter; Squadron 71st Fighter; Detachment 306 Wing (US)
2. SPECIFY: Point of Departure Foggia #3 Airdrome, Italy; Course 328°
Intended Destination Villafranca and Ghedi A/D; Type of Mission Strafing
3. WEATHER CONDITIONS AND VISIBILITY AT TIME OF CRASH OR WHEN LAST REPORTED: 5/10 cumulus clouds with base at 3500'. Thick haze for 500' below this
4. Give: (a) Date 17 May 44; Time 1440; and Location 44°31'N, 11°05'E of last known whereabouts of missing aircraft.
(b) Specify whether ( ) Last Sighted; ( ) Last Contacted by Radio; ( ) Forced Down; (X) Seen to Crash; or ( ) Information not available.
5. AIRCRAFT WAS LOST, OR IS BELIEVED TO HAVE BEEN LOST, AS A RESULT OF: (check only one) ( ) Enemy Aircraft; (X) Enemy Anti-aircraft; ( ) Other Circumstances as Follows
6. AIRCRAFT: Type, Model and Series P-3 8J-1510; AAF Serial Number 43-28758
7. ENGINES: Type, Model and Series V-1710-91 & 89; AAF Serial Number (a) A-045648
(b) A-045316; (c) ; (d)
8. INSTALLED WEAPONS (Furnish below Make, Type and Serial Number) 50 Cal Browning M-2
(a) UL 1294564; (b) LL 1294518; (c) UR 1294089
(d) LR 1293509; (e) ; (f)
(g) Cannon 116448 20MM Hispano M-2.
9. THE PERSONS LISTED BELOW WERE REPORTED AS: (a) Battle Casualty X
or (b) Non-Battle Casualty .
10. NUMBER OF PERSONS ABOARD AIRCRAFT: Crew 1; Passengers None;
Total One (1)
(Starting with pilot, furnish the following particulars: If more than 10 persons were aboard aircraft, list similar particulars on separate sheet and attach original to this form.)

	Crew Position	Name in Full (Last name first)	Rank	ASN	Present status
1.		Morehead, Lyle E.	1st Lt.	0-749043	KIA 17 May 44 Italy
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

NEXT OF KIN, RELATIONSHIP AND WIFE.

Melba J. Morehead, (Wife)
Box 353
Union, Oregon

1. IDENTIFY BELOW THOSE PERSONS WHO ARE BELIEVED TO HAVE LAST KNOWLEDGE OF AIRCRAFT, AND CHECK APPROPRIATE COLUMN TO INDICATE BASIS FOR SAME:

Name in Full (Last Name First)	Rank	ASN	Contacted By Radio	Last Sighted	Saw Crash	Saw Forced Landing
			Check only one column			
1. Hultman, Walter B.	1st Lt.	0-748986			X	
2. Hoenshell, Carl C	2nd Lt.	0-750592			X	
3.						

21

2. IF PERSONNEL ARE BELIEVED TO HAVE SURVIVED, ANSWER YES TO ONE OF THE FOLLOWING STATEMENTS: (a) Parachutes were used ; (b) Persons were seen walking away from scene of crash ; or (c) Any other reason (Specify) Lt. Morehead was trying to get out of the aircraft after jettisoning his canopy. No other Info. available.
3. ATTACH AERIAL PHOTOGRAPH, (MAP) CHART, OR SKETCH, SHOWING APPROXIMATE LOCATION WHERE AIRCRAFT WAS LAST SEEN.
4. ATTACH EYEWITNESS DESCRIPTION OF CRASH, FORCED LANDING, OR OTHER CIRCUMSTANCES PERTAINING TO MISSING AIRCRAFT. See Enclosures No. .
5. ATTACH A DESCRIPTION OF THE EXTENT OF SEARCH, IF ANY, AND GIVE NAME, RANK AND ASN OF OFFICER IN CHARGE HERE 20 May 1944

SECRET
(Equals British Most Secret)
(over)
Prov. Ex No. 1 (page 1).

Date of Report [illegible]
/s/ Charles J. McCann, Capt. Air Corps,
Operations Officer

3 Incls.

Incl 1 - Sketch of location where Lt. Morehead was seen to crash.
Incl 2 - Statement by Lt. Hultman on crash of Lt. Morehead.
Incl 3 - Statement by Lt. Hoenshell on crash of Lt. Morehead.

Prov. to No. 1 (page 2)

DISPATCHED AD CASUALTY OUT

DISPATCHED AD CASUALTY OUT

71st Fighter Squadron
1st Fighter Group
APO 520
19 May 1944

S T A T E M E N T

I was Cragmore "Blue" three in Lt. Morehead's flight on the 17th of May, 1944. Lt Morrison was the number two man in our flight.

We were on a strafing mission in the Po valley, hitting targets of opportunity. When we came in for a run on the field of Modena, Lt Morehead was hit by groud fire. We were about 50 feet from the edge of the field and at an altitude of approximately 25 feet from the ground. Lt Morehead was hit on the bottom of his right engine and a streak of fire broke out. I called, saying, "Cragmore Blue Leader, your right engine is on fir, pull up and bail out." I repeated my call several time, telling him to pull up. After we crossed the field, he pulledup and I passed by him to the left. By looking over my shoulder, I saw that he gained between between four hundred (400) to five hundred (500) feet and then the plane slowly rolled to the right and dove straight into the ground.

I did not see him bail out or did I see a parachute, due to being ahead of him.

/s/ Warren B. Hultman,
/t/ WARREN B. HULTMAN
1st Lt. Air Corps

Incl 2: Statement by Lt. Hultman on the crash of Lt. Morehead.

Proc. Ex. No. 1 (Continued)

S T A T E M E N T

On 1[illegible] May, 19[illegible], I was No. three man in Cramore "Green" flight. We were strafing targets of opportunity in the Po Valley.

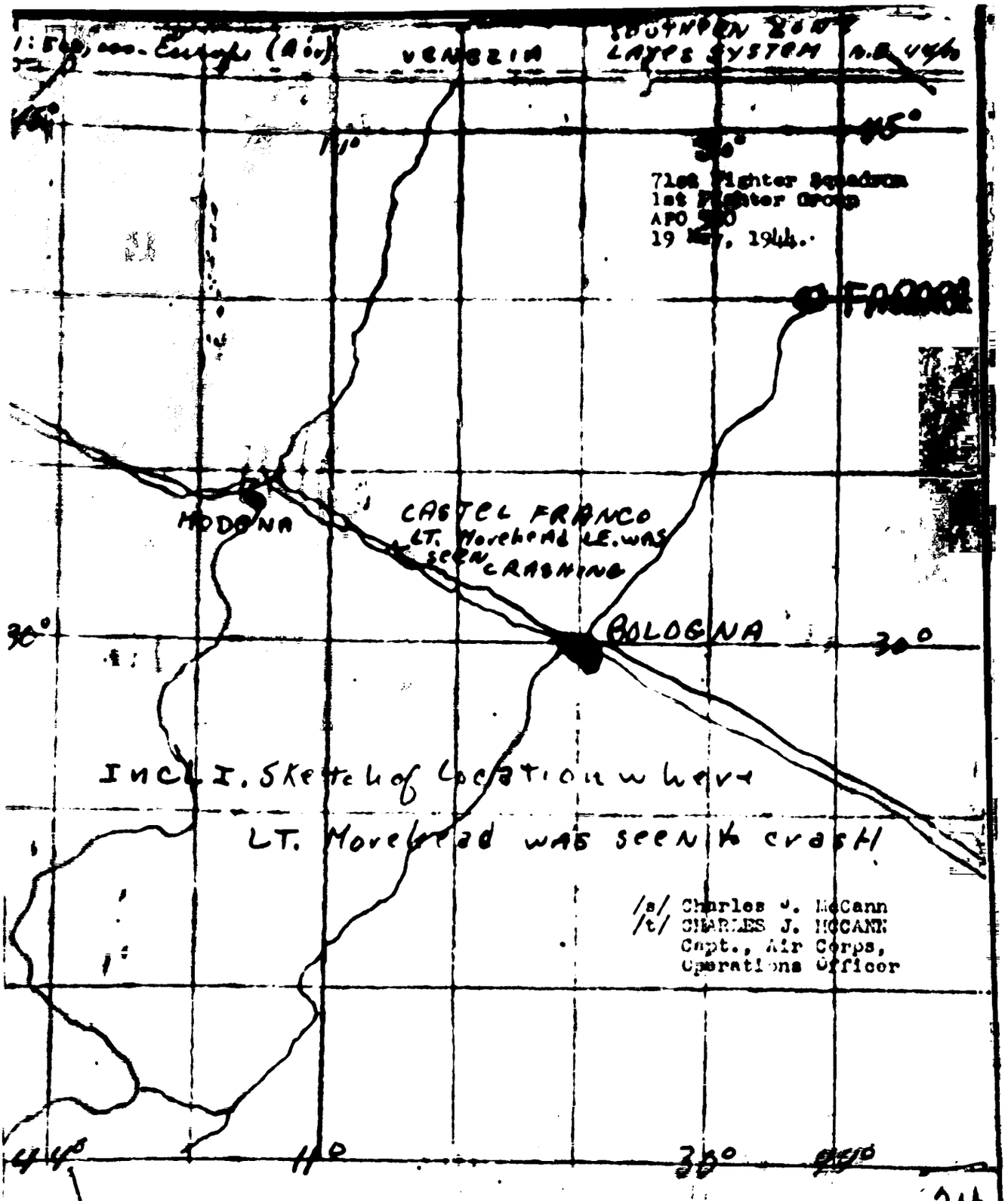
As we were making our run on a field at Modena, I saw Lt Morehead pass under and in front of me with his right engine on fire. I called him, as did others who saw him, and told him to pull up and bail out. He finally pulled up to about four hundred (400) feet, jettisoned his canopy, and I could see him attempting to get out of the left side of the cockpit. The upper half of his body was leaning over the side of the window. His aircraft went into a right spin and crashed with an explosion and burned.

I did not see a chute or see Lt. Morehead leave the plane. There was no activity at the scene of the accident which happened about three (3) miles from the field of Modena.

/s/ Carl C. Moenshell
/t/ CARL C. MOENSHELL
2nd Lt., Air Corps

Incl 3: Statement by Lt. Moenshell on crash of Lt. Morehead

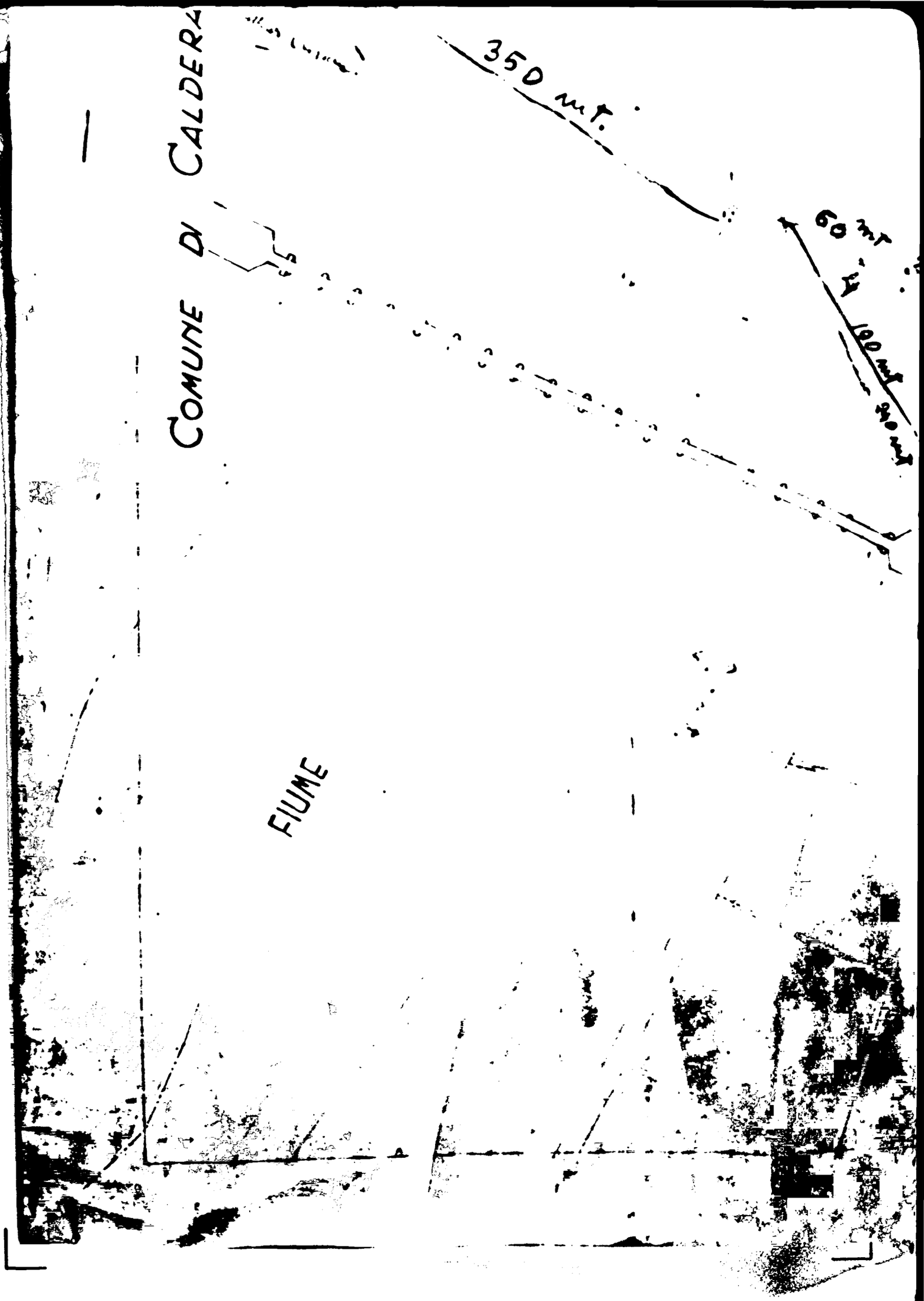
Proof Ex No. 1 (page 4)



Proj. Sk. No. 1 (page 5)

CONFIDENTIAL

Prosecution's Exhibit 1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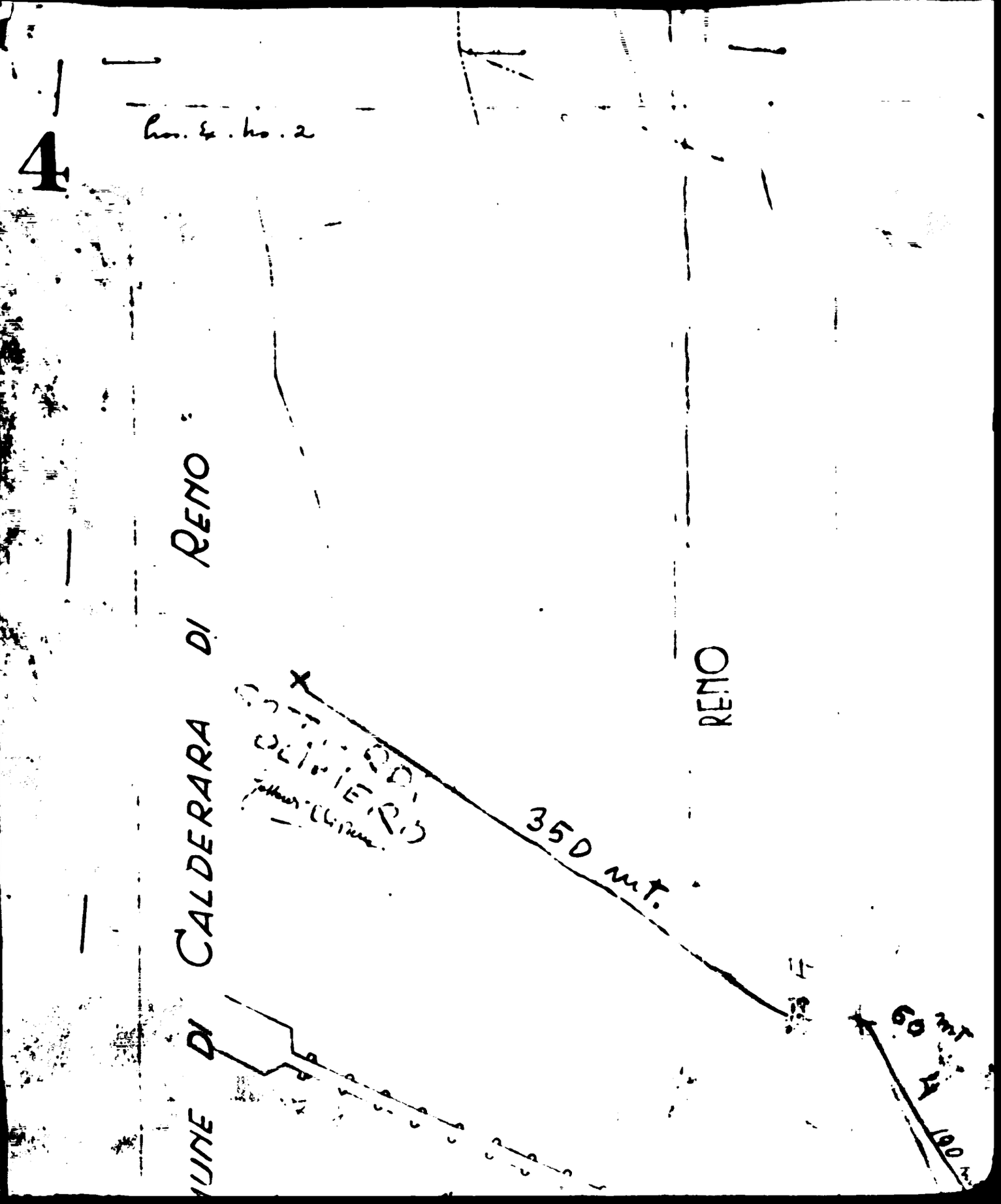
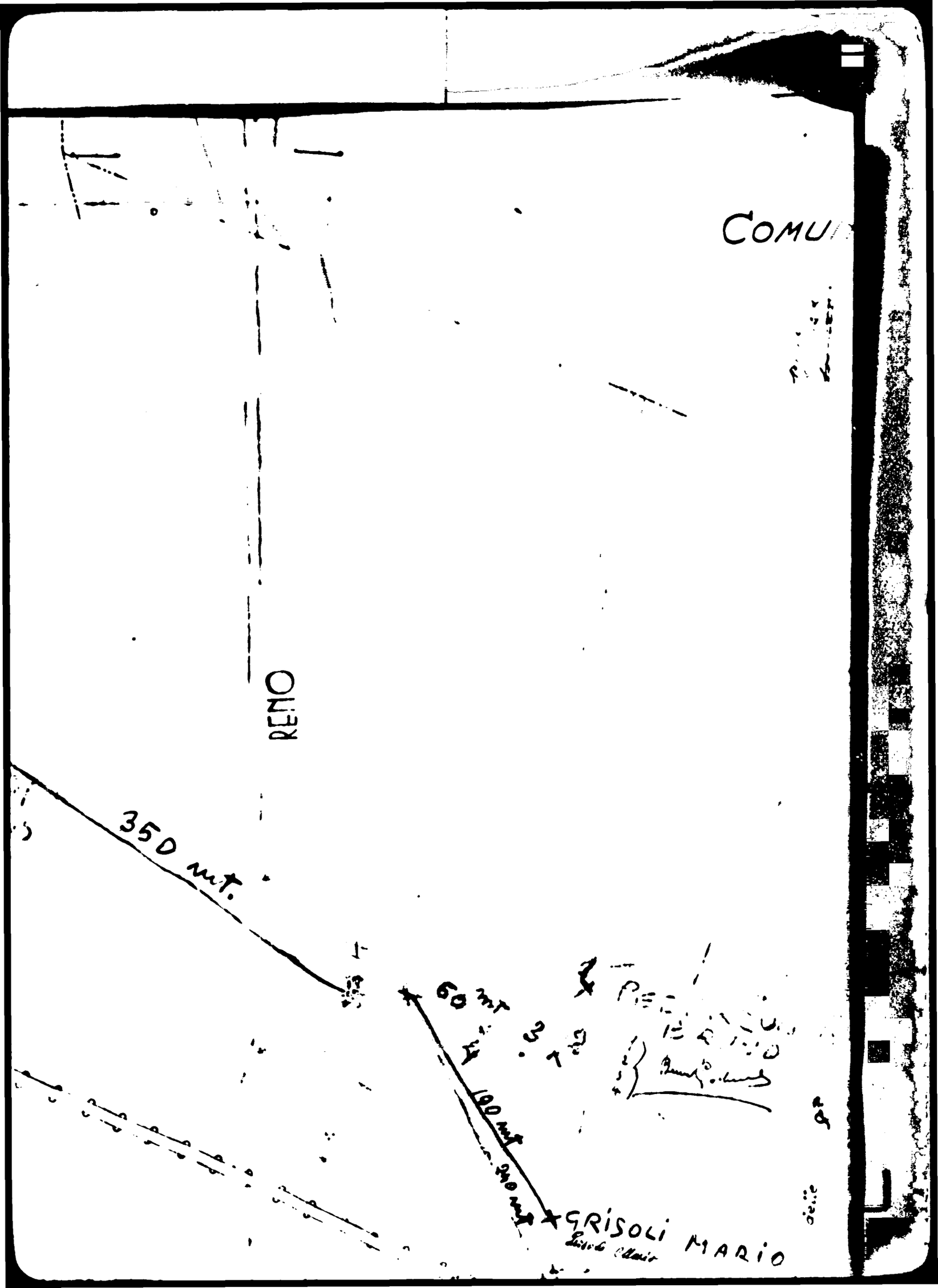
60 mt
100 mt
FIUME

4

Cros. Ex. No. 2



350 mt.
60 mt
100 mt
GRISOLI MARIO
Palazzo Trebbio
Casette


COMU
RENO
350 mt.
60 mt
100 mt
GRISOLI MARIO

Marani Edoardo XI.

Deposizione dell'ex guardia nazionale Repubblicana, Marani Edoardo di ignoto e fu Marani Elvira, nato a Brindisi il 7 giugno 1925, residente a Cà de Fabbri, via Chiesa n. 26 (Bologna) ed attualmente soldato presso la quarta compagnia di Sanità, ospedale militare di Treviso, allo Speciale Ramo Investigazioni R.A.F., nell'ufficio S.I.B. R.A.F. di Treviso.

Io sottoscritto dichiaro che dal 7 febbraio 1944 fino al 7 agosto 1944, prestai servizio al distaccamento della G.N.R. "12 Archi" e nel corpo di guardia comandato dal sergente Lodi, lato S. Vitale.

In un giorno del mese di maggio 1944, verso le ore 14, mi trovavo a pescare sul fiume Reno, lato Beverara ed a circa trenta metri dal Ponte Nuovo. Con me si trovavano tre o quattro civili a pescare che abitano in quella zona e che io conosco soltanto di vista. Vidi sette od otto aeroplani a doppia fusoliera in alluminio che mi traguardavano il campo di Aviazione di Borgo Panigale; io attraversai il Ponte Nuovo per recarmi nel rifugio situato a circa due metri dal corpo di guardia comandato dal Sergente Lodi e che era distante circa cinque metri dal Ponte Nuovo, lato S. Vitale. I suddetti civili si recarono invece in un rifugio distante circa cinque metri dal Ponte Nuovo, lato Beverara. Nel rifugio ove mi recai trovai il Maresciallo Fariani, il Sergente Lodi ed i seguenti militi: Pasquali Tolmino, Magri Pietro, Neri Remo ed

Prov. Ex No 3 (pagina 1)

Marani Edoardo

Amer. Exhibit No 3

Marini Edoardo

Alberghini Giuseppe. Mentre io entrava nel ri-
fugio vidi che il Milite Magi Pietro ne usciva.
Dopo circa un minuto prima da quando ero
entrato nel rifugio e cioè verso le ore 14.15,
il Milite Magi Pietro, che si trovava
vicino all'ingresso del rifugio, disse ad alta
voce che era stato abbattuto un aeroplano
e cioè il Sergente Lodi, il milite Pasquali
Volmino, il milite Neri Remo, il milite Al-
berghini Giuseppe, assieme al Milite Magi
Pietro ci recammo nel corpo di guardia, di-
stante dal rifugio circa quattro metri, per
armarci di fucile Mod. 91. Il Maresciallo
Zeriani rimase invece dentro il rifugio. Men-
tre ci recavamo nel corpo di guardia vidi
che era stato abbattuto un aeroplano nella
parte asciutta del fiume Reno, e ad una
distanza di circa trecentocinquanta metri
da dove io mi trovavo. Assieme al Sergen-
te Lodi, al milite Pasquali Volmino, al Mi-
lite Neri Remo, al milite Alberghini, al
Milite Magi Pietro che aveva la baionetta
innestata sul fucile, tutti armati di fucile,
mi recai dirimpetto di corsa ove si trovava
l'aereo che bruciava e che era avvolto da
fumo. Il Sergente Lodi, il milite Magi
Pietro e il milite Bonassi, che era so-
praggiunto proveniente dalla riva del fiume
Reno, lato di Bevilacqua, fermarono a
circa dodici metri dall'aereo, mentre il
sottoscritto si fermò a circa venticinque
metri dall'aereo. Il milite Pasquali Volmino,
il milite Neri Remo e il milite Alberghini

[illegible] 2 (Pagina 2) [illegible] Edoardo

Marini Edoardo

Giuseppe si fermarono a circa quaranta metri dall'aereo. Io mi fermai a circa venticinque metri dall'aereo perchè sentivo scoppiare le munizioni della mitragliatrice dell'aereo abbattuto. Dal posto in cui mi fermai vidi uscire dall'aereo il pilota il quale camminando con i propri piedi ed appoggiandosi sulla mano sinistra si portò al centro di un'ala dell'aereo sulla quale si sedette appoggiandosi sulla mano sinistra, e nello stesso tempo cercava togliersi i pantaloni perchè bruciavano. Mentre il pilota si trovava seduto sull'ala dell'apparecchio il Milite Bonazzi rivolgendosi al Sergente Lodi ed al Milite Magi Pietro disse quanto segue: "Guardate che il pilota vuol reagire e cerca di sparare con la sua pistola". Detto questo il Milite Bonazzi lanciò contro il pilota due bombe a mano mentre il Sergente Lodi ed il Milite Magi si misero a sparare con i loro fucili contro il pilota. Subito dopo il lancio delle bombe a mano il Milite Bonazzi, ad alta voce, disse quanto segue: "L'ho ucciso, quel vigliacco". Il pilota dopo il lancio delle bombe a mano e dopo che il Sergente Lodi ed il Milite Magi Pietro avevano sparato cadde sulla ala dell'apparecchio ove rimase disteso. Il Sergente Lodi ed il Milite Bonazzi si avvicinarono quindi al pilota, lo presero e lo trascinarono per circa dieci metri in direzione del corso d'acqua distante circa venticinque metri da dove si trovava l'aereo. Appena i suddetti lo adagiarono per terra il

Prov. Ep. Lib. 3 (Pagina 3)

Marini Edoardo

Marmi Edoardo

Sergente Lodi gli diede con forza una pedata producendogli una larga ferita su un lato della testa da dove usciva copioso sangue. Il pilota dopo aver ricevuto la pedata fece qualche movimento per distendersi. Dopo l'atto del Sergente Lodi, il Milite Magi Pietro, con la baionetta innestata sul fucile, dette con forza tre o quattro colpi di baionetta in direzione del torace e dello stomaco del pilota. La baionettate produssero al pilota larghe e profonde ferite poichè la baionetta penetrava nel corpo del pilota per una profondità di circa venti centimetri. La baionetta rimase tutta insanguinata ed alquanto piegata. Mentre il Milite Magi Pietro baionettava il pilota questo muoveva la testa ed a bassa ed addolorata voce diceva: "Ohi - Ohi". Quando il Milite Magi Pietro colpiva con la baionetta il pilota io mi trovavo a circa cinque metri da questo e non mi fu possibile fermare il Magi Pietro. Subito dopo che il Milite Magi Pietro aveva baionettato il pilota, ad alta voce disse: "Ho ucciso il pilota, essi sono barbari e mi hanno distrutto la mia casa". Nessuno degli altri militi che si trovavano vicino al pilota ha sparato contro di questo. Anch'io non ho fatto uso del mio fucile. Dopo qualche minuto dall'esclamazione del Milite Magi Pietro sopraggiunsero dei militari tedeschi che lo fecero a calci e pugni mentre il Sergente Lodi gettando della rabbia

Prov. Ex. [illegible] (Pag. 4) Marmi Edoardo

Marani Edoardo

cercava di spegnere il fuoco dei pantaloni del
pilota che bruciavano, come pure il paracadute
che bruciava e che il pilota aveva
legato alla sua vita. Dopo che i militari
tedeschi presero a calci ed a pugni il [illegible]
te Magri Pietro io mi [illegible] all'aereo
e vidi che il Milite [illegible] Giuseppe
si rivolse ad un maresciallo tedesco per
dirgli se gli voleva dare [illegible] l'ora-
logio, che era bruciato [illegible] pilota e che
il suddetto Maresciallo [illegible] nelle sue
mani. Il maresciallo tedesco acconsentì e
gliela diede. L'Alberghini teneva nelle sue
mani la bussola dell'aereo che era bruciata,
un guanto del pilota ed un pacchetto di
cotone per [illegible] appartenente al
pilota, come pure l'orologio che gli era
dato il Maresciallo tedesco [illegible] che ave-
va i pantaloni [illegible] che [illegible] pregi-
re gli potevo custodire [illegible]
[illegible] non [illegible]
al nostro posto di guardia. Io [illegible] alla
sua preghiera e presi tutto in [illegible]
Il Milite Alberghini [illegible]
[illegible] aereo [illegible] una piccola
ferita alla mano e gli chiamo per [illegible]
il pacchetto di cotone per [illegible]
Mentre l'Alberghini mi [illegible]
[illegible] il cotone [illegible]
[illegible] tedesco che si trova [illegible]
me mi tolse dalle mani [illegible]
pacchetto di cotone [illegible]
[illegible] Quindi mi [illegible]
mi tolse [illegible] l'Alberghini [illegible]

[illegible] (pages 5) Marani Edoardo

Marani Edoardo

dato. I militari tedeschi fungarono gli abiti del pilota e si portarono con loro una borsa di pelle che trovarono a circa tre metri dall'aereo e che conteneva documenti e denaro. Dopo di che, e cioè verso le ore 15.30 me ne andai da solo al mio posto di guardia dove preparai le mie cose per andare a casa in permesso di dodici ore. Verso le ore 16.15 lasciai il corpo di guardia incamminandomi verso il Ponte Reale dove presi il tram per recarmi da mia nonna Zamboni Angela che abita a Cà de Gabbi, via Chiesa n. 26. Ritornai in servizio il mattino seguente verso le ore 8 e il Maresciallo Feriani mi disse che mi dovevo recare al comando tedesco del campo d'aviazione di Borgo Panigale per chiarire come mi trovavo in possesso della roba che mi aveva dato il Colberghini. Il Maresciallo Feriani mi disse dopo che il milite Colberghini era stato messo in prigione dai tedeschi. Mi recai subito al predetto comando, ove mi misero subito in prigione. Dopo due giorni venni interrogato assieme al milite Colberghini da un capitano tedesco a mezzo di un interprete di cittadinanza italiana che scenosco dove abita e come si chiama. In seguito alla mia asserzione che avevo accettato la roba dal milite Colberghini e che l'orologio del pilota era stato dato all'Colberghini ~~era stato dato~~ da un Maresciallo tedesco il capitano tedesco fece telefonare a tutti i distaccamenti dislocati nei pressi del campo d'aviazione di Borgo Panigale

[illegible] 3 (pagina 6)

Marani Edoardo

Marani Edoardo

per rintracciare il suddetto Maresciallo. L'interprete disse che il Maresciallo era stato rintracciato e che era vero che questo aveva dato l'orologio al milite Bilberghini. Il capitano tedesco a mezzo del suddetto interprete fece dire a me ed al Milite Bilberghini che non si doveva mai più verificare quanto era successo perchè la roba appartenente ai militari degli apparecchi abbattuti non si doveva toccare per nessun motivo ma che era nostro dovere di accorrervi subito. Quindi ci mise in libertà e ci recammo al nostro posto di guardia ove riprendemmo servizio.

Dopo il sette agosto 1944, appartenendo sempre alla 67ma Legione Territoriale, passai a far servizio alla cabina elettrica, sita in via Pagiolo, sita in Borgo Sanigale, ove vi erano militari tedeschi ed italiani, sino al 28 settembre 1944. Nei primi giorni del mese di ottobre 1944 con un'autocolonna composta di tutti gli elementi della 67ma Legione Territoriale, e al comando di un maggiore della G. N. R. che non ricordo il nome, lasciai Bologna diretto alla volta di Brescia ove giungemmo verso la fine dello stesso mese. Gli indomani del mio arrivo mi recai all'ospedale Militare di Brescia per essere ricoverato, ove vi rimasi quasi un mese. Uscito dall'ospedale mi recai al comando della Legione Territoriale n. 67ma che si trovava ad Odezza (Brescia) dove venni

Sem. Ex. No 2 (Pagina 7)

Marani Edoardo

Marmi Edoardo

preso in forza. Rimasi a Oderzo fino al 28 febbraio 1945 epoca in cui con la seconda compagnia mi recai a Martellaro (Venezia) dove vi rimasi fino al 27 aprile 1945. Il 28 aprile 1945 tutti i componenti della seconda compagnia ci recammo a Treviso, alla caserma Salsa ove consegnammo tutti le armi a militari tedeschi che erano in possesso della suddetta caserma.
Il 29 aprile 1945 mi recai all'ospedale militare di Treviso per essere preso in forza in qualità di soldato dell'esercito in quell'ospedale. Il Maggiore dell'ospedale, Gomelli, mi prese in forza e da allora ho continuato a prestare servizio al suddetto ospedale.
Il milite Pasquali Volmino può testimoniare che quanto era contenuto nelle mie tasche mi era stato consegnato dal milite Albarghini per tenerglielo fino a quando fa ceverno ritorno al nostro corpo di guardia.
Questa dichiarazione, che io ho dettato di mia spontanea volontà, mi è stata letta con chiarezza e dichiaro e confermo che è vera in ogni sua parte e per dimostrare che la confermerò ovunque e in qualsiasi epoca di tempo mi firmo

Treviso, 31 luglio 1945. Marmi Edoardo

Statement witnessed by me
[illegible] 8/[illegible] [illegible] RAF.P.

Prov. Lib. 3 (pagina 8)

gt. tenent and [illegible] social investigation Branch, [illegible]
FARINI Edoardo, [illegible] Guardia Nazionale Repubblicana, [illegible]
father and of the late [illegible] Elvira, [illegible] Ministerio [illegible]
and residing at Ca' de Fabbro, [illegible], No. 16 Via Chio[illegible]
in the 4th. Sanitary Company, Military Hospital, Treviso.

I the undersigned state that from 7th. February 1944 until 7th. August 1944 I was on duty with the 12 Arches Detachment of the Guardia Nazionale Repubblicana and in the Guard Post, commanded by Sergente LODI, on the San Vitale side. On a day of the month of May 1944 at about 14.00 hours, I was fishing in the river Reno, on the Beverara side and about 30 metres away from the Ponte Nuovo. With me there were three or four other civilians who live in that area and who I know by sight. I saw seven or eight aeroplanes with double fuselage and of aluminium that were machine gunning Borgo Panigale airfield. I crossed the Ponte Nuovo to go to the shelter situated about 2 metres away from the Guard Post, commanded by Sergente LODI and a distance of about 5 metres away from the Ponte Nuovo, on the San Vitale side. The above mentioned civilians went to a shelter about 5 metres away from the Ponte Nuovo, on the Beverara side. In the shelter where I went I found Maresciallo FERIANI, Sergente LODI, and the following Militia:- PASQUALI Tolmino, MAGI Pietro, NERI Remo, and ALBERGHINI Giuseppe. Whilst I was entering the shelter the Milite MAGI Pietro, was leaving. About one minute after entering the shelter at about 14.15 hours, the Milite MAGI Pietro, who was near the end of the shelter said with a loud voice that an aeroplane had been down. The persons in the shelter:- Sergente LODI, Milite PASQUALI Tolmino, Milite NERI Remo, Milite ALBERGHINI Giuseppe, together the Milite MAGI Pietro and myself went to the Guard Post, which about 4 metres away from the shelter to arm ourselves with Type [illegible] 91 rifles. Maresciallo FERIANI, remained in the shelter. Whilst we were going to the Guard Post I saw that an aeroplane had been shot down in the dried up part of the river Reno and about 350 metres away from the place where I was. Together with Sergente LODI, Milite PASQUALI Tolmino, Milite NERI Remo, Milite ALBERGHINI, Milite MAGI Pietro, who had his bayonet fixed to his rifle, ran with the others who were all armed with rifles to the place where the aeroplane was burning and surrounded with smoke. Sergente LODI, Milite MAGI Pietro and Milite BONAZZI who arrived from the Beverara side of the river Reno, stopped about 12 metres away from the aeroplane whilst I stopped about 25 metres away from the aeroplane. Milite PASQUALI Tolmino, Milite NERI Remo, and Milite ALBERGHINI Giuseppe, stopped about 40 metres away from the aeroplane. I stopped about 25 metres away from the aeroplane because the ammunition of the aircraft gun was exploding. From the place where I stopped I saw coming out from the aeroplane the pilot who was walking and supporting himself with his left hand. He sat on the centre of the wing of the aircraft still supporting himself and was trying to take off his burning trousers. Whilst the pilot was doing this, the Milite BONAZZI, turned and said to Sergente LODI and the Milite MAGI Pietro, "Look the pilot is scouting and he is trying to fire with his pistol". After these words the Milite BONAZZI, threw two hand grenades at the pilot whilst Sergente LODI and the Milite MAGI, fired their rifles at the pilot.

..... OVER.....

Pro Ex 3 (page 9)

Type [illegible] 3
[illegible]

Statement of MARANI, continued.....

Shortly after the throwing of the hand grenades the Milite BONAZZI, in a loud voice said, "I have killed him that coward". The pilot, after the throwing of the hand grenades and after Sergente LODI Milite MAGI Pietro had fired, fell on the wing of the aeroplane where he remained lying. Then Sergente LODI and Milite BONAZZI, approached the pilot, took him and dragged him for about 10 metres in the direction of the stream of water which was about 25 metres away from the aeroplane. Suddenly, after the above mentioned had put the pilot down Sergente LODI, with force, stamped on the head of the pilot making a large wound on the side of the head from which came copious blood. After being stamped upon the pilot made a movement to extend himself. After the act of Sergente LODI, Milite MAGI Pietro with his bayonet fixed on his rifle, struck with force the thorax and the stomach of the pilot three or four times. These blows with the bayonet caused large and deep wounds to the pilot as the bayonet penetrated into the body of the pilot to a depth of about 20 centimetres. The bayonet was all covered with blood and rather bent. Whilst the Milite MAGI Pietro was bayoneting the pilot the pilot was moving his head and with a low moaning voice was saying, "Ahi, Ahi, Ahi"; when Milite MAGI Pietro struck the pilot with his bayonet I was about 5 metres away and it was not possible for me to stop MAGI Pietro. Shortly after Milite MAGI bayoneted the pilot in a loud voice he said, "I have killed the pilot, they are barbarous and have destroyed my house". None of the other Militi or I that were that standing near the pilot fired their rifles. About one minute after MAGI'S exclamation some German soldiers arrived and kicked and struck MAGI, whilst Sergente LODI, was putting some sand on the trousers and the parachute of the pilot to extinguish the flames. After the German soldiers had kicked and struck MAGI, I went near the aeroplane and I saw that the Milite ALBERGHINI Giuseppe, turned to a German Maresciallo and asked whether he could have the watch of the pilot which was burned, as a souvenir and which the Maresciallo had in his hands. The German Maresciallo agreed and gave it to him. ALBERGHINI, had in his hands the burned compass of the aeroplane, a glove of the pilot, a packet of medicated cotton wool belonging to the pilot and the watch which was given to him by the German Maresciallo. As ALBERGHINI, had no pockets in his trousers he begged me to look after these for him until we got back to our Guard Post. I agreed and he handed me everything. Milite ALBERGHINI, touched the aeroplane and burned his hand and called me to give him the packet of cotton wool. ALBERGHINI, cleaned his wound and whilst he was giving the cotton wool back to me, a German soldier who was near to me took from me the cotton wool and struck me. Then he searched me and took away what ALBERGHINI had handed to me. The German soldiers searched the pilot's clothes and took with them a leather brief case which was about three metres away from the aeroplane and contained money and documents. After this the time was about 15.30 hours, I went to my Guard Post alone where I prepared to go on leave for 12 hours. At about 16.15 hours I left my Guard Post and went to the Ponte Reno, where I went home by tram to the house of my grandmother Zamboni Angela, who is living at Cas de Fabbri, No. 26 Via Chiesa. At about 8°/clock the following morning I went back on duty and Maresciallo FERIANI, told me that I had to go to the German Command of Borgo Panigale airfield to explain how I was in possession of .....OVER.....

Proc. Ex. Leg. 3 (page 10)

Statement of MARANI. Continued.....

the articles handed over to me by [illegible]. [illegible] also told me that [illegible], had been put in prison by [illegible]. I went at once to the above Command where I was put in prison. [illegible] days afterwards I was questioned with [illegible] by a German Captain and through an Italian interpreter [illegible] name and address I do not know. As I said that I had received the articles and that the pilot's watch was given to him by a German [illegible], the German Captain gave the order to telephone all detachments in the area of Borgo Panigale airfield to find this [illegible]. The interpreter said that the German [illegible] had been discovered and that it was true that the German [illegible] had given the Milite ALB[illegible], the watch. The German Captain through this interpreter told me and the Milite ALB[illegible] that a thing like this must never happen again because on no account was property of shot down aeroplane Military to be touched for any reason but that it was our duty to go there at once. Then he released us and we went to our Guard Post where we resumed duty. After 7.8.44. being always a member of the 67th. Legione Territoriale, I was on duty at the Electrical Power Station, at Via Fagiolo, Borgo Panigale, where there were Italian and German Military and I remained there until 28.9.44. In the first days of October 1944 with a convoy composed of all the members of the 67th. Legione Territoriale and under the command of a Major whose name I do not remember of the Guardia Nazionale Repubblicana, I left Bologna, for Treviso where we arrived at the end of the same month. The following day I went to the Military Hospital of Treviso for treatment where I remained for about one month. When I left the hospital I went to the 67th. Legione Territoriale Command, which was at Overza, Treviso, where I was taken on duty. I remained at Overza, until 28.2.45. and on this day together with the 2nd. Company I went to Martellaro, Venezia, where I remained until 28.4.45. On 28.4.45. all members of the 2nd. Company, went to Treviso, to the Caserma Salsa, where we handed over our arms to German soldiers who were in control of the Caserma. On 29.4.45. I went to the Military Hospital of Treviso and applied to be employed as a soldier at the hospital. Major. [illegible], of this hospital accepted me and from that date I have served at the hospital. Milite PASQUALI Palmino, can testify that what I had in my pockets was handed to me by Milite ALBERGHINI and that I received these things in custody until we got back to the Guard Post.

This statement that I have dictated of my own free will has been clearly read over to me and I state and confirm that it is true in every part and to show that I confirm this I here sign my name.

(Signed). MARANI Edoardo.

Treviso.
31.7.45.

This statement has been translated by me to the best of my ability.

Ponturo Carmelo.....
(Signed). PONTURO Carmelo.

Statement witnessed by me..... [illegible].....
(Signed). C.G. REAT. S.I.B., R.A.P.Polic

Pros Ex No 8 ([illegible])

CONFIDENTIAL

Prosecution's Exhibit 3.

Mario [illegible]

[illegible] Reno
[illegible] 10. [illegible]
[illegible] 5 ([illegible]) [illegible] nelle
Carceri di S. [illegible] Ramo
[illegible] R. A. F.
Io sottoscritto [illegible] che [illegible] ore
15 di un giorno [illegible] mese di [illegible]
che non [illegible] [illegible]
[illegible] Reno ([illegible]) [illegible]
un apparecchio [illegible] mentre [illegible]
[illegible] sopra [illegible]
[illegible] dalla [illegible]
[illegible] nel [illegible] del fiume Reno [illegible]
un posto dove [illegible] acqua. [illegible]
[illegible] che [illegible]
circa 600 metri da [illegible] era [illegible]
[illegible] Collegato [illegible] che il [illegible]
[illegible] apparecchio, si trascinava [illegible]
[illegible] corso d'acqua [illegible]
[illegible] distante da lui. Nel [illegible]
mento notai pure che [illegible]
della G. N. R. del [illegible]
[illegible] servizio [illegible]
[illegible] della [illegible]
[illegible] il luogo [illegible]
l'aeroplano. [illegible]
erano [illegible]
per primo [illegible]
[illegible]
[illegible] nel [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Maniezzi Giuliano

persone che si era formato intorno al corpo del pilota, e dato pure la distanza in cui mi trovavo non ho più potuto distinguere ed osservare ciò che è avvenuto in seguito.
Non posso, anche se portato a confronto, riconoscere il milite che diede i colpi di baionetta al pilota dato la distanza in cui mi trovavo, però so che nella frazione di S. Vitale vi sono [illegible] che lo conoscono perchè il milite, oltre ad essere stato veduto da questi, si è pure vantato in pubblico delle azioni da lui commesse.
Questa dichiarazione mi è stata letta e dichiaro che corrisponde a verità.

Bologna 11-7-1945 Maniezzi Giuliano

Desidero aggiungere che l'aeroplano Alleato era un caccia bombardiere bicoda in alluminio. Credo che il colono Cozzani, residente in S. Vitale di Reno, possa fornire informazioni utili dato che anche lui si trovava in quei pressi.

Bologna 11-7-1945 Maniezzi Giuliano

[illegible] deposizione è stata [illegible] in scritto [illegible] Maniezzi Giuliano

Brigadiere [illegible]

[illegible] è stata [illegible]

Testimony of: Giuliano Maniezzi
San Francesco Prison,
Bologna, Italy.

Proc. Ex. No. 4 (page 3)

Statement made by Maniez[illegible] [illegible] late Marcelo Maria, born at Calderara [illegible] Reno, [illegible] 10.1[illegible] [illegible] rara di Reno [illegible] 5 via [illegible] dina d[illegible] [illegible] Vita[illegible] [illegible] of San Francesco, to the [illegible]ecial In[illegible]estigatio[illegible] [illegible]ranco, Roy [illegible] Who states:

I the undersigned state that about [illegible] hours on a [illegible] May 1944 was on the St. Vitale ba[illegible] of the [illegible]ver RENO, where I saw an a[illegible] aeroplane which was hit by anti-aircraft fire whilst [illegible]ving on the ai[illegible] of Borgo - Panigale. The machine caught fire and [illegible] into the dr[illegible] river bed.

From where I was standing some 600 meters where the allied aeroplane crashed I saw that the pilot [illegible] left the machine and he dragged himself along the ground towards a place where there was tear water a short distance away. At the same time I saw some Fascist guards of the Guardia Nazionale Repubblicana of the Detachment which was on duty at the New Bridge of the Railway were running towards the crashed aircraft. One of the Fascist guards who was armed with a rifle or a musket was the first to reach the place near the pilot. I saw him strike the pilot with his bayonet a number of times. In the meantime further Fascist guards and some Germans soldiers arrived at this place, and also many peolple gathered around. It was impossible for me to see anything more. I cannot identify the Fascist guard that bayoneted the pilot because I was too far away.

I know that in the district of St. Vitale there are people that are able to identify him as they witnessed the incident. Further the Fascist guard boasted in public of the act that he had done.

The above statement has been read over to me and it is true.

Bologna, 11.7.1945 (signed)

Maniezzi Giuliano

I wish to add that the allied aircraft was a fighter bomber with double fuselage in aluminium. I think that the farmer [illegible] living at ST. Vitale di Reno is able to give useful information because he was also near the place where the aeroplane crashed.

Bologna, 11.7.1945 (signed)

Maniezzi Giuliano

This statement has been written down by me at the request and dictation of Maniezzi Giuliano.

(signed)

Brigadieredi P.S. Ponturo Carmelo

The above statement was translated by me to the best of my ability.

(signed)

[illegible] Ponturo Carmelo

Statement witnessed by me.

(Signed). C.C. Reat. F3Sgt.

Pros Ex No. 4 (page 4)

CONFIDENTIAL

Prosecution's Exhibit 4.

Legione Territoriale dei Carabinieri di Bologna

Stazione di Bologna Borgo Panigale

Si dichiara che il 17 maggio 1944 è caduto un apparecchio americano in località Ponte Nuovo sulla riva occidentale del Fiume Reno Mn.

Tale località è così chiamata perchè si sta costruendo un nuovo ponte ferroviario.

L'apparecchio è caduto, riferendosi alla carta topografica dell'Italia 1:100.000, foglio n°.87; 86,5/84,4.

Non risulta che nel mese di maggio 1944 sia caduto nessun altro apparecchio di nessuna nazionalità nella zona che è sotto la giurisdizione di questa Stazione.

La zona sotto la giurisdizione è determinata dalle seguenti località: Borgo Panigale, Castel Debole, La Palazzina, Rigosa, Lavino di Mezzo, Marotti, Sacerno, Ravernello, Lavino di Sotto, Luogo Nuovo, Castello di Campeggio, quindi segue il Fiume Reno fino all'altezza di un chilometro dalla linea ferroviaria Bologna Modena, per ricongiungersi a Borgo Panigale.

COMANDO STAZIONE CARABINIERI di BOLOGNA - BORGO PANIGALE

Il maresciallo maggiore a piedi comandante la stazione (Riccitto Michele)

Maresciallo Maggiore
Comandante
Riccitto Michele

Pros. E. No. 5 (page 1)

REGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
STAZIONE DI S.CESARIO SUL PANARO
-:-:-:-:-:-

Dagli atti di quest'ufficio non risulta che alcun apparecchio di nessuna nazionalità sia caduto nel maggio 1944 nel territori di questa stazione.

Il territorio di questa stazione con riferimento al foglio n°87 della Carta d'Italia I:100000 è delimitato da: Ponte S.Ambrogio sulla via Emilia,continua sulla via Emilia fino alla alla Villa Graziosa -scende a Sud per un chilometro circa e si dirige su Cà Paolo da dove si congiunge a Canaletto Mussa seguendolo all'altezza di Cà Cavallotti,Casa Martino,Magazzino, Cà Barletada qui segue il fiume Panaro fino a ritornare a Ponte S.Ambrogio sulla via Emilia.

SaCesario sul Panaro,23 ottobre 1946

IL BRIGADIERE
COMANDANTE LA STAZIONE
(Stefano Montali)

Pres. Ex. n. 5 (Magazzino)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
STAZIONE DI BAZZANO

Agli atti di questo ufficio non risulta che alcun apparecchio di nessuna nazionalità sia caduto nel maggio 1944 nel territorio di questa stazione.-

Il territorio di questa stazione con riferimento al foglio numero 87 della carta d'Italia 1:100000 è delimitato da: Muffa a Sud di Crespellano - Segue i confini occidentali di Zola Predosa e Monte S.Pietro e si distacca da questi per giungere fino alle porte di Castelletto di Serravalle sale fino a Cà Lavacchio,Cà Montale includendovi Montebudello e scendendo via Motta,via Musaa Magazzino,zuccherificio chiudendo il confine con Spilamberto e Castelfranco in via Maggiore,congiungendosi alla Muffa.-

Bazzano,23 ottobre 1946

Il Brigadiere Comandante Stazione
(Nelle CAMPANA)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
STAZIONE DI CASTELFRANCO EMILIA

Si dichiara che in tutto il mese di Maggio 1944, non é caduto nessuno apparecchio di nessuna nazionalità nel territorio di questa stazione che é circoscritta da :

Castelfranco Emilia - S. Anna - Sante Ambrogio ; segue il fiume Panaro fino all'altezza di Monchi, il Casone, Villa Cavazza, fondo S. Antonio, Recovato, Castellino, Villa Giovanetto, Casa Vecchia, Casa Grignoni, esclude Castagnolo per la distanza di circa 300 metri, Palazzo Pedrazzi, fino a ricongiungersi poi con il confine della zona di Anzola dell'Emilia, segue poi la via Emilia per ritornare a Castelfranco Emilia -

Castelfranco Emilia li 18-9-1946

Il Maresciallo Maggiore a piedi
Comandante la stazione
(Modello Vincenzo)

Pres. Ex. No. 5 (page 4)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
Stazione di Castelmaggiore

CARABINIERI
STAZIONE di CASTELMAGGIORE

Si dichiara che in tutto l'anno 1944, non è catuto nessuna apparecchio di nessuna nazionalità nel territorio di questa stazione che è circoscritta da:

Corticella (tutte il confine della stazione di Corticella fino al Fiume Reno), tutte il Fiume Reno fino ad un chilometro a Sud; di Buon Convento Podero Palazzo Bondanello Casa [illegible] Hercolani Casalone, Lovoleto Sabiuno di Piano e quindi luogo la strada Ferrarese (64) fino a raggiungere il territorio della stazione di Corticella in prossimidità di Fabbrica .

CASTELMAGGIORE ,li 18-9-1946

IL MARESCIALLO COMANDANTE
Lira Rosario

Appuntato
Piazzolla Giuseppe

Pros. Ex. No. 5 (pag. 5)

UNIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA

STAZIONE DI CORTICELLA

COMANDO STAZIONE CARABINIERI DI CORTICELLA

Si dichiara che nel mese di maggio 1944, non è caduto nessun apparecchio di nessuna nazionalità nel territorio di questa stazione circoscritta: Da Corticella - Cadriano - Quarto Inferiore - S.Nicolò - Arcoveggio - Fiume Reno - e Trebbo.

Un solo apparecchio è caduto nelle vicinanze del nostro territorio al di là del fiume Reno nella giurisdizione di Borgo Panigale.

Corticella li 18 settembre 1946 Arcangiolini Brig.

Il V.Brigadiere

Comandante int.della stazione

(Mariano Arcangiolini)

Arcangiolini

[illegible] (pagina 6)

[illegible] TERRITORIALE [illegible] DI [illegible]
Stazione di Spilamberto

Dagli atti di questo ufficio non risulta che alcuno apparecchio di nessuna nazione [illegible] nel Maggio 1944 nel territorio di questa stazione.=

Il territorio di questa stazione con riferimento al foglio N°87 della carta d'Italia I,100000 è delimitato da S.Eusebio - segue la ferrovia fino all'altezza di"Ca di Balugani-segue il torrente Guerro fino al Ponte Guerro per continuare verso Sud Est avendo come confine il Fiume Panaro e scende giù fino all'altezza della cartiere di Sega - Cabelle - Rola - Ca 'Lenzino per ritornare a S.Eusebio.=

A Spilamberto,li 23 Ottobre 1946

Il Maresciallo Maggiore Comandante
(Ivo Ferioli)

Pros. Ex. No. 5 (page 7)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
Stazione di San Damaso
666666666666666666666

Dagli atti di questo ufficio risulta che nessun apparecchio di nessuna nazionalita' e' caduto nel maggio del 1944 nel territorio di questa stazione.

Il territorio di questa stazione con riferimento ai fogli # 86 e 87 della carta d'Italia 1:100000 e' delimitato da:

S. Agnese nei sobborghi di Modena, segue poi la Via Emilia fino all'altezza del ponte S. Ambrogio da dove segue il Fiume Panaro fino a Ponte Guerro, Ca Macchioni, Ca Bracia, Cavazzati, Bellaria, Tonini, Tirelli, fino al Km. '8' della strada N° 12, da dove segue la ferrovia Modena-Sassuolo, per ritornare a S. Agnese nei sobborghi di Modena.

San Damaso, 25 Ottobre 1946

IL MARESCIALLO COMANDANTE LA STAZIONE
TULLIO [illegible]

Pros. Ex. No. 5 (pages 8)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
Stazione di Anzola Emilia

Dai registri di questo Ufficio non risulta che in tutto il mese di maggio 1944, non è caduto nessun apparecchio di nessuna Nazionalità nel territorio di questa Stazione che è circoscritta da:
Anzola dell'Emilia, Ponte Samoggia, S.Maria in istrada, quindi segue il torrente Samoggia fino a S.Giacomo in Martignone incluso, un tratto di strada di circa due Chilometri, della strada che va da Borgo Panigale a S.G. in Persiceto, da qui segue il torrente Lavino (che lo confina con il territorio della Stazione di Borgo Panigale), fino alla via Emilia, Tombe, Bachi, il Polverifizio e ritorna ad Anzola seguendo il rio Ghironda.

Anzola Emilia lli 18-9-1946

L'Appuntato Comandante interinale
della Stazione
(Bortolani Guerrino)

CARABINIERI
EMILIA

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
= STAZIONE DI CRESPELLANO=

Dagli atti di quest'ufficio non risulta che nessun apparecchio di nessuna nazionalità è caduto nel maggio 1944 nel territorio di questa stazione.

Il territorio di questa stazione con riferimento al foglio numero 87 della carta d'Italia I: 100000 è delimitato da: Ponte Samoggia, Calcara, seguendo la strada fino alla frazione Muffa, Pragatto, Chiesa Nuova, Cà via Lunga e seguendo la strada fino ad Anzola dell'Emilia da dove il confine è costituito dalla via Emilia per ricongiungersi a Ponte Samoggia.

A Crespellano lì 23 ottobre 1946

IL MARESCIALLO CAPO
COMANDANTE LA STAZIONE
(Mazzoni Fulvio)

Pros. Ex. No. 5 (page 10)

Legione Territoriale dei Carabinieri di [illegible]

Stazione di Zola Predosa

Dagli atti di questo ufficio risulta che nessun appartenente di nessuna Nazionalità é caduto nel territorio di questa Stazione, che comprede il Comune di Zola Predosa e Monte San Pietro, nel mese di di maggio 1944.

Il territorio di questa stazione, con riferimento al foglio N° 87 della carta d' Italia a 1.100.000 e delimitato da:

Croce delle Pradole - Cavignano - Ca Salarole - Mongiorgio - Verenano - Case Rosse - Ca Sasale - Ca Ballotta - Ca Poggio - Ca Marchese - Pratalbino - S.martino in Casola - La Vigliazza - Torre Stagni - Chiesa Nuova - Polverificio - Le [illegible] Tombe - Spirito Santo - Rigosa - La Palazzina - La Falzina - Castel Debole - Ca Bassa Riale - Muchieto - Ca di Sotto - Cavaro - Fontanella - Costeggia poi il Torrente Lavino fino alla Colombara - Ca Rossi [illegible] - Ca Lolli - Monte Severo - Monte Pastore - per ritornare a Croce delle Pratole -

A Zola Predosa li 23 ottobre 1946

Il Maresciallo Maggiore Comandante
(Francesco Stanco)

Pres. Ep. no. 5 (page 11)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
Stazione di Casalecchio di Reno

Dagli atti di quest'ufficio risulta che nessun apparecchio di nessuna nazionalità è caduto nel territorio di questa stazione nel mese di maggio 1944.=

Il territorio di questa stazione, con riferimento al foglio n.87 della carta d'Italia n.100.000 è delimitato da: Riale=Ca Bassa = Casteldebole = segue poi il fiume Reno fino all'altezza di Toiano = Marescalchi per ritornare poi a Ca de Sotto.=

a Casalecchio di Reno, li 23 ottobre 1946

Il maresciallo maggiore e piedi
comandante stazione
(Garrone Giorgio)

Pres. Ex. No. 5 (pagina 12)

[illegible]

[illegible] di [illegible] di [illegible] [illegible] territorio [illegible] giurisdizione di questa [illegible] nel [illegible] 19[illegible].

Il territorio di [illegible] con riferimento al foglio n. 75 e 7 della carta d'Italia 1/100.000 è delimitato da: Casalecchio di Reno, i Frati, Castelmaggiore, Borgo Panigale, S. Isaia, Porta Lame, segue la linea ferroviaria includendo [illegible] della piccola velocità, vicino alla Certosa includendola, scendendo alla Madonna di S. Luca per ricongiungersi poi a Casalecchio di Reno.

Bologna Bertalia, li [illegible] ottobre 19[illegible]

IL MARESCIALLO MASSIMO
[illegible]

Pres. Ex. ho. 5 (pagina 13)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA
= Stazione di Sala Bolognese =

Dagli di quest'ufficio risulta che nessun apparecchio di nessuna Nazionalità è caduto nel territorio sotto la giurisdizione di questa stazione nel mese di maggio 1944.-

Il territorio di quest' stazione con riferimento al foglio n.75 e 87 della carta d'Italia 1/100.000 è delimitato da: S.Giacomo del Martignone.- Forcelli Lungo il torrente Samoggia fino allo stibilimento idraulico per seguire poi il fiume Reno e inserirsi attraversando il ponte in prossimità del Casa Nova fino a Cascina Beari.segue la strada per discendere al Ponte Nuovo da dove segue il fiume Reno fino a Castello di Campeggio.- Cascina-Zuni Luogo Nuovo Lavino di Sotto per ritornare seguendo la Ferrovia a S.Giacomo del Martignone.-

Sala Bolognese,li 23 ottobre 1946.-

Il maresciallo d'alloggio a p.
comandante la stazione
(Arrigo Cassi)

LEGIONE TERRITORIALE DEI CARABINIERI DI BOLOGNA

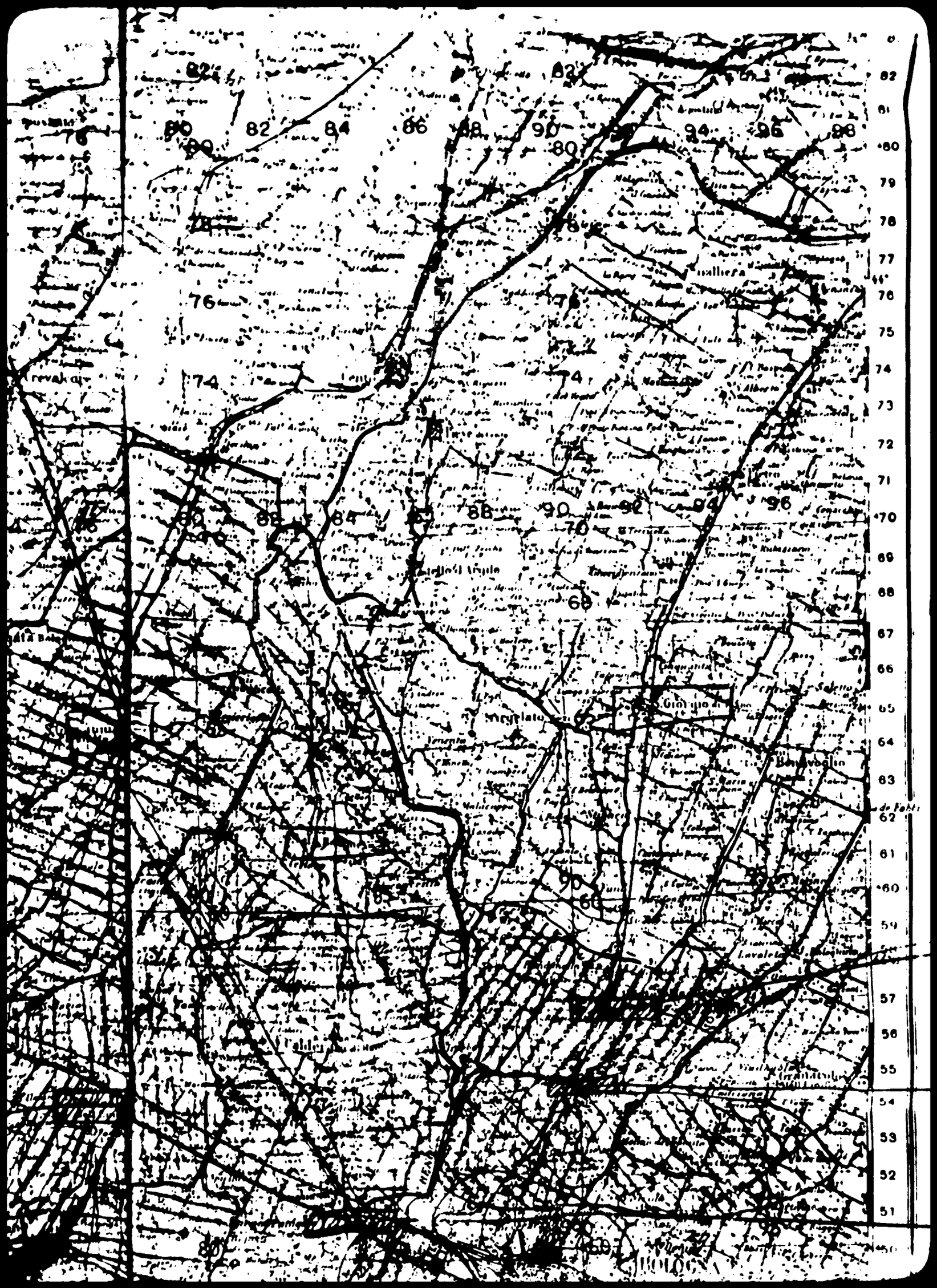
Stazione di S.Giovanni in Persiceto

Dagli atti di quest'ufficio non risulta che in tutto il mese di maggio 1944 sia caduto un apparecchio nel territorio di questa stazione in S.Giovanni in Persiceto.-

Si intende che nessun apparecchio, di nessuna nazionalità, per ciò che riguarda la zona sotto questa stazione circoscritta da : CASTELLETO- PALAZZO PEDRAZZI- LE TORRI DI BUDRIE- CASTAGNOLO- CASA GRIGNANI- CASA VECCHIA- VILLA GIOVANETTO- RASTELLINO- S.BENEDETTO- CHIESA DEI FRATI- SEGUE LO SCOLO GALLEGO FINO ALL'ALTEZZA DEL KM.25 SULLA STRADA S.GIOVANNI IN PERSICETO- CREVALCORE - PROSEGUE POI FINO A CASA MANZI -ATTRAVERSA LA FERROVIA E LA STRADA ALL'ALTEZZA DI CASA RONCATI -CASA COLAMO -POGGESCHI- CASA FALZONI da DOVE COSTEGGIA IL TORRENTE SAMOGGIA FINO A S.MARIA IN STRADA E SI RICONGIUNGE A CASTELLETO .-

S.Giovanni in Persiceto, li 23 ottobre 1946 .-

Il Maresciallo Maggiore Comandante
(Nunzio Gardarelli)



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72
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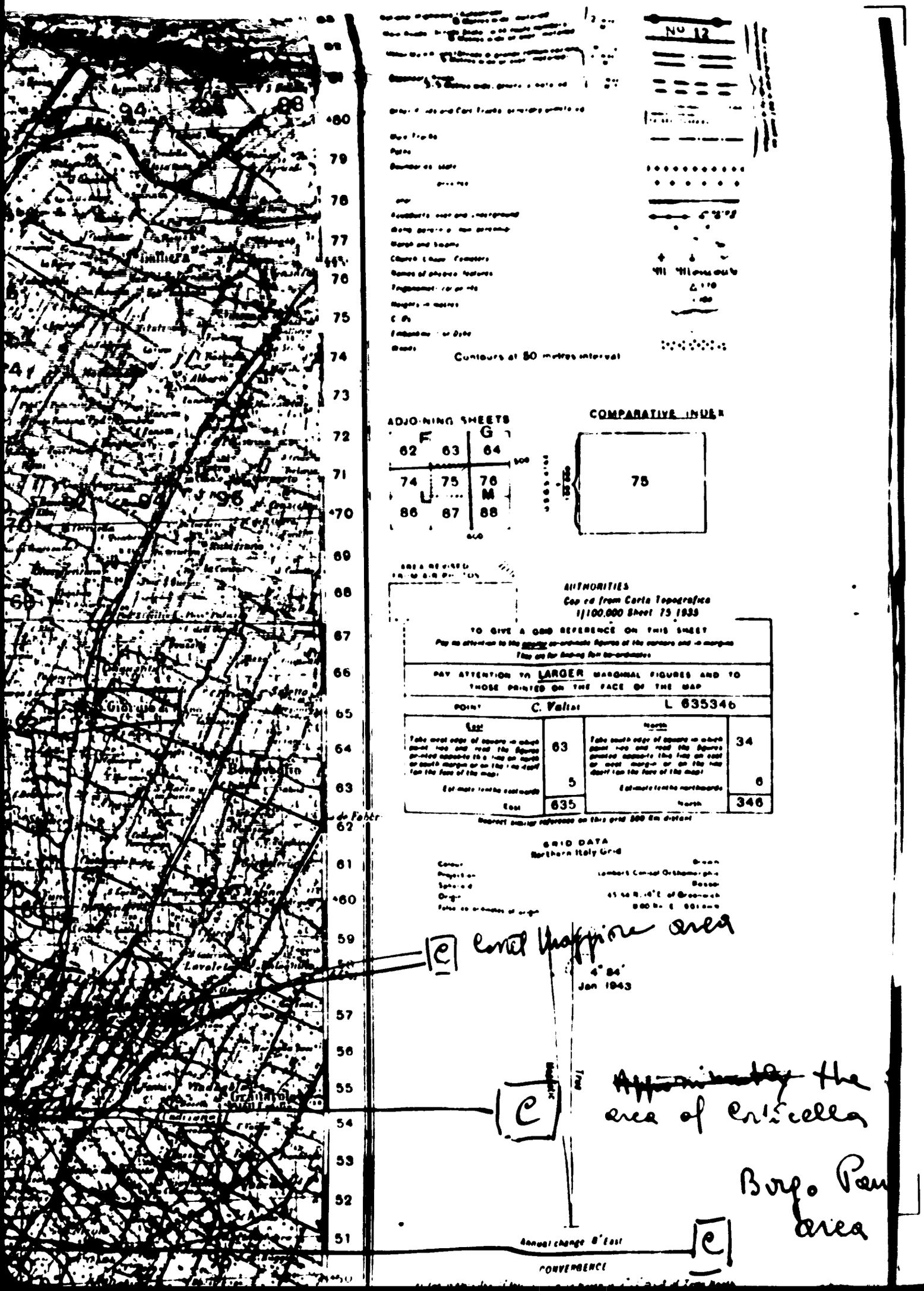
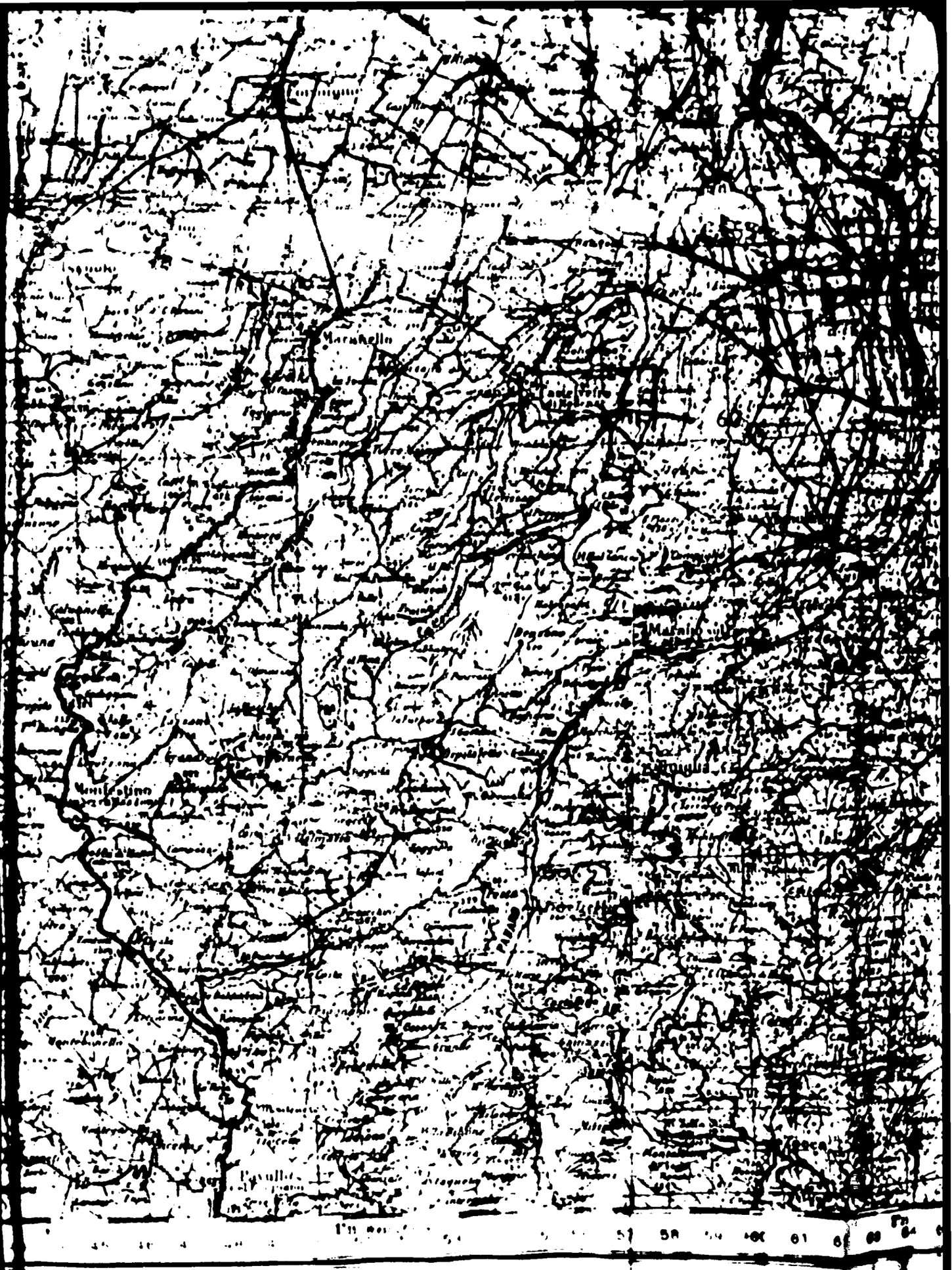
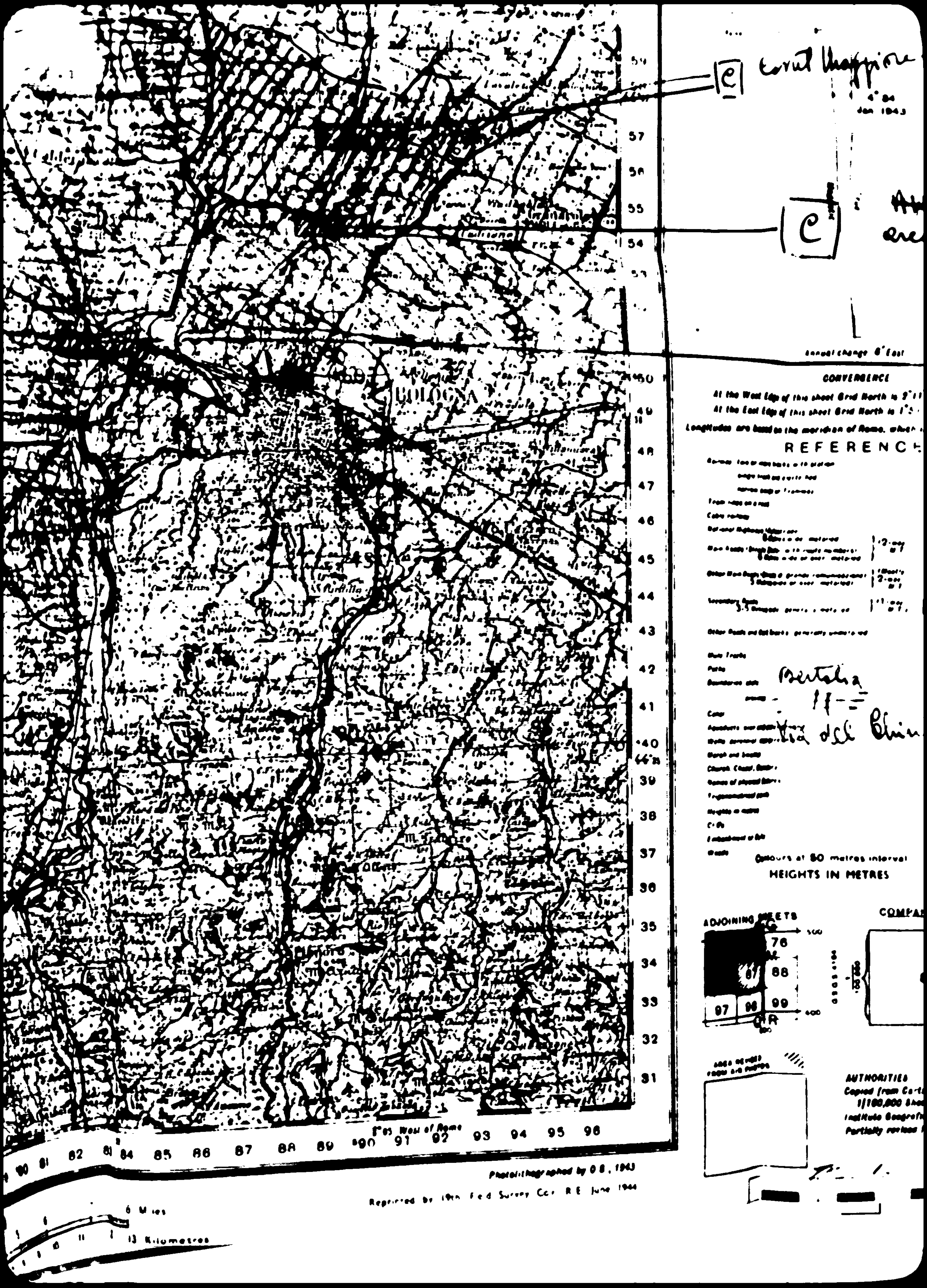
52
51

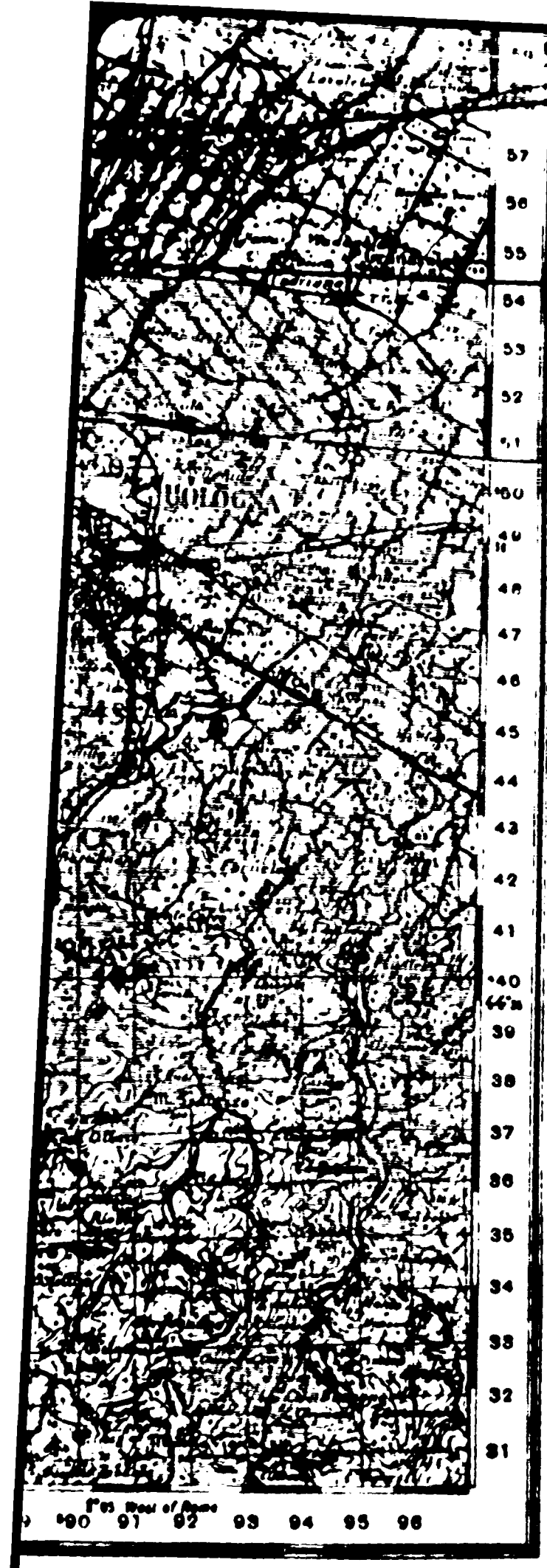


No 12
Contours at 50 metres interval
ADJOINING SHEETS
F
G
62
63
64
74
75
76
L
M
86
87
88
COMPARATIVE INDEX
75
AUTHORITIES
Copied from Carta Topografica
1/100,000 Sheet 75 1935
TO GIVE A GRID REFERENCE ON THIS SHEET
PAY ATTENTION TO LARGER MARGINAL FIGURES AND TO THOSE PRINTED ON THE FACE OF THE MAP
POINT
C. Valtai
L 635346
East
63
5
635
North
34
6
346
GRID DATA
Northern Italy Grid
Lambert Conical Orthomorphic
Bessel
Jan 1943
Annual change 8' East
CONVERGENCE
Corvel Maggiore area
~~Approximately~~ the area of Corticella
Borgo Pan area


Marinello
Montestino
Pavullo
Zocca
Geographical Section, General Staff, No
Published by War Office, 1943
REFER TO THIS MAP AS
J 2038

S MAP AS


Corut Maggiore
Jan 1943
Annual change 0° East
CONVERGENCE
At the West Edge of this sheet Grid North is 2°11'
At the East Edge of this sheet Grid North is 1°3'
Longitudes are based on the meridian of Rome, which
REFERENCE
Bertalia
Via del Chiu
Contours at 50 metres interval
HEIGHTS IN METRES
ADJOINING SHEETS
76
87
88
97
98
99
AUTHORITIES
Copied from Carta
1/100,000 Sheet
Istituto Geografico
Partially revised
BOLOGNA
2°05' West of Rome
Photolithographed by O.S., 1943
Reprinted by 19th Field Survey Coy. R.E. June 1944
6 Miles
13 Kilometres



Photolithographed by G.S., 1943

Reprinted by 19th Field Survey Coy. R.E. June 1944

C

~~Approximately~~ the area of Corticella

Borgo Pan area

C

Annual change 8' East

CONVERGENCE

At the West Edge of this sheet Grid North is 2°11' West of True North

At the East Edge of this sheet Grid North is 1°50' West of True North

Longitudes are based on the meridian of Rome, which is 12° 27' 7.1" East of Greenwich

REFERENCE

Railway: two or more tracks with station

single track and electric line

narrow gauge or Tramway

Tram lines on a road

Cable railway

National Highways: Autostrade 8 Metres wide, metalled

Main Roads: Strade 6 Metres wide or over, metalled — 2-way, 8'

Other Main Roads: Strade 5 Metres wide or over, metalled — Mostly 2-way, 8'

Secondary Roads: 3.5 Metres wide, generally metalled — 1-way, 8'

Other Roads and Cart Tracks, generally unmetalled

Mule Tracks

Paths

Boundaries: state

province

Canal

Aqueducts: over and underground

Wells: perennial, non perennial

Marsh and Swamp

Church, Chapel, Cemetery

Names of physical features

Trigonometrical points

Heights in metres

Cliffs

Embankment or Dyke

Woods

No 9

Bertolla

Via del Chiù

Contours at 50 metres interval

HEIGHTS IN METRES

ADJOINING SHEETS

76

87

88

97

98

99

COMPARATIVE INDEX

SW SE

NW NE

87

AREA REVISED FROM AIR PHOTOS

AUTHORITIES

Copied from Carta Topografica 1/100,000 Sheet 87, 1934

Instituto Geografico Militare

Partially revised for communications, 1943.

Proc. Exhibit No. 5

Testimony of: Steven F. Capasso
Capt, QMC
Field Graves Reg Officer,
US Army.

Prog Ex. No 6. (page 1)

Poor caution
Exhibit No 6
for view

C O P Y.

HEADQUARTERS
GRAVES REGISTRATION
MILITARY CEMETERY AT MIRANDOLA I ALY.
APO 464, U.S. AR

16 [illegible] 1[illegible]

SUBJECT: Removal of Deceased - 1st. Lt. Lyle E. [illegible] - 0-749043

TO WHOM IT MAY CONCERN.

1. Pursuant to verbal request received this date from F/Sgt. REAT-92496[illegible], R.A.F Special Investigation Branch, the undersigned states that the dead human remains of 1st. Lt. Lyle E. [illegible], 0-749043 were disinterred from the Civilian Cemetery at La Certosa (Bologna) by personnel of the Graves Registration Unit, and properly reinterred in the U.S. Military Cemetery at Mirandola, Plot E, Row 3, Grave 601.

(Signed). STEVEN F. CAPASSO
Capt., QMC
Field Graves Registration Officer

Pros Ex. No. 6 (page 2)

MOREHEAD, L. E.
O-749043 T43

RESTRICTED

REPORT OF BURIAL
AR 30-1815 & TM 10-630

O.M.C. Form 1, CBM
and revising
July 1943

16 May 1945
Date Report Filled Out

Morehead (Last Name)	(Lyle) (First Name)	E. (Middle Initial)	O-749043 (Serial No.)	T (Rank)
1st Lt. (Rank)	Unknown (1 Fr Sq) (Organization)	Air Corps (Branch)	USA (Country)	
Vic. Bologna, Italy (Place of Death)	est. 17 May 1944 (Date of Death)	KIA - Decapitated (Cause of Death)	Protestant (Religion P. C. H. etc.)	

MEANS OF IDENTIFICATION

Identification Tags found on body : Yes (1) ; No ( ).
~~Identification tags~~ other means used to identify body (identification card, letters, etc.):

NONE Clothing checked - no markings found

Complete fingerprint chart of both hands on reverse side if body cannot be identified.
Complete tooth-chart on reverse side and list anatomical characteristics and other data if fingerprints cannot be taken.

If unidentified, give circumstances:
List of Personal Effects found on Body and disposition of Same:

NONE

MOREHEAD, Malba J. — Box 315 Union, Ore
(Name of Emergency Addressee) (Address of Emergency Addressee)

S/Sgt George Greenstein 47th QM GR Co.
(Signature (or Name) of Person furnishing above data when other than the Officer reporting burial.)

1450 hrs 18 May 1945 U. S. Mil. Cem. At Mirandola, Italy
SHROUD (Time and Date of Burial) (Location, Name, & No. of Cemetery)

IF BURIAL OUTSIDE THAN IN ESTABLISHED CEMETERY FURNISH SKETCH AND MAP REFERENCE REVERSE SIDE THIS FORM

E (Plot No.)	3 (Row No.)	601 (Grave No.)	Temp. Wood (Kind Grave Marker)	Protestant (Type of Religious Ceremony)

Identification Tag buried with body (1) ; Identification Tag attached to marker (0).
If identification Tags not present, what other identification data were buried with the body and in what kind of container? _____

Bodies buried on either side (See paragraph 4 on reverse side this form.)

Right side : BEGINNING OF ROW
(Name) (Rank) (ASN) (Organization)

Left side : SEKED, Lloyd J. Cpl 37631251 UNKNOWN
(Name) (Rank) (ASN) (Organization)

/s/ [illegible]
(Signature of Person Reporting Burial)

THOMAS J. [illegible]

INSTRUCTIONS FOR FILING OUT BURIAL, [illegible]
additional copy for allied and [illegible]
Registration [illegible] will f[illegible] the [illegible]
against [illegible] papers [illegible]
Section Grave [illegible] Service Officer. [illegible]

RESTRICTED

FOR FILE -
CASE # 189

INSTRUCTIONS FOR BURIAL

1. PREPARATION OF BODY : Have body examined by member of Medical Department whenever possible (to attach F.M.T. Form 52b.) Remove all personal prop[illegible] remove one identification tag, leave other on body in protected [illegible]sition (in case of enemy dead, leave ½ tag on body, forward ½ with personal effects.) If no tag present, make notation of identifying data on form, protect in sealed bottle, canteen, spent shell, or best available container and bury with remains. If unidentified, take fingerprints of both hands; if this not possible, fill out tooth chart and note height, weight, color of eyes and hair tattoo marks, birthmarks, etc., and other data as serial no. of weapon, laundry marks, where body found, etc. Wrap body in shelter half, mattress cover, or blanket when available.

2. BURIAL : Dig grave to a depth of five feet (hasty battlefield burials, to sufficient depth to prevent elements from exposing the body). *Place only one body in a grave.* Dig graves side by side, row behind row.

3. MARKING OF GRAVE : Fasten identification tag to temporary name peg and place at head of grave. For enemy dead, write data on peg. When pegs are not available copy data on a piece of paper, place in bottle, spent shell, or other receptacle, seal tightly and place so as to mark and identify grave. If identification tag cannot be fastened to peg or placed in container, do not leave at grave but forward with report of burial. If only one tag is found on body, it should be buried with body. The information thereon should be written on marker or placed in container at head of grave. Do not use weapons or helmets to mark graves.

4. LOCATION OF GRAVE : Report burials in established cemeteries by plot, row, and grave number (or show on cemetery map). For all other burials prepare sketch in space provided below; and give location by means of map references, or by reference to prominent permanent landmarks. Information must be specific, accurate, complete. Stand at foot of grave facing head to determine bodies buried to the left and right.

5. PERSONAL EFFECTS : List only personal effects taken from body on the Burial Report form. Place these with information as to identity of owner, organization, emergency addressee, in personal effects bag, or wrap in handkerchief, towel, or other available material and turn over to Grave Registration Service Personnel with report of burial. Government property is not to be included in personal effects but is to be turned in to Salvage Collecting Point.

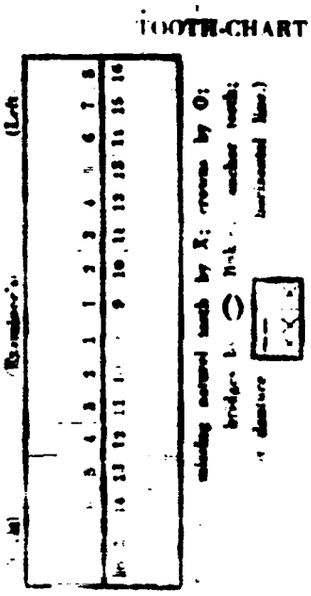
SKETCH AND MAP REFERENCE:

Disinterred on 14 May 1945 From Grave 3 of Civilian cemetery located at grid coord. L860498, Map of Italy, 1:50,000 by S/Sgt Edward Finnerty, 47th [illegible] Co.,

Reinterred on 15 May 1945 in the U. S. Mil. Cem. at Mirandola, Italy in Plot E, Row 3, Grave 601.

Physical characteristics impossible - decapitated and decomposed.

TOOTH-CHART



When unidentified, take thumb and fingerprints of both hands.

If this not possible, fill in tooth chart.

Left

Right

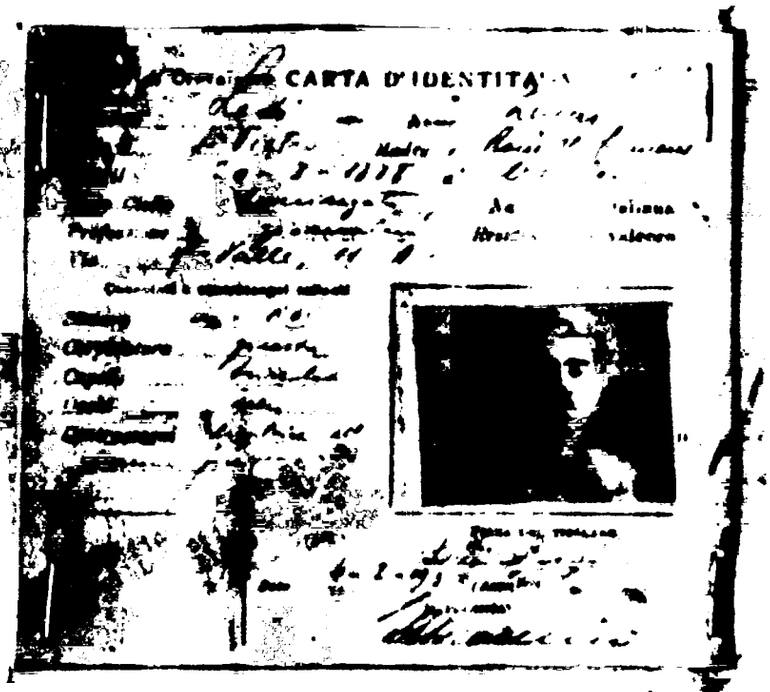
Thumb

Thumb

CONFIDENTIAL

Prosecution's Exhibit 6.

Testimony of: Carabinieri of San Giovanni in Persiceto,
Re discovery of Lodi's body,



Pros Ex No 7 (Finger 1)

"1".

[illegible]

[illegible] sto 7. [illegible]

1 [illegible]

[illegible]:- **Discovery of [illegible]**

[illegible] the [illegible] hours in the locality of "[illegible]" of [illegible] Battoo [illegible] [illegible], [illegible] of S. Giovanni in Persiceto, in [illegible] of Via [illegible]to, has been found buried the body of [illegible], Luigi, ex Fascist Guard [illegible] the [illegible] was born at Crevalcore, [illegible] years of [illegible] and the son of the late [illegible]ro. He was killed by fire arms, [illegible] bullet [illegible] the [illegible] left to [illegible], the hands were bound and there were [illegible] hat. Investigation [illegible] proceeding [illegible].

([illegible]) [illegible] Petroni.

[illegible]etter transl[illegible] to the best of [illegible] ability.

....................(Signed) [illegible]

[illegible handwriting]

31

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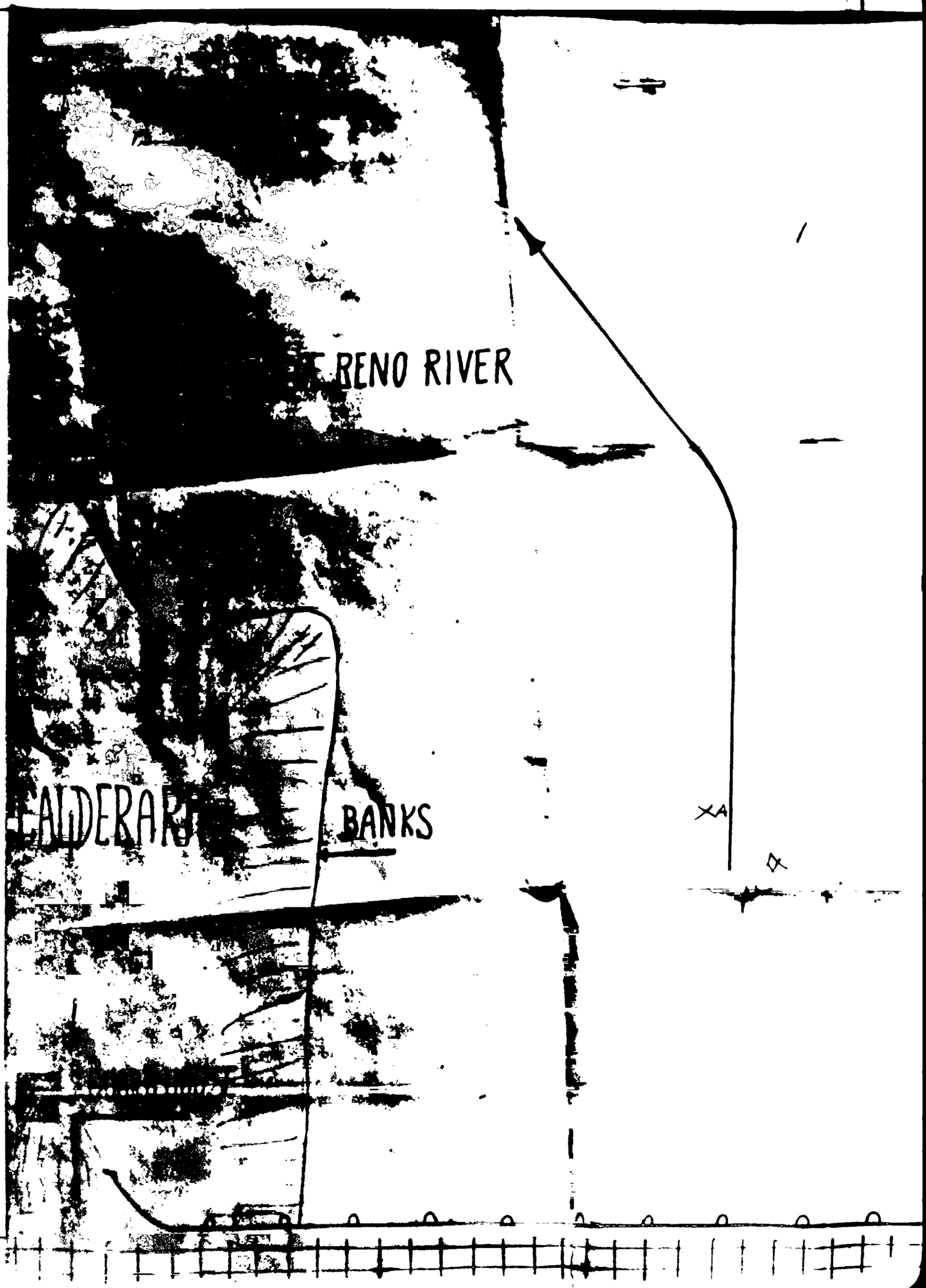
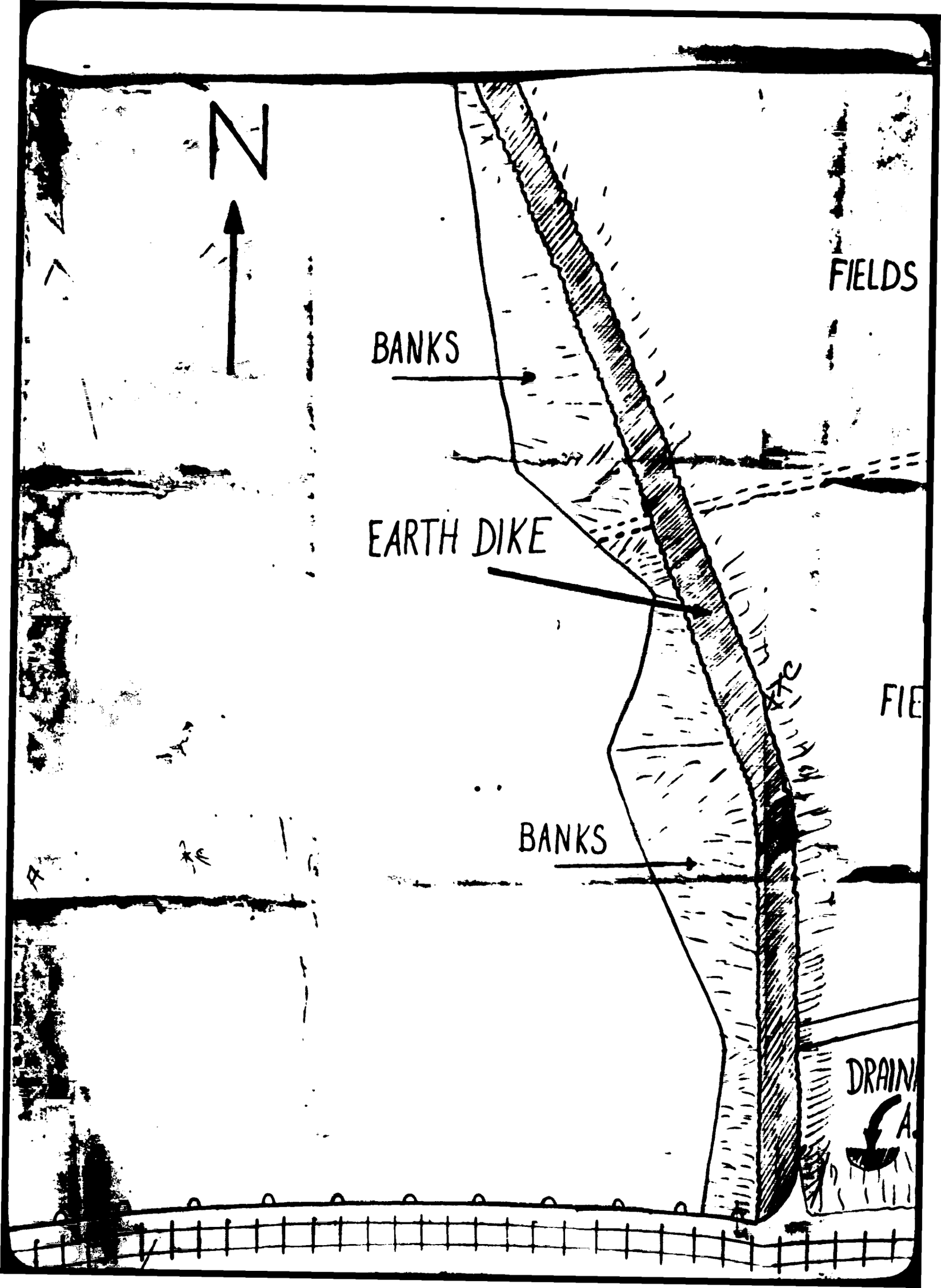
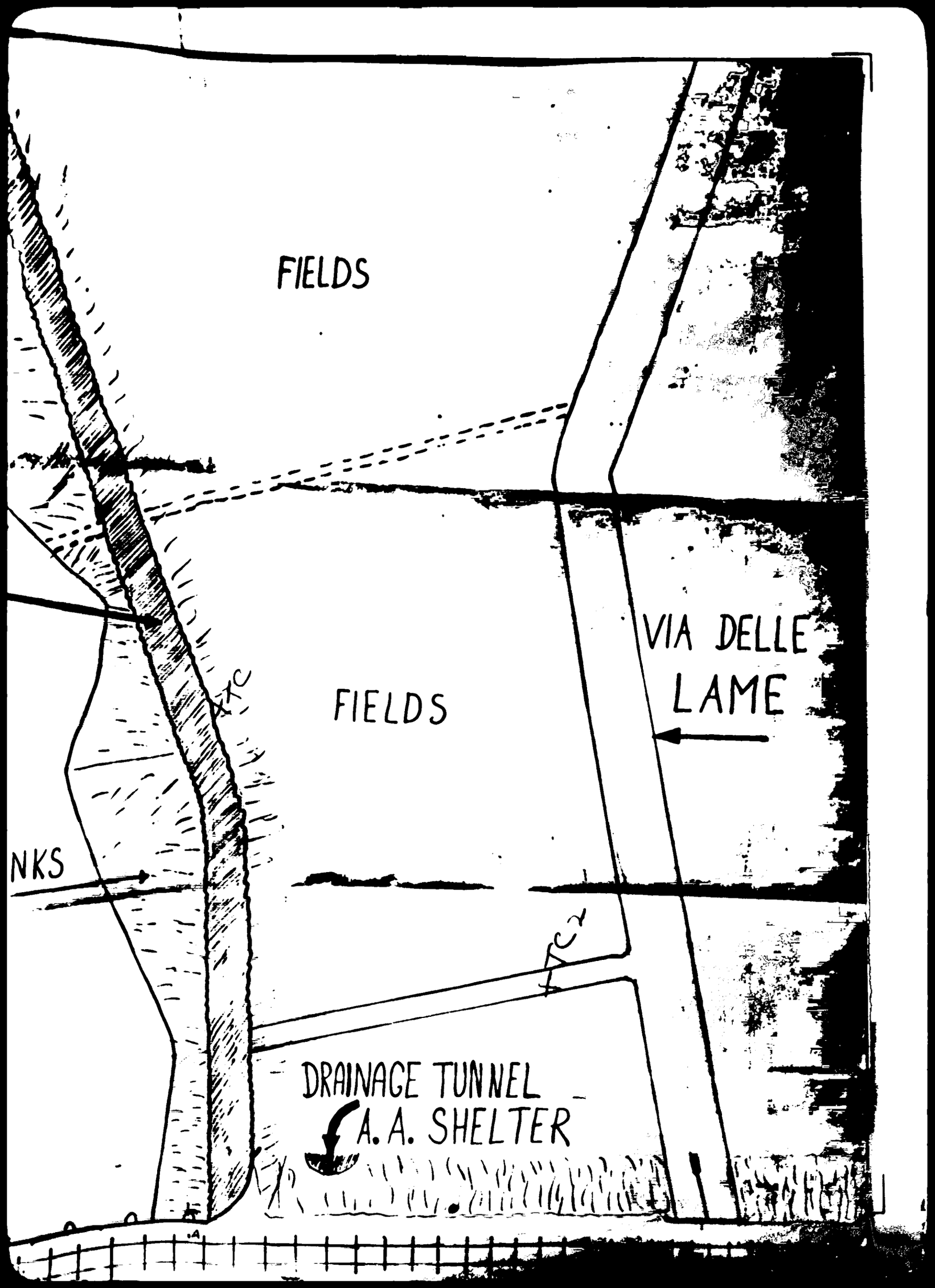
Prosecution's Exhibit 7 .

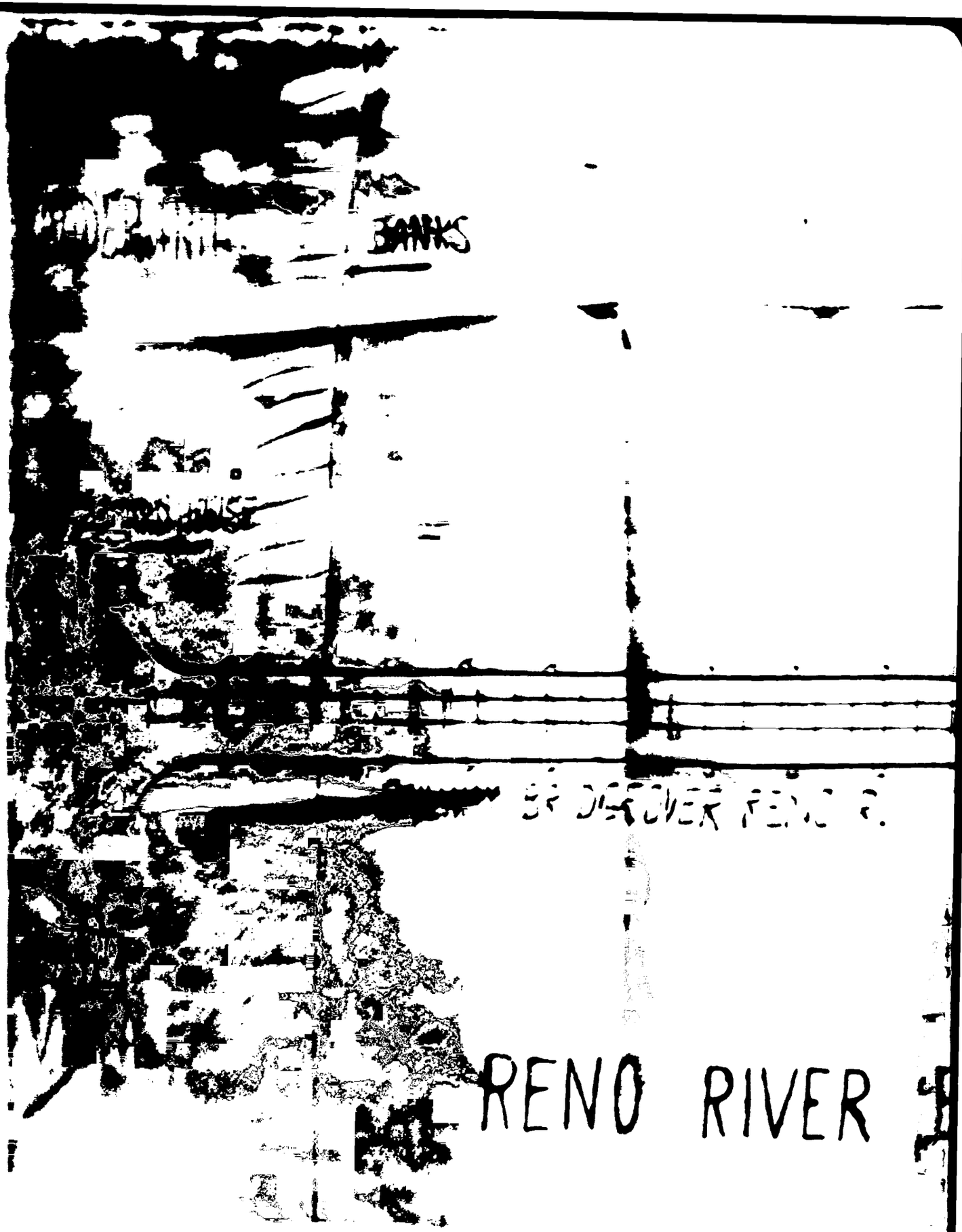
CONFIDENTIAL

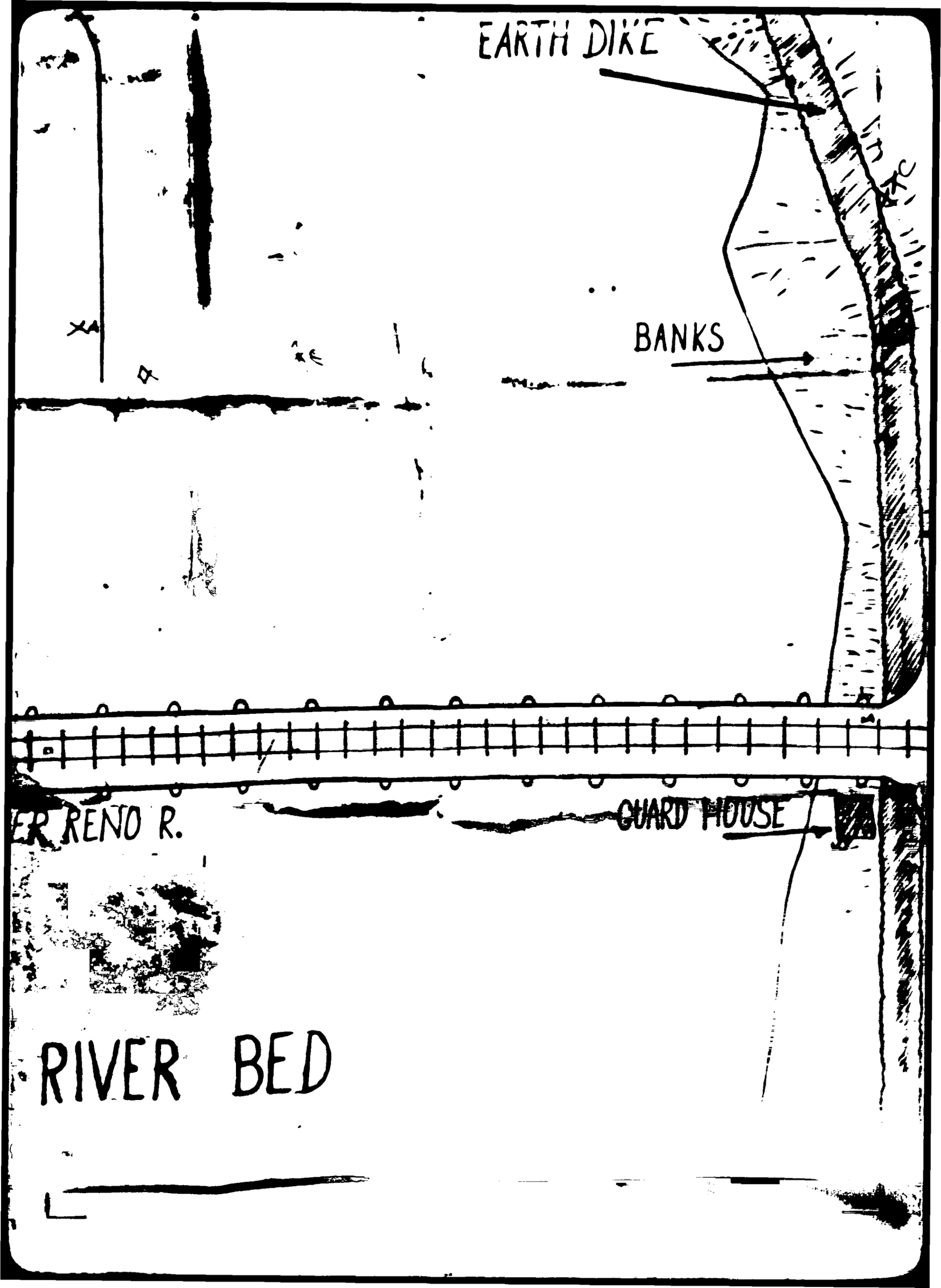
Prosecution's Exhibit 8. WITHDRAWN

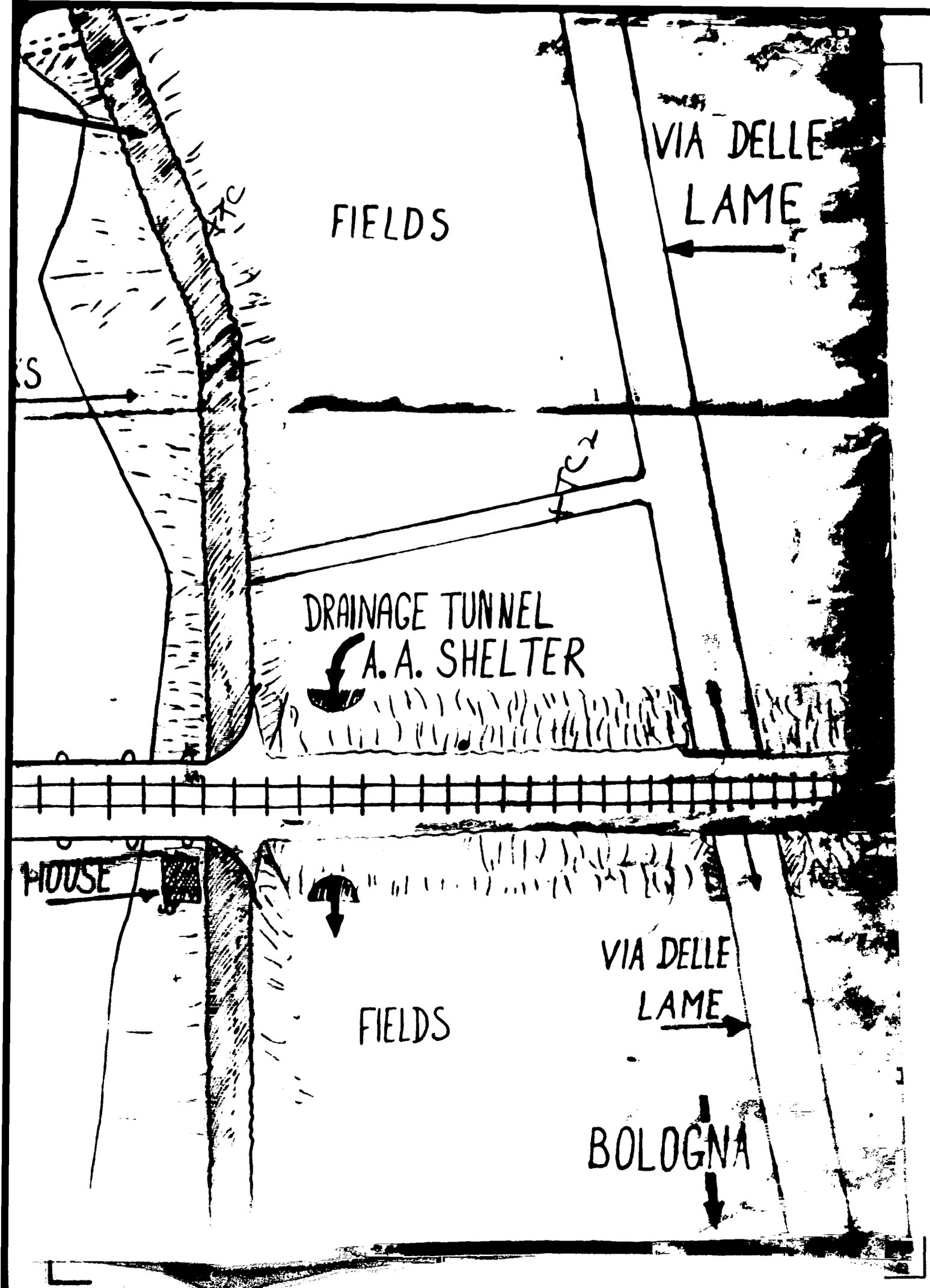

RENO RIVER
ALDERAR
BANKS


N
BANKS
EARTH DIKE
BANKS
FIELDS
FIE
DRAINA


FIELDS
FIELDS
VIA DELLE
LAME
NKS
DRAINAGE TUNNEL
A. A. SHELTER


BANKS
RENO RIVER


EARTH DIKE
BANKS
ER RENO R.
GUARD HOUSE
RIVER BED


VIA DELLE
LAME
FIELDS
S
DRAINAGE TUNNEL
A. A. SHELTER
HOUSE
VIA DELLE
LAME
FIELDS
BOLOGNA

Fattori Oliviero F

Deposizione del signor Fattori Oliviero nato a [illegible] (Bologna) il 12.6.917 e abitante a [illegible] alla [illegible] Rimo [illegible] della Rule [illegible].

Verso le ore 15.30, dalla fine del mese di maggio 1945 vidi che un apparecchio precipitava in fiamme. Mi recai subito sul posto ove era caduto l'apparecchio, distante circa 200 metri dal ponte della ferrovia, chiamato Ponte Nuovo e notai che il corpo del pilota dell'apparecchio stesso era distante da questo circa 20 metri, con una ferita al ventre larga circa 20 cm, che io ritenni fosse stata causata dallo scoppio di qualche bomba a mano, ed un'altra ferita al viso tanto vasta che il pilota era irriconoscibile.

Sul luogo ove si trovava l'apparecchio trovai due militi della G.N.R. di cui uno teneva a bada le persone civili che volevano avvicinarsi allo apparecchio e l'altro se ne stava in disparte. Dopo circa dieci minuti da quando arrivai sul luogo ove l'apparecchio era caduto sono arrivati dei militari tedeschi in compagnia di un sergente italiano. Il milite che se ne stava in disparte diceva che aveva ucciso il pilota dell'apparecchio perchè questi aveva tentato di difendersi. Il sergente, allora, si rivolse a detto milite per

Pm Ex 10 (Page 1) Fattori Oliviero prove [illegible] no 10 [illegible]

Gottardi Olivano

Ricordo con che mezzo cercava difendersi quando era evidente che il pilota non aveva alcuna arma.
Il milite insistette col dire che aveva ucciso il pilota per difendersi ma non convinse il sergente perché questi gli rispose che non continuasse a dire fesserie.
- Ho visto varie volte il milite che diceva di aver ucciso il pilota, però prima della caduta dell'apparecchio. I militari tedeschi s'impossessarono dei documenti che il pilota aveva addosso e quindi se ne andarono.
- Il milite che teneva a bada la gente che voleva vedere l'apparecchio era Pierantoni Ettore abitante a S. Vitale in via Oldina n. 80.
Questa deposizione mi è stata letta e dichiaro che corrisponde alla verità.

Bologna, 4 luglio 1945 Gottardi Olivano

Questa deposizione è stata messa in iscritto a richiesta e sotto dettatura di Gottardi Oliviero dal sottoscritto

Brig. di P.S. Ponturo Carmelo

Questa deposizione è stata da me tradotta in inglese con la mia migliore capacità.

Ponturo Carmelo

Pros Ex No 10 (page 2)

Testimony of: Oliviero Gottardi
90 Via Aldina
Calderara, Bologna, Italy.

Pros Ex. No 10 (pages 3)

Proxc. Exhibit No 10

TRANSLATION

COPY "F"

Statement made to Special Investigation Branch Royal Air Force by Gottardi Oliviero, born at Calderara (Bologna) on 12.6.1919 and living there at n. 90 via Aldina;

Who states:

About the end of May 1944 at 15.30 hrs p.m. I saw that an aeroplane was coming down in flames. I went at once where the aeroplane crashed, about 200 meters far from the railway bridge, called "Ponte Nuovo" (New bridge) and I saw that the body of the pilot was about 20 meters away from the aeroplane. The body of the pilot had a wound at the venter about 20 centimeters large and I believed was caused by the explosion of some hand grenade and another wound in the face, so large that the pilot was unrecognizable.

At the place where the aeroplane was I met two Fascist Guards of the Guardia Nazionale Repubblicana one of whom was doing his best to keep the civilian people away that wanted to come near the aeroplane and the other one was standing aside. About ten minutes after I arrived in the place where the aeroplane had crashed, came some Germans military men and an Italian sergeant. The Fascist guard that was staying aside said that he had killed the pilot of the aeroplane because the pilot had tried to defend himself. The sergeant asked to the Fascist guard with what firearms the pilot was trying to defend himself whom the Sergeant said that it was evident that the pilot had no fire arms. The Fascist guard insisted saying that he had killed the pilot to defend himself but did not convince the Sergeant because the Sergeant answered him that he had not to tell lies.

I have seen several times the Fascist guard that was saying he had killed the pilot but I have not seen him again after the aeroplane crashed.

The German military men took with them all the documents that the pilot had with him and went away.

The Fascist guard that was doing his best to keep away the civilians that wanted to see the aeroplane was PIERANTONI Ettore, living n. 80 via Aldina.

This statement has been read over to me and it is true.

Bologna, (Calderara) 4.7.1945 (signed)

Gottardi Oliviero

This statement has been written down by me at the request and dictation of Gottardi Oliviero.

(signed)

Brigadiere P. S. Ponturo Carmelo
Questura Reali.

The above statement was translated by me to the best of my ability.

(signed)

[illegible] Ponturo Carmelo

Statement witnessed by me.

(Signed). [illegible] Sgt. F/Sgt.

Pros. Ex. No. 10 (page 4)

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CONFIDENTIAL

Prosecution's Exhibit 10.

Magi Pietro

Il Magi Pietro di Giuseppe e di Borgagelli [illegible] nato [illegible] il 24.12.1925 ed abitante in Bar[illegible] frazione S. Maria Fabbrecce, via Sabotino n. 4, e [illegible] della Guardia Nazionale Repubblicana, faccio volontariamente la seguente dichiarazione in piena consapevolezza di ciò che faccio.

Sono stato avvisato dallo Speciale Ramo Investigazione R.A.F. che non sono obbligato di fare alcuna dichiarazione a meno che io non desideri di farla, ma che tutto ciò che io dichiaro sarà messo in iscritto e può essere usato come prova testimoniale.

Ho capito perfettamente il significato di questo avvertimento e per dimostrarlo mi firmo

Magi Pietro

Bologna, 10-4-1945, ore 16.45.

Dichiaro che la mia dichiarazione fatta allo Speciale Ramo Investigazioni della R.A.F., in data 24 giugno 1945 non risponde alla verità dei fatti in quanto è falsa in ogni sua parte. Chiedo adesso, di fare una nuova dichiarazione che risponde alla più completa verità e di conseguenza dichiaro quanto appresso:

Il giorno del mese di maggio del 194[illegible] cui precipitò, nei pressi del Ponte [illegible] sul Reno, sito nella frazione S. Vitale nel Comune di Calderara di Reno, un aereo [illegible] mi trovavo di guardia al suo ponte. Subito dopo la caduta dell'aereo io mi allontanai dal [illegible] dia dirigendomi [illegible] [illegible] l'apparecchio, [illegible] tempo dietro un [illegible]

[illegible] Magi Pietro

Magi Pietro

due colpi di moschetto in direzione dell'aeroplano. Spostatomi da questo luogo, raggiunsi un mio compagno, certo Bonazzi Giuseppe, che già si trovava vicino all'aeroplano caduto, il quale mi indicò il pilota che si trovava disteso sopra un'ala dello aeroplano. Nel mentre il milite Bonazzi Giuseppe unitamente al sergente Lodi Luigi trascinarono via dall'ala dell'aeroplano il pilota. Mentre il corpo del pilota veniva trascinato dai suddetti militi io, che avevo la baionetta innestata sul moschetto vibrai, con l'intenzione di uccidere il pilota se questi era ancora vivo, un colpo di baionetta in direzione dello stomaco del pilota, ove l'ho colpito tanto che la mia baionetta si è contenuta avendo incontrato la fibbia del paracadute. Mentre commettevo questa azione mi sono sentito colpire alla testa da pugni, che giratomi ho potuto constatare che mi erano stati vibrati da un maresciallo tedesco che nel frattempo era giunto sul posto ma che da me non era stato notato. Quasi nello stesso momento in cui colpivo il pilota con la baionetta, il sergente Lodi colpiva lo stesso col tacco della scarpa fracassandogli la nuca. Dopo di ciò mi allontanai dal posto recandomi al mio posto di guardia. Nella sera dello stesso giorno in cui era caduto l'aeroplano il milite Bonazzi Giuseppe [illegible]

Prov.to 2c 11 [illegible] Magi Pietro

Magi Pietro

racconto di aver sparato diversi colpi di moschetto, tre o quattro caricatori, e di aver lanciato due o tre bombe a mano in direzione del pilota in quanto questo era in piedi sull'aeroplano e puntava contro di lui una pistola. Che il Bonazzi abbia effettivamente sparato colpi di moschetto in direzione dell'aeroplano è da me confermato in quanto io stesso l'ho veduto, ed il Bonazzi si trovava in quel momento a circa 20 metri dall'aeroplano.

Questa dichiarazione mi è stata letta e corrisponde nella maniera più assoluta alla verità e che l'ho fatta di mia spontanea volontà.

Io sono stato adeguatamente avvisato e ne comprendo perfettamente il significato.

Magi Pietro

Dichiarazione messa in iscritto dal sottoscritto sotto dettatura del Magi Pietro. Gli ho spiegato in italiano tutti gli avvertimenti fatti in lingua inglese dal flight Sergeant Reat, R.R.F. J. J. D. La suddetta dichiarazione del Magi Pietro è stata dettata in presenza del Brig. di P.S. Peccenini Lelio, Questura di Bologna che si sottoscrive.

Brig. di P.S. Pontuso Carmelo

Brig. di P.S. Pontuso Carmelo

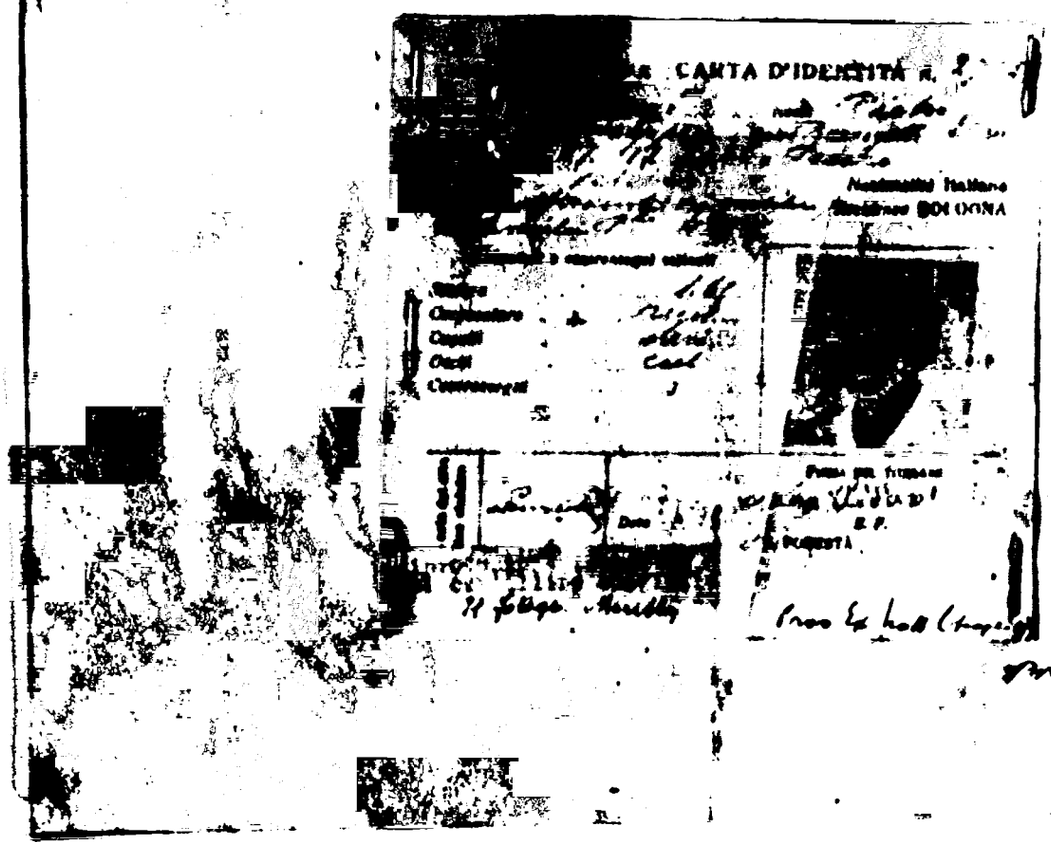
Brig. di P.S. Peccenini Lelio

[illegible]

Dichiarazione terminata alle ore 17.55 - 10 - 4 - 1945, Bologna

Prov. Ex 11 (segue 2)

Testimony of: Pietro Vagi
4 Via Sabotino,
Santa Maria, Pesaro, Italy.



Proc. Ex Subst
No 41

TRANSLATION

I, MAGI Pietro son of Giuseppe and Borgogelli Elisa, born at [illegible] living in Pesaro, District of S. Maria, 4 Via Sabotino. Ex [illegible] the Guardia Nazionale Repubblicana wish to volunteer the follo[illegible] entirely of my own free will. I have been cautioned by [illegible] Branch, R.A.F. that I am not obliged to say anything unless I [illegible] to do so but whatever I do say will be taken down in writing and may be [illegible]. I fully understand the meaning of this caution and to show that [illegible] sign my name.

(Signed). MAGI Pietro.

Bologna. 10.7.45. 16.45hours.

I wish to state that my statement made to the [illegible] Investigation Branch, R.A.F. on the [illegible]th. June 1945 is not true as it is false in every part. I ask now to make a new statement that is completely true and consequently I state as follows:-

On a day of May 1944 in which an Allied aeroplane crashed near the Ponte Nuovo sul Reno, which is at the District of San Vitale of the Commune of Calderara di Reno, I was on duty at this bridge. Shortly after the crashing of the aeroplane, I left the place where I was on Duty going towards the spot where the aeroplane was. I stopped a little while behind a small mound of land to shoot two bullets with my rifle to the direction of where the aeroplane was. Moving from this place I rejoined a fellow of mine BONAZZI Giuseppe, who was already near the crashed aeroplane, and he did indicate to me that the pilot was laying over a wing of the aeroplane. In that time the Milite BONAZZI Giuseppe with Sergente. LODI Luigi dragged away the pilot from the wing of the aeroplane and while the body of the pilot was dragged by the above mentioned Militi, (I, had the bayonet on my rifle ready with the intention to kill the pilot if he was still alive. I pushed my bayonet in the direction of the pilot's stomach where I did hit him) that my bayonet did bend having met the buckle of the parachute. While I was doing this action somebody hit my head with fists and turning myself saw that was a German Marshal arrived at the place where I was in the meantime that I was doing the above action but I did not see him. Almost at the same time that I hit the pilot with the bayonet, Sergente. LODI hit the pilot with the heel of his shoe smashing the nape of the neck of the pilot. After that I went away to go to the place where I was on duty. On the evening of the same day that the aeroplane crashed the Milite BONAZZI Giuseppe told me that he had fired with his rifle several shots, and that he had thrown to the direction where the pilot was two or three hand grenades as the pilot was standing over the aeroplane and pointed against him a pistol. That BONAZZI fired with his rifle some shots in the direction of where the aeroplane was is confirmed by me as it has been seen by myself, and in that moment BONAZZI was about 20 metres away from the aeroplane.

The above statement has been read over to me and it is absolutely true and has been made of my own free will. I have been properly cautioned and I do understand the meaning.

(Signed). Magi, Pietro.

Statement written down by the undersigned at the dictation of MAGI Pietro. I explained to him in the Italian language the meaning of the caution made in the English language by Flight Sergeant. Rest C.G. R.A.F. S.I.B.. The above statement of MAGI Pietro has been dictated in the presence of Brigadiere Peccenini Lelio, Questura of Bologna, who signs his name.

(Signed). Brigadiere. PONTURO Carmelo.
(Signed). Brigadiere. PECCENINI Lelio.

Statement witnessed by me.

(Signed). C.G. Rest. F/Sgt.

14

Statement finished at 17.35 hours.
Bologna
10.7.45.

Translated by me to the best of my ability.
[illegible]
[illegible]

Pres Ex No 11 (page 5)

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

2375

File Number T-56 Date of Report 20 Feb 47

Title of case U. S. vs Takao KATSUMA

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

Yokohama, Honshu, Japan

11 Feb 47 - 20 Feb 47

(Over)

Inclosure 2 to WD Letter (AGAM-P[illegible]00.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

GUILTY - 40 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

---

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

---

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report 20 July 46

Title of case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted], Takeo - Japanese

2. Nature, Place and Date of Offense

Between 1 December 1942 and 1 September 1945 at Fukuoka Prisoner of War Camp #1, Fukuoka Area, Kyushu, Japan, the accused, then a Private in the armed forces of Japan, did violate the Laws and Customs of War.

3. Names and Nationalities of Victims

AMERICAN	BRITISH	DUTCH
John La Fay	Herbert Sidney Hay	J.J. Streefkerk
Pvt Glen I. Chase	Ronald Scott Barrett	Lt. F.J. Bolyn

4. Probable Place and Date of Trial

[redacted]

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 194

3 10

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report 20 July 46

Title of case [redacted]

PART A

1. Names and Nationalities of Accused

[redacted], Takeo - Japanese

2. Nature, Place and Date of Offense

Between 1 December 1942 and 1 September 1945 at Fukuoka Prisoner of War Camp #1, Fukuoka Area, Kyushu, Japan, the accused, then a Private in the armed forces of Japan, did violate the Laws and Customs of War.

3. Names and Nationalities of Victims

AMERICAN	BRITISH	DUTCH
John La Fay	Herbert Sidney Hay	J.J. Streefkerk
Pvt Clem L. Chase	Ronald Scott Barrett	Lt. F.J. DeWyn

4. Probable Place and Date of Trial

[redacted]

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 194

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

---

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

---

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDGS, The Pentagon, Washington 25, D. C.

25-89621-300

VOLUMES I AND II

RECORD OF TRIAL
(5th Original Car on Copy)

(237 J)

in the case of

UNITED STATES

vs

TAKEO MATSUDA

Case Docket No. 59

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama, Japan
February 12th - February 20th, 1947

163

HEADQUARTERS EIGHTH ARMY
United States Army

Office of the Staff Judge Advocate
APO 343

15th March, 1947

SUBJECT: Transmittal of record of trial.

TO: Commanding General, Eighth Army, APO 343.

Transmitted herewith is the completed record of trial in the case of United States vs. Takeo Katsura tried by Military Commission.

Norman P. Groff
NORMAN P. GROFF
Colonel, Inf.
President.

Inclosure:

Volume 1 - Record of Trial and Exhibits.

MILITARY COMMISSION DATA SHEET

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?						
c. Was accused asked whom he desired as counsel?						
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?						
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?						
b. Was the action of the commission upon challenges regularly and properly taken?						
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?	✓					

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
14. Were the interpreters sworn?	✓					
15. Was the accused properly arraigned?	✓					
16. Are these copied or incorporated into the record:						
a. Charges and specifications?	✓					
b. Name, grade and organization of person signing the charges?	✓					
c. Affidavit to the charges and specifications?	✓					
d. Name of the person who administered the oath verifying the charges and his official capacity?	✓					
e. The order of reference for trial?	✓					
17. Does each specification state an offense?	✓					
18. Are the pleas of the accused regularly entered?	✓					
19. Are the findings properly entered?	✓					
20. Was the vote upon each finding in closed session?	✓					
21. Was the vote upon the sentence in closed session?	✓					
22. Did at least two-thirds of the members present at time vote on each finding was taken concur therein?	✓					
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?	✓					
24. Does the evidence sustain the findings of the commission?	✓					
25. Are the findings legal?	✓					
26. Is the sentence legal?	✓					
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?		✓				
28. Is the record properly authenticated?	✓					
29. Does it sufficiently appear that the defense counsel accepts the record as correct?	✓					
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?	✓					

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?.....						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?.....						
b. In death cases does the action refer the case to JCAP for final action?.....						
33. Is clemency recommended by the commission?.....						

Jesse Patch
Prosecutor

Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

****

BEFORE A MILITARY COMMISSION CONVENED BY AUTHORITY OF THE COMMANDING GENERAL UNITED STATES EIGHTH ARMY _____ 1946	UNITED STATES OF AMERICA VS TAKEO HATSURA

****

CHARGE

That between 1 December 1942 and 1 September 1945, at Fukuoka, Prisoner of War Camp Number One, Fukuoka Area, Kyushu, Japan, TAKEO HATSURA, then a Private in the Armed Forces of Japan, a nation then at war with the United States of America and its Allies, did violate the Laws and Customs of War.

SPECIFICATIONS

1. That in or about the summer of 1944, the accused, Takao Katsura, did willfully and unlawfully mistreat, abuse and strike John La Fay and James Edwin Young, American Prisoners of War.

2. That between 1 December 1942 and 1 September 1945, the accused, Takao Katsura, did willfully and unlawfully misappropriate and convert to his own use Red Cross supplies intended for the use and benefit of Allied Prisoners of War.

3. That in or about the month of June 1945, the accused, Takao Katsura, did willfully and unlawfully mistreat Gunner Albert Henry Joss Newman, a British Prisoner of War, by beating him with fists and a hammer.

4. That in or about the month of October, 1944, the accused, Takao Katsura, did willfully and unlawfully cause Private Glen I. Cherne, an American Prisoner of War, to be beaten.

5. That in or about the month of March 1945, the accused, Takao Katsura, did willfully and unlawfully mistreat, abuse and beat Gunner Ronald Scott Barratt, also known as Percy Barratt, a British Prisoner of War.

6. That on or about the 18th day of August 1944, the accused, Takao Katsura, did willfully and unlawfully mistreat, abuse and beat Ensign J. J. Streefkerk, a Dutch Prisoner of War.

7. That on or about the 18th day of August, 1944, the accused Takao Katsura, did willfully and unlawfully mistreat, abuse and beat Lieutenant H. J. de Wijn, a Dutch Prisoner of War.

8. That between 1 December 1942 and 1 September 1945, the accused, Takao Katsura, did willfully and unlawfully mistreat, torture, abuse and beat numerous American and Allied Prisoners of War, thereby contributing to the death of a number of them.

28 August 1946

/s/ Alva C. Carpenter
/s/ ALVA C. CARPENTER
Chief, Legal Section
Supreme Commander for the Allied Powers

AFFIDAVIT

Before me personally appeared the above named accuser this 28th day of August 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R. Pritchard

/s/ Captain, Infantry
Summary Court

A TRUE COPY

MARCUS. L. JONES.
1st Lt, Inf.

SPECIFICATIONS

1. That in or about the summer of 1944, the accused, Takao Katsura, did willfully and unlawfully mistreat, abuse and strike John La Fay and James Edwin Young, American Prisoners of War.

2. That between 1 December 1942 and 1 September 1945, the accused, Takao Katsura, did willfully and unlawfully misappropriate and convert to his own use Red Cross supplies intended for the use and benefit of Allied Prisoners of War.

3. That in or about the month of June 1945, the accused, Takao Katsura, did willfully and unlawfully mistreat Gunner Albert Henry Joes Newman, a British Prisoner of War, by beating him with fists and a hammer.

4. That in or about the month of October, 1944, the accused, Takao Katsura, did willfully and unlawfully cause Private Glen I. Sherno, an American Prisoner of War, to be beaten.

5. That in or about the month of March 1945, the accused, Takao Katsura, did willfully and unlawfully mistreat, abuse and beat Gunner Ronald Scott Barratt, also known as Percy Barratt, a British Prisoner of War.

6. That on or about the 15th day of August 1944, the accused, Takao Katsura, did willfully and unlawfully mistreat, abuse and beat Ensign J. J. Streefkerk, a Dutch Prisoner of War.

7. That on or about the 15th day of August, 1944, the accused Takao Katsura, did willfully and unlawfully mistreat, abuse and beat Lieutenant E. J. de Wijn, a Dutch Prisoner of War.

8. That between 1 December 1942 and 1 September 1945, the accused, Takao Katsura, did willfully and unlawfully mistreat, torture, abuse and beat numerous American and Allied Prisoners of War, thereby contributing to the death of a number of them.

28 August 1946

/s/ Alva C. Carpenter
/s/ ALVA C. CARPENTER
Chief, Legal Section
Supreme Commander for the Allied Powers

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/s/ John R. Pritchard

/s/ Captain, Infantry
Summary Court

A TRUE COPY

MARCUS. L. JONES.
1st Lt, Inf.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (29 Aug 46)LS

APO 500
29 August 1946

SUBJECT: Trial of Takeo KATSUNA.

TO : Commander-in-Chief,
United States Army Forces, Pacific.

1. Herewith revised specifications to charges forwarded to you by letter, AG 000.5 (10 Jun 46)LS, General Headquarters, Supreme Commander for the Allied Powers, Subject: "Trial of Takeo KATSUNA, 10 June 1946.

2. You will withdraw the original specifications and substitute therefor the attached revised specifications. The Charge will stand as originally filed.

By command of General MacARTHUR:

/s/ R. G. Hersey
R. G. HERSEY
Lt. Col. AGD.
Asst. Adj. Gen.

1 Incl:
Specifications

A TRUE COPY

MARCUS L. JONES.
1st Lt, Inf.

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (29 Aug 46)LS, dated 29 August 1946, subject: "Trial of Takeo KATSURA.

AG 000.5 (29 Aug 46)LS 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500.
29 August 1946.

TO: Commanding General, Eighth Army, APO 345.

1. Attached revised specifications to charge against Takeo KATSURA are forwarded herewith.

2. Authority to try subject Japanese having been redelegated to you by first indorsement to letter referred to in paragraph 1 of basic communication, you are directed to withdraw the original specifications and substitute therefor the attached revised specifications. The charge will stand as originally filed.

By command of General MacARTHUR:

/s/ R. C. Hersey
/t/ R. C. HERSEY
Lt. Col. AGD.
Asst. Adj. Gen.

1 Incl: n/c

A TRUE COPY

HARCUS. L. JONES.
1st Lt, Inf.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (10 Feb 47)LS

APO 500
10 February 1947

SUBJECT: Trial of Suspected War Criminal.

TO : Commanding General, Eighth Army, APO 343.

Herewith substituted specifications against Takeo KATSURA, forwarded to you for trial before a Military Commission by letter AG 000.5 (10 June 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Trial of Takeo KATSURA", 10 June 1946.

BY COMMAND OF GENERAL MacARTHUR:

/s/ R. G. Hersey
/t/ R. G. HERSEY
Lt. Col. AGD
Asst. Adj. Gen

1 Incl
Spec vs Takeo Katsura

AG 000.5 (YR) 1st Ind.

HEADQUARTERS EIGHTH ARMY, APO 343. 13 Feb 1947

TO: Colonel Norman P. Greff, 05024, Inf, President of the Military Commission appointed pursuant to Paragraph 1, Special Orders Number 32, this Headquarters, 7 February 1947, APO 343.

1. The attached substituted specifications against Kazuo Katsura are referred for trial to you as president of the Military Commission appointed by Paragraph 1, Special Orders Number 32, this Headquarters, 7 February 1947, APO 343.

2. You are hereby directed to withdraw the specifications against Kazuo Katsura heretofore referred to you for trial and substitute therefor the attached specifications.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Otis N. Luckman
/t/ OTIS N. LUCKMAN
Capt A.G.D.
Asst Adjutant General

1 Incl:
n/c

A TRUE COPY
F. B. Bough
F. B. BOUGH
Capt. WAC

SPECIFICATIONS

1. That in or about the Summer of 1944, the accused, Takeo Katsura, did willfully and unlawfully mistreat, abuse and strike John LePay and James Edwin Young, American Prisoners of War.

2. That between 1 December 1942 and 1 September 1945, the accused, Takeo Katsura, did willfully and unlawfully misappropriate and convert to his own use Red Cross supplies intended for the use and benefit of Allied Prisoners of War.

3. That in or about the month of June 1943, the accused Takeo Katsura, did willfully and unlawfully mistreat Gunner Albert Henry Jess Newman, a British Prisoner of War, by beating him.

4. That in or about the month of December 1944, the accused, Takeo Katsura, did willfully and unlawfully mistreat Glen J. Cherne and James Ackerman, American Prisoners of War, and two unknown Prisoners of War, by causing them to be beaten.

5. That in or about the month of March 1943, the accused, Takeo Katsura, did willfully and unlawfully mistreat, abuse and beat Gunner Ronald Scott Barratt, also known as Percy Barratt, a British Prisoner of War.

6. That on or about the 15th day of August 1944, the accused Takeo Katsura, did willfully and unlawfully mistreat, abuse and beat Ensign J. J. Stroefkerk, a Dutch Prisoner of War.

7. That on or about the 16th day of August 1944, the accused, Takeo Katsura, did willfully and unlawfully mistreat, abuse and beat Lieutenant F. J. de Wijn, a Dutch Prisoner of War.

8. That in or about March 1945, the accused, Takeo Katsura, did willfully and unlawfully mistreat and abuse Albert A. Roby, Jr., an American Prisoner of War, by beating him and confining him without proper protection from the cold.

9. That in or about August 1944, the accused, Takeo Katsura, did willfully and unlawfully mistreat and abuse Benjamin James Marsh, an American Prisoner of War, by beating him and thereby breaking his eardrum.

10. That in or about the Winter of 1945, the accused, Takeo Katsura, did willfully and unlawfully mistreat an unknown Dutch Prisoner of War by beating him.

11. That in or about May 1944, the accused, Takeo Katsura, did willfully and unlawfully mistreat Otto Hugo Luleich, an American Prisoner of War, by beating and otherwise abusing him.

12. That in or about November 1944, the accused, Takeo Katsura, did willfully and unlawfully mistreat William F. Ryan and Lee W. Wilcox, American Prisoners of War, by beating and otherwise abusing them.

13. That in or about February 1943, the accused, Takeo Katsura, did willfully and unlawfully mistreat and abuse Albert Cleeves, a British Prisoner of War, by beating him while he was sick

14. That between 1 December 1942 and 1 September 1945, the accused, Takeo Katsura, did willfully and unlawfully mistreat, torture, abuse and beat numerous American and Allied Prisoners of War, thereby contributing to the death of a number of them.

6 February 1947.

/s/ Theodore R. C. King
THEODORE R. C. KING
MAJOR, INFANTRY,
EXECUTIVE OFFICER, LEGAL SECTION,
SUPREME COMMANDER FOR THE ALLIED POWERS.

AFFIDAVIT

Before me personally appeared the above named accuser this 6th day of February 1947, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R. Pritchard

Captain, Infantry
Summary Court.

A CERTIFIED TRUE COPY
Claude A. Mizzy
CLAUDE A. MIZZY,
C.W.O., U.S.A.

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (10 Jun 46) LS, dated 10 June 1946, subject: "Trial of Takeo Katsura".

AG 000.5 (10 Jun 46) LS 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC,
APO 500, 10 June 1946.

TO: Commanding General, Eighth Army, APO 343.

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (10 Jun 46) LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Trial of Takeo Katsura", dated 10 June 1946, said power is re-delegated to you and you are hereby directed to appoint a Military Commission for the trial of the following named person of or serving with the Japanese Imperial Forces:

Takeo Katsura

2. The trial is to be held in the city of Yokohama, Honshu, Japan. The trial held under this authority shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named persons assigned to General Headquarters, Supreme Commander for the Allied Powers, have been made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

<u>Prosecution Personnel for the Trial</u>

Mr. Jessie Deitch Chief Prosecutor
1st Lt. Harlan L. Havilland, MAC, 0239137, Assistant Prosecutor

By command of General MacARTHUR:

1 Incl:
Chgs vs Takeo Katsura

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (10 Jun 46) LS

APO 500
10 June 1946

SUBJECT: Trial of Takeo Katsura.

TO : Commander-in-Chief,
United States Army Forces, Pacific

1. It is desired that a Military Commission be appointed for the trial of the following named person, member of or serving with the Japanese Imperial Forces, for the alleged offenses indicated on the attached charges:

Takeo Katsura.

2. The trial is to be held in the city of Yokohama, Honshu, Japan. All trials held under this authority shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. All records of trial, including judgment or sentence and the action of the appointing authority, will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

1 Incl.
Chgs vs Takeo Katsura

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (29 Aug 46)LS, dated 29 August 1946, subject: "Trial of Takeo Katsura".

AG 000.5 (YR) 2d Ind.

HEADQUARTERS EIGHTH ARMY, APO 343.

TO: Colonel Norman P. Groff, 05024, Inf, President of the Military Commission appointed pursuant to Paragraph 1, Special Orders Number 32, this Headquarters, 7 February 1947, APO 343.

The attached charges against Takeo Katsura are referred for trial to you as president of the Military Commission appointed by Paragraph 1, Special Orders Number 32, this Headquarters, 7 February 1947, APO 343.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Otis N. Luckman
/t/ OTIS N. LUCKMAN
Capt. A.G.D.
Asst Adjutant General

2 Incl:
1. Ltr, GHQ, SCAP, file AG 000.5 (10 Jun 46)LS, dated 10 June 1946, subject: "Trial of Takeo Katsura", with 1st Ind.
2. Chg vs Takeo Katsura.

A TRUE COPY
S. L. Bousch
S. L. BOUSH
Capt. WAC

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 32

7 February 1947

EXTRACT

1. Appointment of a Military Commission.

Pursuant to authority contained in letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45)LS, Subject: "Detention, Interrogation and Trial of Suspected War Criminals", a Military Commission is hereby appointed to meet at the Yokohama District Court Building, Yokohama, Japan on or about 12 February 1947, to try Takeo Katsura and such persons as may be properly brought before it.

DETAIL FOR THE COMMISSION

COL NORMAN P. GROFF, 05024, Inf, Hq Eighth Army
LT COL HALBERT H. NEILSON, 06774, Cav, 32d MG Co
LT COL JOSEPH A. McCUSKER, 0126170, Inf, Hq Eighth Army
LT COL MARTIN J. GRIFFIN, Hq Canadian Army, LAW MEMBER
MAJ JAMES B. DUNCAN, 01287496, Cav, Hq 1st Cav Div

FOR THE PROSECUTION
(VOCG)

MR JESSIE DEITCH, Chief Prosecutor
MR RICHARD B. APPLETON, Assistant Prosecutor

ADVISORY COUNSEL FOR THE DEFENSE

MR RICHARD E. O'BRIEN
Accused are expected to provide individual defense counsel.

The procedure of the Commission will be governed by letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45)LS, Subject: "Regulations Governing Trials of Accused War Criminals", as amended by letter AG 000.5 (27 Dec 46)LS-L, General Headquarters, Supreme Commander for the Allied Powers, Subject: "Amendments to Regulations Governing the Trials of Accused War Criminals", 27 December 1946, letter this headquarters, 5 February 1946, AG 000.5 (YO) Subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", as amended by letter this Headquarters, same subject, dated 16 January 1947, file number AG 000.5 (YR) and such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers. The employment of an enlisted civilian court reporter is authorized.. (AG 334).

(T. Katsura - Case # 59)

Extract SO 32, Hq Eighth Army, 7 February 1947, cont'd.

BY COMMAND OF LIEUTENANT GENERAL MICHELBERGER:

OFFICIAL:

[illegible]
Colonel, [illegible]
Adjutant General

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

EIGHTH ARMY
OFFICIAL
ADJUTANT GENERAL'S OFFICE

DISTRIBUTION:
2 - Each indiv named par 1
2 - CO, [illegible]
5 - G-1 Sec
6 - CO, Eighth Army
6 - CO, 1st Cav Div
6 - CO, 32d MG Co
10 - JA Sec
20 - War Crimes Adm
10 - Legal Sec, SCAP
5 - War Crimes Def
7 - JA Sec, Court Reporters
1 - PRO
2 - CinCFE
1 - SCAP
2 - CofS Sec
2 - PM Sec
5 - File

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
5 December 1945

AG 000.5 (5 Dec 46)LS

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
Commanding General, Sixth Army, APO 442.
Commanding General, Eighth Army, APO 343.
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. JURISDICTION OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPac, CG 6th Army, CG 8th Army and CG XXIV Corps.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

c. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to

submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, US/FPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MACARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500

AG 00.5 (27 Dec 46)LS-L

27 December 1946

SUBJECT: Amendments to Regulations Governing the Trials of Accused War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Reference is made to Letter Order, AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Regulations Governing Trials of Accused War Criminals."

2. The following amendments are directed in Letter Order, referred to in paragraph 1 above:

a. In paragraph 1a, delete the words, "units and organizations."

b. In paragraph 3a, delete in the last sentence thereof, the words "in open court" and add immediately after said last sentence the following: "This fact will be announced by the president of the commission in open court."

c. Delete paragraphs 5d(4) and 5d(5).

d. Delete "(6)" from 5d(6) and substitute therefor "(4)."

e. Delete paragraph 5d(7) and substitute therefor:

"(5) All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured."

f. In paragraph 5g, delete the first sentence and substitute therefor:

"g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, forfeiture of real or personal property, fine, or such other punishment as the commission shall determine to be proper."

g. Add paragraph 7 as follows:

"(7) OATHS.

a. Power to Administer Oaths.

Any person, military, naval, civilian, who, by competent authority is assigned the duty of administering, investigating, prosecuring, or defending suspected war criminals subject to trial under these regulations, and while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, or by the convening authority or his designee, to administer oaths with respect to all matters in the execution of such duty."

3. These amendments shall not affect any case in which the accused has been duly arraigned and, except as amended, all provisions of the subject regulations continue to remain in full force and effect.

BY COMMAND OF GENERAL MacARTHUR:

/s/ J. B. Cooley
JOHN B. COOLEY
Colonel, AGD,
Adjutant General.

AG 000.5 (6 Dec 45) LS

APO 500
6 December 1945

SUBJECT: Detention, Interrogation and Trial of Suspected Japanese War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Supplementing radio XA5457, CINCAFPAC ADV. 15 September 1945, all suspected Japanese War Criminals apprehended on order of this headquarters will be held incommunicado, generally, but in order to permit desired interrogation, all properly identified personnel will be permitted to interview and interrogate such suspects as are confined under the control of your headquarters, upon presentation of credentials or a letter from this headquarters, signed by the Adjutant General, in the following form:

The bearer of this letter _____
NAME

accompanied by _____ _____
NAME NAME

_____, is authorized to interview

_____ at such appropriate
NAME OF PRISONER (s)

times as may be found necessary.

By Command of General MacARTHUR

2. You are directed to establish suitable facilities exclusively for the confinement, interrogation and safekeeping of war criminal suspects, unfriendly witnesses and persons placed in protective custody in connection with war crimes trials. Such facilities will comply, so far as possible, with the following requirements.

a. A location in or sufficiently near Tokyo to enable ready access by persons charged with the prosecution and defense of war criminals.

b. Quartering and messing facilities for approximately fifteen hundred persons.

c. An arrangement of quarters and messing facilities which will permit segregation of suspects from witnesses; of suspects and witnesses formerly stationed or employed in a camp or involved in an atrocity from all other suspects of the same camp or atrocity; and of prisoners who have been interrogated from those who have not.

d. A minimum of ten adequately equipped interrogation rooms.

e. At least 60 single sound-proofed rooms for the solitary confinement of selected individuals.

f. Adequate facilities for the quartering and messing of approximately 10 Allied Officers whose duties may require them to remain at the enclosure and approximately 50 friendly witnesses in protective custody pending trials.

BASIC: Ltr. GHQ SCAP ADV file AG 000.5 (6 Dec 45) LS. dtd 6 December 1945, subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals". to CO, Eighth Army.

3. All persons now detained as war criminal suspects, unfriendly witnesses or persons in protective custody anywhere within the jurisdiction of this headquarters will be transferred forthwith to said facilities, and all such persons subsequently arrested or placed in protective custody will be confined there.

4. Suspected war criminals will be held in close confinement without access to the press or other media of public information, and without distinction as to rank or position, as befits ordinary criminals. The following special provisions will be applied to war criminal suspects and unfriendly witnesses.

a. They will not be treated as prisoners of war.

b. Quarters, food and privileges will be accorded suspects in keeping with those customarily provided for ordinary criminals, charged with an equally revolting domestic crime.

c. Communications among suspects and witnesses, even within segregated groups, will be prevented as far as possible.

d. Each person will be thoroughly searched and all means of self-destruction will be removed from his quarters and person.

e. Suspects and unfriendly witnesses, after their interrogation, will not be returned to their quarters, but will be assigned new quarters sufficiently removed from the old to prevent communication with those not yet interrogated.

f. Suspects will be segregated from witnesses; and suspects, and witnesses involved in the same atrocity or atrocities at the same camp will be segregated from each other.

g. All possible measures will be taken to prevent the exchange of information between inmates and such civilian personnel as may be employed at the facility.

5. You will be responsible for the appointment of Military Commissions for the trial of suspected Japanese war criminals, with several trials being conducted concurrently.

6. It is contemplated that the trials will commence immediately.

7. The Legal Section of this headquarters will furnish personnel for the investigation and prosecution of cases, but in addition to your responsibility for providing personnel for appointment as members of the Military Commissions including law members, if specified, you will also be responsible for:

a. Providing personnel to serve as defense counsel, reporters, interpreters, translators and court orderlies.

b. The selection, procurement and maintenance of the court rooms where the cases will be tried.

c. The summoning, billeting and transportation of witnesses.

By Command of General MacARTHUR

/s/ H. W. Allen
/t/ H. W. ALLEN
Colonel, A. G. D.,
Asst Adjutant General

(stamp) Mailed 0855 Dec 7 '45 Adv.Ech Ag. GHQ

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

AG 000.5 (XO) 5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO: Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as war criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements, affidavits and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any statement, affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is novisc to be limited to matters brought out on direct examination.

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

AG 000.5 (YO) 5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO: Presidents of War Crimes Commissions.

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c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications, excepting therefrom all testimony relative to the issue of guilt or innocence.

5. In case in which the defense moves for a finding of not guilty after the conclusion of the prosecution's case, and upon the overruling of the motion rests its case without offering evidence in defense, and the court after submission of the case, finds the accused guilty, the court before imposing sentence may permit the defense to offer competent evidence in extenuation or mitigation of the offense alleged, subject to the right of the prosecution to rebut such evidence.

6. Interpreters and Interpretation.

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

(1) The Chief Interpreter will be advised of a complaint during the next court recess.

(2) The Chief Interpreter will investigate the matter and:

(a) Convince the complaining party that no substantial error exists; or

(b) Caution and advise the interpreter if necessary; or

(c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or

(d) Prepare an opinion to be given to the Commission if required.

(3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

b. Counsel are reminded that:

(1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and rearrangement of thought.

(2) Counsel is advised, when working through an interpreter:

(a) To use short, simple questions as free from artifice as if examining a small child.

(b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.

(3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile descussions:

(a) Long questions. (Impossible for interpreter and witness to remember)

(b) Complicated questions. (Dependent clauses confuse both interpreter and witness)

(c) Conditional questions. (Usually beyond comprehension of an oriental witness)

(d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)

(e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No — I saw them")

(f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)

(4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trial.

a. The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.

b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the record the fact that the record has been submitted to him and checked by him prior to authentication.

c. In the event the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

SECTION II: OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commissions of persons, units and organizations accused as war criminals.

There will be present: Commission
Accused
Prosecution Staff
Defense Staff
Interpreters
Commission Reporters
Press Representatives
Photographers
Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Bailiff" for the Commission will announce the entrance

of the Members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of accused as read form the caption).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

(Reporters sit down and thereafter are not required to rise until the oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTORS: "The Interpreters will be sworn."

(Interpreters rise, and the Prosecuter facing them repeats the following oath:)

"You (names of Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do."

(Interpreters are then seated.)

PROSECUTOR: "The following Members of the Commission appointed by Paragraph _____, Special Orders No. _____, Headquarters _____, dated _____ (as amended by Paragraph _____, Special Orders No. _____, dated _____) are present."

(The Prosecutor announces by name and rank the Members present.)
"There are no Members absent."
(Or: "Absent, Colonel Jones, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

"Letter Order AG 000.5 (5 Dec 45) L3, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being 'Regulations Governing the Trials of Accused War Criminals.'

"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated _____, with the subject being "Trials of _____."

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated _____, with the subject being 'Trials of _____.'

"Paragraph ____ of Special Orders ____, Headquarters Eighth Army, dated ____, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to Challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel _____ for cause.' The Defense then states reasons for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of _____(name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel _____, Colonel _____, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the Court until they shall be published by the proper authority or duly announced by the court, except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do."

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

PRESIDING OFFICER: "The Prosecution will be sworn. You Major _____, Captain _____, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help You God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

DEFENSE: "The Charge and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel, the proceedings will continue. If accused desires Counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If accused desires Counsel of his own selection and requests that the proceedings be continued until such Counsel be made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charge and Specifications will be read to the accused."

(Prosecutor will read the complete Charge and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of Commission, the Prosecution introduces the Charge and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special Pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "_____ (Naming accused) at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either 'Guilty' or 'Not Guilty'".

(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each specification and to the charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refused to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of "Not Guilty".

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)

PROSECUTOR: "The Prosecution calls as its first witness:_____."

(Witness presents himself in front of and faces the Presiding Officer, and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

*NOTE: Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecuter).

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) to be attached to the record and marked Exhibit ____, (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its Opening Statement."

(The Defense makes its Opening Statement).

DEFENSE COUNSEL: "The Defense calls as its first witness_____."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

(The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the Arguments for the Prosecution and Defense." (Arguments to be conducted as directed by the Commission)

PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgment and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (all of whom remain standing), the Presiding Officer announces the judgment and sentence.)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

WARD W. CONQUEST
Colonel, AGD
Adjutant General

RESTRICTED

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

16 January 1947

AG 000.5 (XR)

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO : Presidents of War Crimes Commissions.

Letter, this headquarters, subject, same as above, file number AG 000.5 (YO), dated 5 February 1946, is amended as follows:

Paragraph 2 of Section I is hereby rescinded.

BY COMMAND OF LIEUTENANT GENERAL MICHELMORE:

/s/ Otis N. Luckman
/t/ OTIS N. LUCKMAN
Capt ...G.D.
Asst Adjutant General

RESTRICTED

CIVILIAN REPORTER'S CERTIFICATE

15th March, 1947

Case No. [illegible]. U. S. v. [illegible]

I, the undersigned, hereby certify that I reported and transcribed the attached record of trial, that I am a civilian court reporter, in the civil service of, and paid for my said services by, the United States.

Charles Morrell

I N D E X

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TESTIMONY

Name of Witness	Direct	Cross	Redirect	Recross	Examination	Recalled
Prosecution						
Takao Kataoka	27				28	
Yukichi Sakamoto (Extract from Trial Record)	58					
Defense						
Osamu Kuroyama	76	81	85	85,96,99	86,99	
Masatoro Kobayashi	100	101				
Kikuchi Tomita	102	103				
Takao Kataoka	114	124	156	158,169	168	
Yukichi Sakamoto	145	147		171	169,180	173,176,179,184

EXHIBITS

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Affidavit of D.J.Peers	1	1
" Malcolm T. Hall	2	1
" Jos. B. Siler	3	1
" K.R.Wheeler	4	1
" J.M.Wolf	5	1
" J.O.Williamson	6	1
" Col.O.T.Beecher	7	1
" Gen. Warwick	8	1
" Lt.Col. H.D.S.Fountaine	9	1
" A.E.Chalkley	10	1
" S.P.Swift	11	1
" H.L.Johnson	12	1
" L.E.Kahn	13	1
Statement of Dr.H.Ewing	14	1
Deposition of Capt.W.P.Wallace	15	1
Affidavit of F.Chilton	16	1
" A.H.J.Newman	17	1
" R.Regan	18	1
" L.E.Graham	19	1
" Wm.D.Barth	20	1
" Sgt.H.Lucas	21	1
" J.F.De Wijn	22	1
" John LaFay	23	1
" Gary.S.J.Guerra	24	1
" E.J.Feuerberg	25	1
" F.D.Yager	26	1
" R.J.Marsh	27	1
" L.R.Ward	28	1
" W.J.Feeney	29	1
" E.F.Burns	30	1
" P.R.French	31	1
Statement of Takao Kataoka	32	1
Affidavit of Takao Kataoka	33	1
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HEADQUARTERS - EIGHTH ARMY

Yokohama Court House
Yokohama, Japan
Wednesday, February 12, 1947

PROCEEDINGS OF A MILITARY COMMISSION

which convened at Yokohama, Japan, pursuant to Paragraph 1, Special Orders 32, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 7 February 1947.

The Commission met at the Yokohama District Court House at 0900 hours, Wednesday, 12th February, 1947.

PRESIDENT: The Commission will come to order.

PROSECUTION: The prosecution is ready to proceed with the trial of the United States of America against Yukio Katayama. The Commission is present together with defense counsel appointed by the convening authority. The prosecution is ready to proceed.

PRESIDENT: You may proceed.

PROSECUTION: The reporter will be sworn.

(Whereupon Charles Morrell was sworn as court reporter.)

DEFENSE: I think, Sir, this might be a proper time to explain that the Japanese lawyer assigned to this case has not yet appeared. I have so advised the accused and I have his consent and permission to carry on and that defense attorney will be reinstated as attorney upon his appearance.

PRESIDENT: Let the record so show.

PROSECUTION: The interpreters will be sworn.

(Thereupon Suso Ito and Hajima Nakai were sworn as interpreters.)

PRESIDENT: At this time the Commission would like to point out that SCAP rules provide that the defense shall have translated to him the substance of the testimony. In this Commission, it will not be a verbatim word for word translation of English-speaking witnesses.

DEFENSE: I may say that the accused speaks and understands English perfectly so that will not be necessary at all.

PROSECUTION: The following members of the Commission, appointed by Paragraph 1, Special Orders No. 32, Headquarters Eighth Army, U.S. Army, Office of the Commanding General, APO 343, under date 7th February, 1947, are present:

Colonel Norman F. Groff, 05024, Inf., Hq. Eighth Army
Lt. Col. Halbert H. Neilson, 06774, Cav. 32 Mg Co.
Lt. Col. Joseph A. McCusker, 0126170, Inf. Hq. Eighth Army
Lt. Col. Martin J. Griffin, Hq. Canadian Army, LAW MEMBER
Maj. James B. Duncan, 01287496, Cav. Hq. 1st Cav. Div.

There are no members absent.

LAW MEMBER: Let the record show that the Law Member is sitting on the right of the President because the President is deaf in his left ear.

PRESIDENT: And I want to hear what the Law Member says!

PROSECUTION: The prosecution submits for inclusion in the record:

Letter Order AG 000.5 (5 December 1945) subject: Regulations Governing the Trials of Accused War Criminals.
Letter GHQ,USAFP, file AG 000.5 (18 June 46) the subject being "Trial of Takeo Natsura," to Commanding General, Eighth Army.
Letter GHQ, SCAP, file AG 000.5 (10 June 46) LL to Commander in Chief, USAFP.
Letter Order dated 10 February, 1947, from General MacArthur to Commanding General, Eighth Army, APO 343, subject: Trial of Suspected War Criminal, being later substituted specifications for the original specifications in this case.
Paragraph 1 of Special Orders No. 32, Headquarters Eighth Army dated 7th February, 1947, entitled "Appointment of a Military Commission."
Also Amendment to Regulations covering the Trials of Accused War Criminals as modified by Letter dated 27 December, 1946.
Letter Hq. 8th Army dated 5 February 1946 AG 000.5 (YO) subject: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals, as modified by letter Hq 8th Army dated 16th January 1947 file AG 000.5 (XR)
And such rules and forms as may be prescribed by the convening authority or by SCAP.

PRESIDENT: They will be received and made a part of the record.

At this point, the Commission would like to point out that the last paragraph of special orders No. 32 apparently is in error. The procedure of the Commission will be governed by letter GHQ, SCAP, dated 5th December, 1945, AG 000.5 LL. The date "6th December, 1945" is obviously in error.

PROSECUTION: Along these lines, there is another error in the orders. The last sentence should read "employment of an enlisted or civilian court reporter is authorized."

PRESIDENT: Let the record so show.

PROSECUTION: The prosecution has no challenges.

PRESIDENT: At this point, let the record show that the Law Member will make such rulings and will not be required to preface each ruling with "No member objecting". He will make the objection and if any member does object he will so state.

Does the defense desire to challenge any member of the Commission for cause?

DEFENSE: I have just one blanket general question I should like to ask:

Do any of you gentlemen have any reason, or any doubt in your mind as to why you could not or would not be able to act fairly and impartially without any bias whatsoever hear this case as against the accused?

PRESIDENT: Apparently not.

DEFENSE: Then, Sir, the defense has no challenges.

PRESIDENT: The Commission would like to go a step further. Is any member of the court prejudiced or biased, or likely to be a witness for the prosecution, or has he formed an opinion of the guilt or innocence of the accused, or is he aware of any reason why he might be challenged?

Apparently not.

Is defense ready to proceed with the court as it now sits?

DEFENSE: Yes sir.

PROSECUTION: The prosecution is ready to proceed with the arraignment of Takao Katsura.

PRESIDENT: The Commission will be sworn.

(The members of the Commission were then sworn.)

DEFENSE: May it please the Commission, the charge and specifications were received by the defense counsel and the accused has been duly apprised of each offense charged.

The accused has also been apprised of his rights as provided in paragraph 5b of Letter Order AG 000.5, dated 5th December, 1945, General Headquarters, Supreme Commander for the Allied Powers, entitled, "Regulations Governing the Trials of Accused War Criminals" heretofore introduced in evidence.

PRESIDENT: Whom does the accused desire to introduce as defense counsel?

DEFENSE: The accused desires to introduce the regularly appointed defense counsel as well as Mr. Tsuchiya Chumemon.

PRESIDENT: Will the accused be defended by individual defense counsel?

DEFENSE: There will be another attorney to be introduced before the Commission at a later day.

PRESIDENT: The defense is ready to proceed?

DEFENSE: Yes sir.

PRESIDENT: The charge in this case has been read.

DEFENSE: The defense is willing to waive the reading of the charge and specifications. They have been read to the accused and the defense is willing to waive them.

PROSECUTION: I think it better to follow SCAP rules and read them. Between the date this case was originally sent forward on the 10th of June and today we have received numerous affidavits. It has become necessary to bring in substituted specifications. I have these specifications and I do not believe the members of the court have these substituted specifications. You can disregard the ones you have at present.

PRESIDENT: When did the prosecution receive these substituted specifications?

PROSECUTION: The defense, sir?

PRESIDENT: The prosecution.

PROSECUTION: I made them up myself.

PRESIDENT: When did the defense receive them?

PROSECUTION: They received them on Friday last. However, Mr. O'Brien and I have discussed this case and Mr. O'Brien, or rather, the Defense Section, has had these affidavits in their possession since the 10th of June; not all the affidavits, but as I got the new affidavits I immediately forwarded them to the defense so I do not believe they are taken by surprise.

DEFENSE: I will go along with that. I was not caught by surprise and I knew what he was going to incorporate in them and have had ample opportunity to be apprised of them.

PRESIDENT: Does the prosecution have the original copy of the substituted charge and specifications? Do you have that in court?

PROSECUTION: I may have it, sir. I will look for it.

PRESIDENT: The court cannot proceed until the original copy signed and sworn is produced.

PROSECUTION: The original copy is still in the possession of SCAP. This is a certified true copy.

PRESIDENT: Do the documents you have show who signed the substituted specifications and show before whom the affidavit was sworn?

PROSECUTION: Yes sir.

PRESIDENT: And has it been regularly referred to this Commission for trial?

PROSECUTION: Yes. You have that on your specifications - the letter of the Supreme Commander.

PRESIDENT: Is there any reference to the trial of the substituted -

PROSECUTION: Yes sir. I have incorporated that into the record already. The court reporter has the seven copies of that in his possession.

PRESIDENT: Alright, you may proceed.

(Prosecution thereupon read the charge and substituted specifications against the accused, Takeo Katsura.)

PRESIDENT: And these substituted specifications were referred to this court by the first endorsement or letter dated February 10th. Is that correct?

PROSECUTION: Yes sir.

PRESIDENT: Any objection by the defense?

The charge and specifications are received and will be incorporated in the record.

Any special pleas by the defense?

DEFENSE: Yes sir. The defense has a number of pleas.

Comes now the defendant at this time and respectfully asks the Council also for an order to strike Specifications 1, 4 and 12 on the grounds of duplicity. In that connection, sir, I wish to state that in the Winthrop Military Law and Procedure at pp. 143-4, it says:

> "An indictment or count in which two or more separate and distinct offenses, whether of the same or a different nature, are set forth together, is said to be double, and such a pleading is bad on account of duplicity.
>
> This rule, however, does not apply to the stating together, in the same count, of several distinct criminal acts, providing the same all form parts of the same transaction, and substantially complete a single obtention of offense....
>
> It may be added that double pleading, consisting sometimes in joining two or more separate and distinct instances of the same offense, but more frequently in blending different specific offenses, in one specification, has been a not uncommon fault in our service and has been repeatedly condemned in orders."

The 1928 edition of the Manual for Courts Martial, at page 19, states:

> "One specification should not allege more than one offense either conjunctively or in the alternative."

Specification 1 alleges that "the accused did wilfully and unlawfully mistreat, abuse and strike John La Ray and James Edwin Young, American Prisoners of War." This is setting out a double charge.

The same thing occurs in Specification 4 wherein it sets out in one count:

> "the accused...did wilfully and unlawfully mistreat Olen J. Cherne and James Ackerman,...and two unknown prisoners of war, by causing them to be beaten."

The same is true of the others. We submit that under the Manual and Winthrop, which is the Supreme Court or Bible, that these specifications should be stricken for the reasons outlined.

LAW MEMBER: I take it you assume that we know that these are not part of one incident?

DEFENSE: We cannot try to determine what the prosecution intended to say. We can only take it as it is there. If he meant that, he could have so stated in the specification.

LAW MEMBER: May we hear the prosecution?

PROSECUTION: I don't believe it is necessary to answer this motion. However, I will do my best to try to point out the fallacies of the reasoning of the defense.

It is the first time I have ever heard of such a motion before one of these Commissions. Each of these events took place at the same time and under the same circumstances. That is true of specification 1, LaRay and Young. They were beaten at the same time by Ackerman and

and presumably over the same incident. That is, they both did something against the regulations. I am assuming that will be the defense so I put it in the same specification.

The same applies to specifications 4 and 12.

I do wish to point out that we are not governed by Winthrop or anything Winthrop says. I have not looked up the point and it does not make any difference. However, just one more point.-

The prosecution is supposed to be notified 24 hours in advance of any motion the defense intends to make. I have not been notified of this motion.

DEFENSE: I might say I have heard practically everything the prosecution has said. The prosecution's protest that they have not been notified is the flimsiest thing I have heard. It is true that anything in regard to exhibits to be offered or affidavits are the subject of 24-hour notice. But does the prosecution expect I have to tell them everything I am going to bring up before this Commission. This matter is purely elementary law. I cannot give them legal education in the short time we have here.

LAW MEMBER: The prosecution has not said they have been prejudiced. Do you want my ruling on it now?

PROSECUTION: Yes sir.

LAW MEMBER: The ruling is that the motion is not allowed and we will proceed with the next motion.

PROSECUTION: May I say one thing before we go. I don't wish to engage in personalities. I will be glad to argue motions without personalities.

DEFENSE: I will stay within the same confines unless I am forced to step over the boundary.

May it please the Commission: Comesnow the defense for an order striking specifications 2, 4, 10 and 14, as not clearly wording a crime so as to apprise the accused of each offense charged. It will be noted, Sir, that the specification sets out, between 1st December, 1942, and 1st December, 1945, that the accused did this and that.

PROSECUTION: Which specifications are you talking about.

DEFENSE: No. 2, Jesse.

Now, sir, MCAP rules set forth under "Rights of the Accused"

"The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged."

Section 129 on Criminal Law from American Jurisprudence, 1943 edition, states:

'129. Generally.- While there are some courts which consider a fair trial one which is fair not only to the accused, but also to the people of the state, the question is generally considered only from the standpoint of the rights of the accused; it being said that every person charged with a crime has an absolute and fundamental right to a fair and impartial trial and that it is a duty resting on the courts to see that this right is upheld and sustained.'

Hence, in passing on this motion, the Commission should be governed by the clear understanding of the position in which the accused finds himself upon the reading of this particular specification.

What is the requirement behind the requirement that he must be apprised of the charge. Certainly, it is fair play,- what we understand in law as due process. There are two minimum requirements. The first is notice; the second is a hearing. This Commission provides the second, which is the hearing; and the charge and specifications provide the first. Whether or not the accused has had proper notice is a question before the Commission.

This requirement of proper notice is nothing new. Section 126 of Criminal Law from American Jurisprudence states:

> 'The right, long ago established in English law, of every one accused of crime to be informed of the nature of the accusation against him is expressly preserved in the Constitutions of the several jurisdictions. This right requires that the offense be charged with clearness and all necessary certainty to apprise the accusedof the crime of which he stands charged...'

During the 35 or 36 months the accused was at this particular camp there were many changes made in personnel. 35 to 50 different Japanese personnel went through that particular camp. You cannot accuse him of a charge stating that some time during a three year period he committed an offense.

I submit that unless the accused knows what he is charged with, and when he is charged with it, we are going to be forced to go out and bring in all the Japanese personnel we can find. If it were confined to a particular year, a particular month and an approximate date it would be a simple matter to meet these charges; but to have these buckshot charges, that is wild blundering. I submit that is not the intent of the SCAP letter.

As regard the catch-all specifications, this clearly violates the SCAP directive which he cannot hope to meet as the actions of others are involved. It is a final link in the chain that the prosecution inserts because it apparently cannot get a conviction on any one particular point.

PRESIDENT: Which does this have reference to?

DEFENSE: No. 14. This refers to 2, 4, 10 and 14.

PRESIDENT: Which one are you talking about?

DEFENSE: 2, 4, 10 and 14. I will go back and be specific. This is just general.

With reference to specification 2, the charge reads "That between 1 December 194 and 1 September 1945". That does not apprise the accused

of what he is being charged with with any degree of clarity - some time in a three year period. We would have to, as I say, get every one of the Japanese personnel at that camp. We might have to seek through some 500 or 1000 prisoners of war there to parade them before the Commission to try and establish his particular guilt or innocence.

I submit this specification is faulty for that particular reason.

Now, sir, with reference to specifications 4 and 2 unknown prisoners of war. Is that following SCAP directives or any system of jurisprudence? Does that apprise him of a crime? Is it clearly and concisely stated so he can meet it? How can he possibly prepare a defense to a charge like that?

Let the prosecution name them and we will go out and get evidence. I submit that it does not follow the SCAP directive.

With reference to specification 10, that the accused did "mistreat an unknown Dutch Prisoner of War by beating him." There were upwards of 150 Dutch Prisoners at this camp No. 1. Let them name the man and we can get out and marshal something to prove his innocence or guilt, but to defend a charge involving any one of these 150 prisoners at this camp No. 1 is not clearly wording a charge or offense. We cannot meet it.

And Specification 14 - that he did "mistreat, torture, abuse and beat numerous American and Allied Prisoners of War, thereby contributing to the death of a number of them". How can we meet such a charge as that? There is a reason for SCAP rules. You have to convict a man of a crime before you can convict him. If you charge that a man on or about such and such a date did so and so, he can marshal facts that may establish his innocence. But over a three-year period, that is not clearly setting out, nor following the intent of SCAP rules or any other system that I have ever known.

PROSECUTION: May I say that the rights of the accused have not in any way been prejudiced.

Specification 2 is clearly worded. It states that between the times mentioned he took Red Cross supplies. The defense has all the affidavits. We have submitted them to the defense. The defense knows that wherever Red Cross supplies are mentioned, that is what the accused will be charged with and tried. These affidavits are in the possession of the defense and have been since June 10, 1948. They cannot claim surprise.

MEMBER: You might say "some of them" Mr. Deitch.

PROSECUTION: Alright, some of them.

In regard to specification 4. I do not know whether the defense is claiming there is duplicity here or whether they say it is not clearly worded.

PRESIDENT: You can take this on the basis of being vague.

PROSECUTION: I claim it is clearly worded and I claim the defense has the affidavits which was practically the same wording as specification 4,

which says he mistreated or beat two unknown Prisoners of War. That is the way the affidavit is worded. I am not going beyond the affidavit. That is for the Commission to decide whether I can prove the specification or not. I don't see how the Commission can rule on that point until they have heard the affidavit.

Specification 10 is next. The defense has that affidavit and that is the way it is worded.

With regard to specification 14, I went over specification 14 particularly with Mr. O'Brien. I said to him that we could have 20 specifications in this case if we wished. However, I believe the most expedient way to handle the matter was to handle it as in specification 14. At that time he agreed. I am more or less taken by surprise by his motion with regard to No. 14 at this time. I can also say in this case that the defense can defend because they have all the affidavits and know exactly what we are charging the accused with. They know exactly what we have in mind. I have pointed out these things to the defense.

DEFENSE: I would like to point out this one thing that this is not the first time I have been before a military commission with a flock of affidavits dumped on my lap two or three weeks from trial. We cannot assume this is all the evidence. I think this is the time to deal with these matters.

PROSECUTION: I think it is a little too late to mention such a thing in view of the fact that we more or less agreed on specification 14.

LAW MEMBER: It is, perhaps, unfortunate that the method of conducting these trials involves us in taking affidavits which are based upon a man's best opinion and not having the opportunity to cross-examine him closely.

In accepting these specifications as they stand, no substantial harm is going to be done. What they lack in quality we assume and hope will be made as clear as possible by the evidence brought out. That will make the charge as clear as it is going to be. If it is not clear enough to satisfy the Commission, that is that, and on that basis, and subject to what the Commission may have to consider, the motions are not allowed.

DEFENSE: Comes now the defense and asks the Commission for an order striking specification 10 for the following reasons:

That this is alleged to have occurred in the winter of 1945. I submit that the Commission can take judicial notice of the fact that in 1945, that winter, the war had been over many months before. The court can take judicial notice of this and of the records of Sugamo prison; that the accused was lodged in Sugamo prison in the winter of 1945 and for these reasons it would have been impossible for him to have violated the rules of Land Warfare.

PROSECUTION: Again, I say that in response, that this date was taken from the affidavit. I am not going to manufacture dates to meet Mr. O'Brien's wishes. The winter of 1945 obviously meant the winter of 1944-45. The court can decide that without trouble when they hear the affidavit.

DEFENSE: Will you let me finish? I believe it is just ordinary courtesy. For these reasons I am objecting to any amendment.

LAW MEMBER: Will you say you are prejudiced by an amendment?

DEFENSE: I just say this: that we are in the course of trial now. If at any time he wants to, the prosecution can change these specifications then I say we may be prejudiced. The specification should have specified a date when he was in the army.

PRESIDENT: The court will take a recess.

The Commission thereupon took a recess until 1025 hours at which time the members of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The court will come to order.

LAW MEMBER: The Commission has considered the two motions we now have before us and the ruling of the Commission on the prosecution's motion to amend is that it be denied. Likewise the motion of the defense will be denied.

Has the defense any further motions?

DEFENSE: Yes sir.

Comes now the defense and respectfully moves the Commission for an order with reference to specification 14 striking therefrom the words, 'thereby contributing to the death of a number of them' for the following reasons:

DEFENSE: The Prosecution contends that it is within his power to change affidavits and say what the affiant meant. If he says the winter of 1945 we must know it is the winter of 1945 and nothing else. It is ridiculous. It is an example of what these affidavits amount to. Are we to meet a charge and try to prove he did not do it during the winter of 1945?

LAW MEMBER: Unless the prosecution are prepared to move to amend this in some way I propose it be stricken.

PROSECUTION: I am prepared to amend this specification to read that "between the 1st of November, 1944, and the 30th April, 1945, the accused, Takee Katsura, did willfully and unlawfully mistreat an unknown Dutch Prisoner of War by beating him."

I may say to the Commission that if I had worded it that way there would have been objection. No matter how I worded it there would have been an objection. Now the Commission has asked me to change the specification to suit the defense.

DEFENSE: They are not telling you to do anything to suit the defense. I object to an amendment at this time or during the trial. It is his baby. It is his pleading. I think it is just taking up the time of the Commission unless he has evidence to show it is a date prior to that.

PROSECUTION: I think -

MEMORANDUM "RI"

"CONTRIBUTION TO DEATH"

Many specifications in the War Crimes trials have as their main indictment against accused that his action "contributed to the death" of a PW. After alleging that he beat, tortured, withheld, food and medical supplies etc., the prosecution completes these specifications with the allegation that such treatment "contributed to the death" of the PW. It is the contention of the defense that this allegation is not proper or legitimate in that it creates a capital crime, not heretofore recognized by either the common law, the civil law, United States law, or the law of any civilized nation.

CAUSALITY THE BASIS OF CRIMINAL RESPONSIBILITY

The outstanding objection to this faulty specification is that it omits any allegation of causal connection between the acts of accused and the death of the PW. The element of causality is one which has been recognized as the basis of criminal responsibility in every system of law throughout the world, not only in modern society, but even in primitive groups. There are no exceptions. The doctrine of causality has come into being, not because of any technical or legalistic conception of defense lawyers, but through the almost intuitive (and thoroughly logical) feeling of reasonable and just men that in order to be held responsible for injuring someone, the accused must have caused the injury. The law has adopted this principal of causality in connection with criminal responsibility in the firm conviction that it, and it alone, can satisfy one of the basic requirements of justice; namely, that a person may be held to answer for only those wrongful injuries which his acts have occasioned.

The doctrine of causality is so deeply rooted in jurisprudence, and in plain logic, that its existence should require no further proof. Nevertheless, it might be appropriate to quote a few excerpts on the subject from recognized legal authorities:

"A person is not criminally responsible for a homicide unless his act can be said to be the cause of death."
(26 Am. Jur. 189, Homicide Sec. 45)

"If defendant's act was the occasion or a condition rather than the cause of death, he is not responsible."
(Corpus Juris, Homicide, p. 1080)

"To warrant conviction for homicide, it is necessary to establish that the act of accused was a proximate cause of death."
(40 Corpus Juris Sec 854)

"To hold a defendant criminally responsible for a death which his conduct did not in fact cause, would ——— shock the conscience of any civilized being."
(9 NJ MISC 321)

The law, then, is well settled on the above discussed proposition, which, stated briefly, is:

> If a person's act is the cause of a death, he may be criminally responsible therefor; if his act is not the cause of death he can not be criminally responsible therefor.

There can be no departure from or amelioration of this doctrine. It is fundamental.

Most cases may be decided easily upon the application of this simple test. However, occasionally complication factors enter into a case, which render the test difficult to apply. Circumstances may be present which obscure the simple logic that should determine guilt or innocence. This does not mean that such cases are decided by applying some other legal test. The criterion of criminal responsibility is, and in logic and justice always must be, the above formula. However, the prosecution confuses the issue by introducing the equivocal specification "contribute to death". Let us see how easily a miscarriage of justice may occur under these circumstances.

In the ordinary case the chain of events is: Accused's act——injury——death; e. g., accused strikes PW on the head——PW sustains a fracture of the skull——dies thereof, each event leads directly and inevitably to the next, the chain of causation is apparent. In a slightly more complicated case the picture might be: Accused's act——disease——death from disease; e. g., accused withhold all food from PW for 30 days——PW develops malnutrition and beri-beri——dies of these nutritional diseases. Although the facts are more

complicated, application of the test is still simple. Accused's act caused the death. It set in motion a series of events, each inevitably resulting from the preceding event and inescapably giving rise to the succeeding event—a solid chain from original cause to final effect.

Let suppose the following chain—beating of PW—PW develops beri-beri—dies thereof. Here there is no logical chain of causation with each event leading inevitably to the next. A beating does not cause beri-beri, and if death resulted from beri-beri, the beating did not cause the death. It is in this type of case that the pernicious effect of the "contributing to death" allegation becomes evident. Viewed superficially, the beating did "contribute" to the death in that any beating however slight, will weaken a person somewhat and lower his resistance to disease. The commission could then say with apparent logic that accused's act "contributed to death", yet they would certainly not say that it caused the death. Accused would be found guilty - in direct violation of the legal principal of causation.

The "contributing to death specification" is open to this further objection - one which plain common sense should immediately suggest - that <u>everything</u>

in one's life contributes <u>in some degree</u> to one's death. The condition of each of one's vital organs contributes to his death; one's kidneys, liver, lungs, etc., all have an effect on the outcome of the disease which one presently has. The fact that a person ran long distance races in high school, which efforts resulted in just the slightest enlargement of the heart muscle, influences in some degree, small the it may be, the outcome of one's disease. The fact that a person was a heavy smoker, or a moderate smoker, or even a non-smoker, has some effect on the ability of his constitution to resist the condition which produces death. The amount of wild oats which a person sowed in his youth, the extent of dissipation of his early years, the childhood diseases he suffered from, the amount of sleep he gets, the amount of prenatal care his mother received, his psychological disposition - absolutely

everything in his makeup contributes to his death. Everything that happens to a person throughout his life makes that person what he is, every incident that affects him goes into his makeup and leaves traces on his personality and on his body, and contributes to his death.

PROXIMATE CAUSE DISTINGUISHED FROM REMOTE CAUSE

An elementary principal of justice requires that every effort be made to safeguard the rights of the accused. He should be protected not only by his own attorney but even by the very system of law which he is accused of violating. In pursuance of this end and to ensure justice, the judiciary has so elaborated and confined the principle of causation that it is necessary for the prosecution to prove not only that accused's act caused death but that it was the "proximate" cause of death thereby circumscribing the word "cause" and limiting it to cause which naturally and probably leads to a result, or cause which is the "efficient producing" factor which leads naturally to the effect. The purpose of thus narrowing the definition of cause in connection with criminal responsibility is to exclude so-called "remote" causes. Thus if A, stabs B causing a wound which forces B's hospitalization and then the hospital burns to the ground (then the negligence of C) and B dies in the fire, the doctrine of proximate and remote cause exonerates A, altho in a broad general sense he was instrumental in producing the death in that he caused B to be in the hospital and if he hadn't been there he would not have burned to death. The law says that A's act was a remote cause and A is not criminally responsible for homicide. Of course, A still remains liable to prosecution for assault.

PROXIMATE CAUSE - INTERVENING AGENCY

Let us examine a supposititious case of proximate cause in order to illustrate the general rule of law given below.

Suppose A pushes B off a twenty story building. Just after he is pushed off, C, not acting in concert with A, shoots B through the heart. B dies of the bullet wound before he hits the pavement. In this case C is

guilty of murder; A is not guilty of murder even though B would have died as a result of A's act if C had not intervened. This does not mean that A escapes punishment for his criminal act. He is guilty of attempted murder or felonious assault.

The governing rule is that an intervening independent mind or agency will break the chain of causal connection so as to relieve from responsibility the person who set the events in motion. In the above case the facts are clear cut, since it is obvious that C's act caused the death and it was the act of an independent mind. But what of those cases where the intervening agency is not a human being but an act of nature so to speak, a disease. A consideration of the cases below cited clears up this aspect of our rule.

It is pointed out that the cases to be cited in the remainder of this section are civil cases, not criminal cases. However, the rules laid down are just as applicable. Proximate cause is proximate cause in whatever type of case it is being considered. In fact, the Defense feels that these cases are even stronger on account of their having been civil cases where an accused is not entitled to the extreme protection which criminal law gives him. If a court is reluctant to assess mere monetary damages against a defendant who allegedly caused a death, how much more reluctant should the court be to assess a penalty where life and liberty are at stake.

The rule as gleaned from the great weight of authority is as follows: Where a wrongful injury is followed by disease which causes death, the injury is held to be the proximate cause of death <u>only</u> when it is proved that the injury <u>caused the disease</u>. For example, if A strikes B in the side and this causes a traumatic pneumonia, A is responsible if B dies., but if B develops a disease not caused by the blow, A is not responsible for B's death, that is, the mere fact that A's blow so weakened B's system as to render him susceptible to the disease, is not sufficient to warrant conviction of a capital crime.

In Ostrander v Orange County Traction Co., (110 NY 15 1908) where deceased

had been injured by defendant's negligence and died as the result of oedema of the lungs, superinduced by heart disease, the court dismissed the case holding that the proximate cause of death must be the cause that produced the condition resulting in death. There was nosattempt in this case to prove that the injury caused the heart disease(just as there is no attempt in the War Crimes trials to prove that the vestings cause beri-beri or pneumonia.) The intervening agency, disease, broke the chain of causation relieving defendant of responsibility.

In the case of Nashville vs. Rosse, (Tenn) 197 S.W. 492 - 1917 it appeared that deceased had been a man of 65 in excellent health before he was injured by defendant's wrongful conduct. He grew weaker after the injury and died some months later. The cause of death, it was agreed, was pneumonia, contracted from a germ and not caused by the injury; i. e., it was not a traumatic pneumonia. Experts testified that the disease could probably not have been contracted but for the weakened condition resulting from the injury. The court held that where it was proved that the injury merely undermined the constitution, rendering the victim more susceptible to the disease and less

able to combat it, such injury had not been shown to be the proximate cause of death. It was the intervening agency which was the proximate cause. The court said:

> "We cannot assent to the proposition that where a person has received an injury many months before, and afterward died of a germ disease in no wise connected with the injury, a cause of action arises against the wrongdoer on the theory that by reason of such injuries the victims constitution became weakened and thereby rendered him an easy prey to such disease. If such were the law it might well have been contended in the case of Wagoner vs. Noelse, 1 Heisk. 235 that the enforced exposure to the weather brought about by defendant's wrongful act weakened the constitution of deceased so that he fell an easy victim to disease when subjected to the conditions of a [illegible] prison."

In the case of Williams vs. Hines, 109 Neb. 11 (1922) deceased had suffered a fractured collar bone and bruises on the head and body as a result of defendant's wrongful conduct. About a month later he developed pneumonia

and died t erefrom. It was agreed that the pneumonia had been caused by a germ rather than traumatiall . The court dismissed the case saying that an injury, in order to be the proximate cause of death, must, be the thing that directly causes the subsequent disease and not merely a condition which enables it to operate independently. Again, an intervening agency takes the place of defendant's act as the proximate cause of death.

In Miller vs. Director Gen., 270 Pa 330, (1921) the deceased, as a result of defendant's mine accident, received a cut across the bridge of his nose from which erysipelas developed. Pneumonia followed and caused death about two months after the injury. Deceased as shown to have been suffering from cystitis at the time of and subsequent to the injury and medical experts testified that the pneumonia germ could have come from the cystitis as well as from the erysipelas. The court held that defendant was not liable because it had not been shown with reasonable certainty that the pneumonia was caused by the injury nor there had been an unbroken connection between

the wrongful act and death.

In Texas Traction vs. Nonney, 178 SW 797, (1915) the sequence of events was, injury - grippe - tuberculosis - death. The court held that in the absence of evidence that the injuries caused the tubercular infection as distinguished from evidence that they merely produced a condition under which the tubercular bacilli could enter and operate as an independent force, such injuries could not be regarded as the proximate cause of death.

In Noey vs. Metropolitan 72 NY Supp., 544, (1901) the sequence was injury - progressive muscular atrophy - tuberculosis - death. Physicians testified that the disease progressive muscular atrophy, which was caused by the injury, had shattered deceased's system and rendered him susceptible to tuberculosis and that by reason thereof he contracted it. There was no evidence that any blow at the time of the injury caused tubercles to form.

The court held that the evidence connecting the death with the injury was insufficient and dismissed the case.

It is to be noted that the crucial point in all these cases is whether the act of defendant directly caused the disease, or stated otherwise, whether the intervening agency was really independent of accused's act or not.

In Weber vs. R.R. Co., 42 NY Supp 709, (1896) the sequence was wrongful injury to knee - infection of knee - pus in knee - tuberculosis of lungs - death. The theory of the plaintiff was that either the injury produced tuberculosis of the knee which was carried through the bloodstream to the lungs, causing tuberculosis of the lungs, or that the injury caused the fatal disease by weakening the resistance to the germ which entered the lungs from the air. The case was dismissed as to the first ground because there was no proof that tuberculosis had been caused in the knee (thereby negativing a causal connection between the original injury and the final disease which caused death). It was dismissed as to the second ground, the court saying that the reception into the lungs of germs of consumption from the outside would be a new and independent cause intervening between the injury and the result.

The case of St. Louis I. M. & S. R. Co. v Steele 119 Ark. 349, (1915) illustrates admirably the principle that an injury must directly cause the disease which produces death. In this case deceased after being injured developed typhoid fever. It was agreed that typhoid fever is a germ disease and never traumatically caused. In such case the injury <u>could not possibly cause the disease</u> (just as in the War Crimes trials beri-beri and dysentery <u>can not possibly be caused</u> by beatings) and we can anticipate what the court's view must have been.

The court reversed a verdict against the defendant saying:

> "—although it was doubtless true that the vitality of deceased was so lowered and his system so weakened by the suffering from the injury—that he was more

susceptible to disease and less able to resist it than he otherwise might have been, still the verdict cannot be sustained unless there was some testimony from which it could be reasonably inferred that his death was occasioned by germs or disease caused by his injury or resulting from it as the natural and probable consequence thereof——. The possibility that he succumbed more readily to the disease causing death than he otherwise would but for the injury is insufficient to support the verdict."

"BUT FOR" FALLACY

The greatest pitfall in applying the doctrine of causality is to view it in the deceptive light of "but for" or "if not" reasoning—calling fact A the cause of event B because event B would not have happened "BUT FOR" fact A. "BUT FOR" causality is not recognized in law, or can it be recognized without reducing justice to an absurdity. Let us examine an example.

Suppose A steals a revolver and sells it to B. Some time later B uses the revolver to shoot C wounding him superficially. While in the hospital, C burns to death in a fire caused by the negligence of D, a hospital employee.

BUT FOR or IF NOT reasoning might be: C would not have burned to death IF he had NOT been in the hospital, he would not have been in the hospital IF B had NOT shot him. B could not have shot him IF B had NOT bought the revolver from A. Therefore A is responsible for C's death. Such reasoning is specious, and can not be used as a basis for fixing criminal responsibility. The same fallacious reasoning would convict B and perhaps, pushed a step further, the owner of the revolver from whom A stole it: IF he had NOT possessed the revolver A could not have stolen it.

This fallacy is another reason for condemning the "contributing to death" specification which is based on exactly such flimsy connection. A PW dies of pneumonia. The camp commander is charged with contributing to his death in that he withheld food, and permitted his subordinates to beat the PW. What the prosecution is saying by means of the phrase "contributing to death" is, "IF the PW had NOT been undernourished and IF he had NOT been beaten he would

not have been in a weakened condition, WITH this weakened condition he might not have contracted pneumonia or died of it."

The issue in such a case if it was not obscured by the clouded wording of the specification, would be clearcut; namely, "Did the pneumonia cause the death?" and "Was the accused's conduct the proximate cause thereof?" But the contribution to death specification permits speculation on all IF NOT questions, "IF it were NOT for the beating, would he have contracted pneumonia," and "IF NOT for the undernourishment would he have contracted pneumonia?" and "IF it were NOT for the weather, would he have contracted etc.", and "IF it were NOT for his being in contact with a pneumonia germ, would he have died?" The lay members of the commission are easily misled into a finding of guilty under such circumstances even though the really essential element, proximate cause, is lacking. The issue is camouflaged by a phrase which is so broad and all inclusive as to introduce other criterion of responsibility than the one which all precedent insists is the true test of criminality.

There is no limit to IF NOT speculation. We can go further in the above case and say that this PW would not have died IF he had NOT been a prisoner at all. And IF he had NOT been drafted into the Army in the first place, he would not have been taken prisoner. Therefore, the cause of his death was the fact that President Roosevelt signed the Selective Service Act! It is undeniable that it did take all these remote causes to produce the death of this PW. All of these circumstances "contributed to his death", since if any one of them had been lacking he would not have died.

Of course, the law cannot tolerate any such system of "logic". But the Prosecution, in these War Crimes Trials, forces the Commission to adopt this type of thinking by creating the issue "did accused's act contribute to the death". The Commission must ask itself the question, "IF it had NOT been for the beating and undernourishment, would the PW have died?" As we have seen, this question is irrelevant; it is a philosophic question, not a legal question. The legal question is, as always, "Was accused's act the cause of death?"

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As an example of the different conclusions which can be arrived at (on the same set of facts) by tribunals, one of which is considering "contributing to a death", the other of which is considering "causing a death", the following facts (to be found in Livingston v. Commonwealth, 55 Va. 592) are set forth: A inflicts an injury upon B, which is not a mortal wound. B then becomes ill with a disease not caused by the wound. B dies of the disease, and there is testimony that "the fatal progress of the disease was accelerated by the enfeebled or irritated condition of B caused by the wound."

The War Crimes Commission might easily say, "A is guilty because his act contributed to B's death." It is quite true that IF it were NOT for B's enfeebled condition due to the wound inflicted by A, he might not have died (or he might not have died as soon). The issue in the case as presented to the commission is, "Did A's act contribute to B's death?" Manifestly it did. But this issue, under the law, is entirely irrelevant. The real issue is, "Was A's act the cause of B's death?" Manifestly it was not, and when this issue was presented to an actual court, accused was found not guilty of homicide. (Livingstone v. Commonwealth, supra). This finding, of course, did not preclude later prosecution for assault of serious degree.

Again, "Inflicting upon another a wound which is not calculated to endanger or destroy life but which because of improper treatment has that effect does not render one guilty of murder". (Annotation 28 LRA, NS 665). But if, against all precedent, the prosecution is permitted to introduce the issue as to whether accused's act "contributed to the death", the finding is just the reverse. Certainly the wound "contributed" to the death. Just as certainly the wound was NOT the cause of death. Thus, the accused was found not guilty of homicide in the cited case.

Again "although one may have——beaten——another, he is not deemed guilty of homicide when the death of such other person results proximately from——some other intervening cause. (26 American Jurisprudence 189, Homicide IV Sec. 45).

"examples might be multiplied ad infinitum but there is no need to labor the point. Suffice it to say that there is a plethora of authority to the effect that one's act must proximately cause a death in order to constitute

a capital crime, whereas there is absolutely no authority to the effect that mere "contributing to a death" (in the absence of evidence that such contributing factor is also the proximate cause) constitutes a capital offense.

It might be contended that the word " 'contribute ' implies a causal connection" (27 Corpus Juris Sec., 1318). But if this is so, then why not use the important word? Why charge an accused with implications? A War Crimes Commission trial is not a guessing game wherein an accused must search for hidden meanings and implications to ascertain with what he is charged. In the War Crimes Trials most of the defendants are on trial for their lives or for an unprecedented term of years. In many instances, it is at worst undisputed, the case for the prosecution is very strong. Why should it be necessary for the prosecution to hide behind circumlocutions and secondary meanings? Let them come right out and tell the accused what he is charged with — what he must (legally) be charged with—"causing death".

These trials are not for the sole purpose of punishing the perpetrators of war crimes. There is a secondary, a long range purpose also, which might in the years to come be considered of far more importance than the mere retribution which is gained by hanging individual war criminals. The Japanese people are to be persuaded of the essential fairness of the American system, with the view that they may come to adopt our ideas of justice and fair play. Convicting them of crimes, which are defined for the occasion, for which no American has ever been, or ever could be, convicted will not tend to convince them that our system is preferable to theirs. As was well said by Chief Justice Cardozo (Matter of Doyle 257 NY 244, 67 AIR 438) quoting Justice Holmes in the Northern Securities case (1904. S. 197) "Historic liberties and privileges are not to bend from day to day because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment; are not to change their form and content in response to

the 'hydraulic pressure' exerted by great masses. A community whose judges would be willing to give it whatever law might gratify the impulse of the moment would find in the end that it had paid too high a price.

We must not allow these War Crimes Trials to degenerate into a mere attempt to satisfy the popular lust for vengeance. Law must be above emotions. When emotions gain control, justice ends. The infamous Salem witchcraft trials are examples of what happens when the judiciary bows to the will of an angry public and distorts the law in order to provide victims for the masses. There is no such crime as "being a witch", yet women were hanged for committing it. There is no such crime as "participating in atrocity", yet men have been hanged for committing it. Let us not a step to witch hunting and show the Japanese people that our system of law is a search for justice, not a search for victims for the hangman.

I has citations on this from every state in the United States and from English judgments. They would only be corroborative of what has been said so far. I submit that to charge the accused with 'contributing to the death' of a number of them does not state a crime. How in the name of conscience can the accused meet such allegations? Of what did the man die? Was there any direct or proximate cause? Did a chain of circumstances follow from one event to the next?

I submit this is not a proper allegation and should not be considered by the Commission. If Mr. Smith and Mr. Appleton are going to tell you that because other Commissions have allowed it in you have to; you have to give full faith and credit to all other judgments; that you are bound to accept them. I do not believe that at all. I believe this Commission may and will sit independently and will decide independently of what other Commissions may have done. The fact that other Commissions may have convicted on a charge of 'contributing to death' or that they have not should not decide the matter for this Commission.

In all these cases where a disease has followed a beating - in this traumatic pneumonia - that is not legally the subject of a crime and I submit that this clause 'thereby contributing to the death' should be stricken.

PROSECUTION: May I ask the Commission to ask the defense whether the defense has been arguing the evidence or arguing against the clause 'thereby contributing to the death', so I may know how to answer?

If he is arguing the evidence I say it is improper at this time to argue the evidence. That is a matter for the Commission to determine after they have heard the evidence. If he is arguing the clause 'thereby contributing to the death' I am prepared to go ahead on that question. I do not understand whether the defense is arguing the evidence or the clause.

LAW MEMBER: We can only consider the question of the clause.

PROSECUTION: Alright sir. This point has been covered in practically every case that has come before these commissions since the inception of the Commissions and in all cases the Commissions have ruled that that is a proper clause.

The case I am familiar with is U. S. v. Ikegami tried before one of these commissions. In that case Ikegami was a camp commander of Camp 1B3 at Sasebo, Kyushu. Ikegami got one, Elbert Knox, an American prisoner of war before him and sentenced him to be confined in a place called the 'dog box'. He said, You will stay there without any food. Knox said, Then I will die. Ikegami said, 'Then you will die'.

The specification was worded that 'he caused the death'. The case was reviewed and Ikegami received the death sentence. The case was reviewed by General Eichelberger and Ikegami was found guilty of that specification. However, the reviewing authority changed the word 'causing'. They felt it meant 'he killed' - the immediate act. I do not recall the number of days; it was fifteen days after he was put in the dog box that he died. The reviewing auth-

ority changed the word "caused" to "contributed to".

In the case of United States v. Masato Hada this point was gone into. Mr. O'Brien was on the defense and I was on the case. He took a couple of hours arguing the point and we had something like ten specifications each worded "contributing to the death of" in all specifications. The motions of the defense were denied.

If the Commission desires the prosecution to go into this point, the prosecution is prepared to deal with it but we might save time. If the Commission wants to hear it, Mr. Appleton has prepared a brief but I think it is a point on which I think the Commission might not wish me to waste too much time.

LAW MEMBER: I think it is clear that the Commission is here to decide whether there is a logical chain of causation; and proof of that is a matter for the Commission to decide. If there is no such chain established there will be no guilt. It seems to be the logical way to approach the problem. Consequently, the motion is denied.

DEFENSE: That completes the special pleas by the defense.

LAW MEMBER: Has the defense any other motions?

DEFENSE: No Sir. That completes the special pleas.

PRESIDENT: Takeo Katsura, at this time the Commission will hear your plea to the charge and specifications read to you. You may plead either guilty, or not guilty.

DEFENSE: Sir, the plea is "Not Guilty".
(The accused pleaded "Not Guilty" to the charge and specifications)
PRESIDENT: Alright, the prosecution may proceed.

PROSECUTION: Sir, I will make my opening statement.

The prosecution intends to prove that Takeo Katsura was a three star private at Fukuoka prisoner of war camp from December 1942 to September 1945. We will prove he was the camp interpreter and a guard during this period, December 1942 to September 1945. We intend to prove that Takeo Katsura was guilty of innumerable beatings of prisoners of war, so numerous that the prosecution does not intend to go into all of them.

The prosecution intends to prove that one of the favorite tricks of Takeo Katsura was walking up to a prisoner of war and hitting him over the head with a four pound ball hammer until the prisoner of war was knocked unconscious or knocked to the ground. This happened on numerous occasions.

The prosecution intends to prove further that Takeo Katsura placed a prisoner of war in the "dog box" which was a sort of hut without any heat and flimsy side walls during the dead of winter.

The prosecution intends to prove that Takeo Katsura beat Streefkerk, a Dutch prisoner of war, so badly that three ribs were broken. That when Streefkerk reported to the dispensary for treatment he was treated by a Dutch doctor, De Wijn; that the Dutch doctor, even against the advice of the Japanese doctor, reported this incident to the camp commander. That because of this Katsura got the Dutch Dr. De Wijn and beat him so badly about the fact that he needed medical attention for two weeks thereafter and his face was

just a piece of raw beef.

The Prosecution intends to prove that Takao Katsura stole Red Cross supplies from December 1942 to September 1945 at will.

Another one of these hammer beatings by Katsura we intend to show was committed on an English prisoner of war by the name of Barratt; that Katsura refused to allow other prisoners of war to administer treatment to him; and when the prisoner of war recovered consciousness Katsura made him dig a hole in the enclosure of the camp.

Prosecution intends to prove that Katsura beat a prisoner of war by the name of Benjamin J. Marsh, an American prisoner of war, so badly that Marsh sustains a broken ear drum. The prosecution intends to prove that Katsura beat prisoners of war with anything at hand such as shovels, sticks, hammers.

The prosecution intends to prove that Katsura went into the camp hospital and beat an English prisoner of war named Albert Cleeves with a pole for five minutes - a long wooden pole.

We intend to prove that he had such other little habits as pushing prisoners of war off thirty foot guard towers; that he made a collection of prisoner of war jewelry; that he has in his possession, or had in his possession, such things as Westpoint rings.

PRESIDENT: Is that charged?

PROSECUTION: This will all come out in the proof.

PRESIDENT: Is it charged?

PROSECUTION: Yes. It is charged in specification 14, "mistreatment and abuse".

In characterizing the defendant, I will use the words of one of the prisoner of war. He said Katsura had the disposition of a rattlesnake. This man has been eleven years in the United States. I believe it was from 1927 to 1938. That is all, sir.

PRESIDENT: Are you ready to proceed?

PROSECUTION: Yes sir.

PRESIDENT: Before we proceed. Mr. O'Brien does the defense have any objection to proceeding with the introduction of evidence without the individual counsel being present.

DEFENSE: Yes sir. The accused advises me that he is willing to go ahead.

PROSECUTION: The prosecution calls as its first witness Takao Katsura for the purpose of identification as outlined in SCAP rules.

PRESIDENT: Any objection on the part of defense?

DEFENSE: Not if he stays within those limits. Of course not, sir.

Q Will you give the address in Fukuoka?
A I do not know the exact address but it was a hotel in front of the Imperial Japanese University.

Q Are you the accused in this case?
A Yes sir.

Q Were you stationed at Fukuoka Camp No. 1.
A Yes sir.

Q When were you stationed at Fukuoka Camp No. 1?
A From December 1942 to September 1945, sir.

Q What capacity did you have while you were stationed at Fukuoka Camp No. 1.
A

DEFENSE: Just a minute. Objection is taken at this time. I believe the prosecution is limited to identification of the accused. The identity is established now. I do not believe they have a right to probe what he was impart of the prosecution's burden to establish.

PROSECUTION: I am entitled to go into his status while he was at this camp.

LAW MEMBER: Have we the page for this?

PROSECUTION: Rule 5, CAP Rules.

LAW MEMBER: What sub-paragraph?

PROSECUTION: I am not sure whether he is to be sworn as a Christian or on the other oath.

DEFENSE: I have been advised by the defendant that he has embraced the Christian religion and would prefer to be sworn by the Christian oath.

PRESIDENT: Under SCAP rules it provides that all Japanese witnesses, I believe, will be sworn in a certain manner. If the witness desires to be sworn as an American or English witness, I think in order to make the record clear, that we should swear him on both.

DEFENSE: I think that is proper.

PROSECUTION: Yes.

TAKEO SATOURA

a witness called by the prosecution (for identification) was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Prosecution:

Q What is your name?
A Takeo Satoura.

Q Speak up loud. Where did you live prior to the time you went into Sugamo prison?
A Fukuoka.

PROSECUTION: Rule 4 of the Eighth Army Rules.

DEFENSE: I believe they have the right to enquire as to his status at that time. I will withdraw the objection.

(Question repeated)

WITNESS: Interpreter and guard.

PROSECUTION: How old are you?
A 40, sir.

Q What rank did you have?
A Private.

Q What sort of a private?
A Superior private.

Q Now, do you have any identifying marks on you, any scars?
A Yes sir.

Q Where are the scars?
A Abdomen

Q Could the Commission care to see these scars? Could you show the Commission your scars?

PRESIDENT: Describe it for the record.

(Witness removes clothing to reveal scar described.)

PROSECUTION: Indicating a 4 inch scar on the right side of the stomach, upward from the navel. One half of the scar is above the navel and the other half below the navel.

PRESIDENT: Just a moment. Let me see the bottom of the scar. One inch to the right of the navel.

Q Do you have any otherscars?

A No sir.

DEFENSE: That is all.

PRESIDENT: Questions by the court?

EXAMINATION BY COMMISSION

Questions by Members:

Q Were you a private in the armed forces of Japan?
A Yes sir.

Q In the Imperial Japanese Army?
A Yes sir.

PRESIDENT: Any further questions?

MEMBER: Had you the same rank all the time you were at this camp?
A I was in Japanese Army;a private has three classes. When they enter Army they are given one star; and then two; and then three stars. After 12 months after entering the army and spending 12 months;or 14 months, they give them three stars, sir; and I held three stars for more than two years.

Q I want to know how many stars you had when you arrived in 1942?
A Two star.

Q That makes you at that time a two-star private?
A Yes.

Q Is that a superior private?
A No sir.

Q December; when didyou become a three star private?
A April, 1944, sir.

Q You was issued that way until September 1945 when you left?
A Yes sir.
Is that all, sir?

Q I have another question but I can't think of it.
Did you have a nickname while you were at this camp from 1st December 1942 to September 1945?
A Not to my knowledge, sir.

PRESIDENT: Any further questions? There appearing to be none, the witness is excused.

PROSECUTION: The prosecution offers in evidence as Exhibit 1 affidavit of Donald Jackson Scott, Sergeant, U. S. Marine Corps, subscribed and sworn to the 22nd day of October 1945 at Oakland, California.

DEFENSE: What is the procedure on this? Will the law member alone be furnished with a copy until the objection has been taken or a ruling on admissibility made?

PRESIDENT: The Commission would like to have each member receive a copy of the affidavits but we will wait until the law member rules.

DEFENSE: That will be quite proper sir.

PROSECUTION: Are there any objections?

DEFENSE: I have an objection.

LAW MEMBER: I imagine it will be helpful to the Commission if the prosecution indicates what specification they are dealing with but it is my understanding that that does not limit you to that specification if there is anything in the affidavit.

PROSECUTION: So long as we are not bound by it. I had to prepare the numbers beside the affidavits but I will attempt to give you the number of the specification to which the affidavit applies before each affidavit is read.

PRESIDENT: You have not prepared that?

PROSECUTION: Yes sir, I have. I have a chart and some affidavits might apply to six or seven specifications.

PRESIDENT: It will assist the Commission to have a copy of that chart.

PROSECUTION: The chart I have, sir, does not enumerate each specification with the affidavit.

DEFENSE: I was on that line, sir.

PROSECUTION: That would be of no help to you. We will indicate the specifications as we go along as long as it is understood that if we omit one as we go along the Commission will permit the affidavit to apply to another specification.

This one applies to specifications 14 and 2.

DEFENSE: To this Exhibit 1 I call you attention to the last paragraph together with the word "Saipan" and move to strike the entire paragraph. There is no foundation laid for observation to show that the affiant was in a position to observe what took place and it merely represents his conclusions apparently predicated on rumors.

PROSECUTION: The Commission can accept this for what it is worth. There is the intention of the prosecution to tie this up with numerous other affidavits. The Commission can take this as part of the big picture which will be painted throughout the prosecution's case.

LAW MEMBER: Overruled. It will be accepted and read.

(Document referred to was produced and marked Prosecution Exhibit No. 1 for identification and was received in evidence.)

(Prosecution Exhibit No. 1, excepting those parts stricken, was read by the prosecution.)

LAW MEMBER: Just in passing, I would like to say that some further part of this affidavit probably should be introduced in order that we can be sure which camp this man is talking about. He probably went to several camps.

PROSECUTION: The last part of what I read was Camp No. 1, Fukuoka. This last sentence of the second paragraph, Camp No. 1, Kyushu Island, Japan from 4 December 1944 to 14 September 1945.

LAW MEMBER: Any objections?

DEFENSE: I don't know to what. It seems to be some doubt as to whether all these affidavits are the same.

PROSECUTION: The only question was, if I understood the law member, that the third paragraph does identify Katsura as being present at the camp. That paragraph was not read in. However, I could read certain parts of it if there is no objection by the defense - the part showing he was at Kyushu.

DEFENSE: The defense is willing to stipulate that at the time referred to he was at Camp No. 1.

LAW MEMBER: The record will therefore show. To the next affidavit, is there any objection?

PROSECUTION: The prosecution offers as Exhibit No. 2 affidavit of Malcolm T. Bull subscribed and sworn to the 13th day of October 1945 at Fort Lewis, Washington.

DEFENSE: Are your affidavits deleted the same as mine? In the portion deleted on page 2 starting with "American born Jap named Katsura" down to "around himself", an objection is taken on the ground that there is no foundation laid here to qualify the affiant to be in a position to observe. It represents conclusions and rumors.

LAW MEMBER: It may well be that there is more in the affidavit that can help the Commission. That is up to the prosecution. Apart from that I do not think I need to hear the prosecution unless you want to add anything to the affidavit.

PROSECUTION: No sir.

LAW MEMBER: It is part of the general picture and is overruled.

PROSECUTION: If there are no further objections I will read the affidavit.

PRESIDENT: The affidavit will be accepted as exhibit 2.

(Document referred to was produced and marked Prosecution Exhibit No. 2 for identification)

DEFENSE: May I ask Mr. Appleton what specification Exhibit 2 refers to.

PROSECUTION: Specification 14.

LAW MEMBER: To be frank now, I feel that this could be stricken as adding nothing.

PROSECUTION: I am personally willing to have the affidavit stricken. It might shorten up the record at this time; but I have offered all these affidavits because if I did not I would have an objection, so either way it does not matter.

DEFENSE: You will never have objection to way you do not offer.

(Prosecution Exhibit No. 2 was read into the record.)

PROSECUTION: The prosecution offers as Exhibit 2 an affidavit of Joseph B. Miles, Pfc, USMC subscribed and sworn to the 14th of September 1945 at the 20th Replacement Depot, Lucon, Philippine Islands.

DEFENSE: Sir, on page two, objection is taken to paragraph three. Paragraph two is deleted in my copy.

LAW MEMBER: It is partly deleted in mine.

PROSECUTION: These were red-lined many months ago. Paragraph two will be offered in evidence.

DEFENSE: I object to paragraph two as highly irrelevant. It has nothing to to with the case and this only serves to prejudice and inflame. It has no basis in this case whatsoever.

LAW MEMBER: I rule out paragraph two and three.

PROSECUTION: This affidavit was red-lined many months ago. The case originally was sent to the defense on the 10th of June 1946. In the meantime, we have received numerous affidavits. That is why it has been necessary to amend these specifications. We have amended these specifications and have substituted specifications since this red-lining and we have other affidavits which sustain paragraph two. Paragraph two is offered along with other affidavits. We intend to use that paragraph and that will be proved by other affidavits in the evidence.

LAW MEMBER: What words of the specification will you prove under that?

PROSECUTION: This will be under specification 14, to the fact that on the night that President Roosevelt died the accused ordered a party. I don't know whether it was in celebration of his death or not.

DEFENSE: I have to object to the prosecution offering evidence.

PROSECUTION: Let me say, I am going to offer it with regard to the word "mistreatment".

LAW MEMBER: Do you propose to tie this in with incidents more relevant than this corroborating that it was a fact that it was a party?

DEFENSE: Since these changes which the court received a few minutes ago, if they have evidence on this which connects the accused up with the death party, after that evidence is before the court then this could be offered.

LAW MEMBER: I was proposing to dispose of it as being well beside the point and irrelevant. It appears it has some purpose and may help us. I will change my views and we will include paragraph 2.

DEFENSE: On paragraph three I have the same objection as made earlier. The affiant does not give the particulars on which his conclusions are made.

I do not object to five or eleven. I do not object to anything he says or knows to be a fact, but in paragraph three, mere generalities are set forth which may or may not change through.

LAW MEMBER: I am with you on this. Paragraph 3 will be deleted and paragraph 2 accepted.

PROSECUTION: Any other objections?

DEFENSE: No further objections.

(Document referred to was produced and marked Prosecution Exhibit No. 3 and was received in evidence.)

(Prosecution Exhibit No. 3, excepting those parts stricken, was read by the prosecution.)

LAW MEMBER: Paragraph 2?

PROSECUTION: Paragraph one has been ruled out of my copy. The entire paragraph has been ruled out. Paragraph to start "the night President Roosevelt's".

LAW MEMBER: I do not believe the record shows this is to be accepted as Exhibit 3. It is to be so accepted. Is there any specification number?

PROSECUTION: Yes sir. That was Specification 14.

The prosecution offers as exhibit 4, affidavit of Kenneth R. Wheeler subscribed and sworn to the 28th of November 1945 at San Pedro, California. This is with reference to Specification 8.

LAW MEMBER: Are there any objections?

DEFENSE: No specific objections except in paragraph 3 starting with "Mr. Matsura" down to "punishing of prisoners". He does not state that he did carry out this particular punishment.

PROSECUTION: I don't think that is in the nature of argument but in the nature of giving evidence. The court can determine what this affidavit means without having the defense tell them. The affidavit speaks for itself.

LAW MEMBER: I have what you say. Speaking generally, it might be helpful. It might be hearsay. We are glad to have the observations.

PROSECUTION: He says right in the paragraph that Major Roby was severely beaten.

PRESIDENT: Is there any objection before the Commission?

DEFENSE: No objection.

PRESIDENT: Proceed.

(Document referred to was produced and marked Prosecution Exhibit No. 4 for identification and was received in evidence.)

(Prosecution Exhibit No. 4 was read by the prosecution.)

LAW MEMBER: This exhibit will be accepted as Exhibit 4.

PROSECUTION: The prosecution offers in evidence as Prosecution Exhibit No. 5 an affidavit of Jack Morse Wolf subscribed and sworn at the 29th Replacement Depot on 16 September 1945. This is with reference to Specification No. 4. Are there any objections?

DEFENSE: No objections, sir.

LAW MEMBER: In that case the affidavit is accepted as Exhibit 5.

(Document referred to was produced and marked Prosecution Exhibit No. 5 for identification and was received in evidence.)

(Prosecution Exhibit No. 5, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: That applies to Specification 4.

The prosecution offers as Exhibit No. 6 the affidavit of James Otis Williamson sworn to in Los Angeles, California on the 8th day of March 1946. This is offered with respect to Specifications 1 and 14. Are there any objections?

DEFENSE: Yes, two. I call your attention to paragraph 2 starting "While I was held", thence 3 lines below ending in the word "death".

Objection is taken to that as vague and indefinite conclusions and rumors and expert medical testimony by a layman.

LAW MEMBER: It will be accepted for what it is worth having due regard to the point you have taken.

DEFENSE: Then sir, on page 2, line 2 starting "I heard" thence for the rest of the paragraph. This is hearsay, rumors and conclusions. He says "I heard from other prisoners". Plainly he was not in a position to observe.

PROSECUTION: I submit sir the Commission is entitled to have that before them and they are entitled to have all the evidence and it can be given whatever value the Commission wishes to give to it. This will be tied up with other affidavits. The court, in giving their decisions on the points, can say it has no value whatsoever, but the court should have the benefit of this paragraph.

DEFENSE: I believe the Commission is only interested in facts and this only clutters up the record and serves no purpose. There has to be a line drawn somewhere on hearsay evidence. I grant you hearsay can be admitted but serve to draw a line somewhere.

LAW MEMBER: The argument that it clutters the record is not relevant for the affidavit goes into the record anyway. The objection is overruled and the affidavit is accepted as Exhibit 6 and will be read.

PRESIDENT: Proceed.

(Document referred to was produced and marked Prosecution Exhibit No. 4 for identification and was received in evidence.)

(Prosecution Exhibit No. 4 was read by the prosecution.)

LAW MEMBER: This exhibit will be accepted as Exhibit 4.

PROSECUTION: The prosecution offers in evidence as Prosecution Exhibit No. 5 an affidavit of Jack Morse Wolf subscribed and sworn at the 29th Replacement Depot on 16 September 1945. This is with reference to Specification No. 4. Are there any objections?

DEFENSE: No objections, sir.

LAW MEMBER: In that case the affidavit is accepted as Exhibit 5.

(Document referred to was produced and marked Prosecution Exhibit No. 5 for identification and was received in evidence.)

(Prosecution Exhibit No. 5, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: That applies to Specification 4.

The prosecution offers as Exhibit No. 6 the affidavit of James Otto Williamson sworn to in Los Angeles, California on the 8th day of March 1946. This is offered with respect to Specifications 1 and 14. Are there any objections?

DEFENSE: Yes, two. I call your attention to paragraph 3 starting "while I was held", thence 3 lines below ending in the word "death".

Objection is taken to that as vague and indefinite conclusions and rumors and expert medical testimony by a layman.

LAW MEMBER: It will be accepted for what it is worth having due regard to the point you have taken.

DEFENSE: Then sir, on page 2, line 2 starting "I heard" thence for the rest of the paragraph. This is hearsay, rumors and conclusions. He says "I heard from other prisoners". Plainly he was not in a position to observe.

PROSECUTION: I submit sir the Commission is entitled to have that before them and they are entitled to have all the evidence and it can be given whatever value the Commission wishes to give to it. This will be tied up with other affidavits. The court, in giving their decisions on the points, can say it has no value whatsoever, but the court should have the benefit of this paragraph.

DEFENSE: I believe the Commission is only interested in facts and this only clutters up the record and serves no purpose. There has to be a line drawn somewhere on hearsay evidence. I grand you hearsay can be admitted but serve to draw a line somewhere.

LAW MEMBER: The argument that it clutters the record is not relevant for the affidavit goes into the record anyway. The objection is overruled and the affidavit is accepted as Exhibit 6 and will be read.

(Document referred to was produced and marked Prosecution Exhibit No. 6 for identification and was received in evidence.)

(Prosecution Exhibit No. 6, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution offers as Exhibit 7 an affidavit of Curtis T. Beecher, Colonel, U.S.M.C. subscribed and sworn to the 18th of March 1946 at Los Angeles, California. This is with reference to Specifications 8 and 14. Are there any objections?

DEFENSE: Just a matter of clarity. I got the details over the telephone on this and I want to be sure I have the right one. Have you deleted the last paragraph on page 1.

PROSECUTION: Yes.

DEFENSE: And all of page 2?

PROSECUTION: On page 1, both the next to the last and the last are deleted. Paragraphs 1 and 2 are in on page 1 to the words "United States". The entire page 2 is deleted and page 3 up to the word "defect".

DEFENSE: And the rest is in?

PROSECUTION: Yes.

DEFENSE: Then on page 3 starting with the word "however".

LAW MEMBER: "However, it was common knowledge"?

DEFENSE: Yes sir. For the rest of the paragraph for the reason that it is repeating rumors and conclusions of things which he did not witness himself. Do you want to rule on this as I go along?

LAW MEMBER: I will try to rule on this briefly. I think it may be of some assistance and your objection is overruled.

DEFENSE: In the next paragraph, starting with the words "I actually ran" then to the word "although". It is objected to on the same reasoning sir.

LAW MEMBER: Objection overruled.

DEFENSE: That is all the objections.

LAW MEMBER: The affidavit will be accepted then as Exhibit No. 7.

(Document referred to was produced and marked Prosecution Exhibit No. 7 for identification and was received in evidence.)

(Prosecution Exhibit No. 7, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution now offers in evidence as Exhibit 8 affidavit of George Warwick, Gunner of the Royal Artillery dated 6 March 1946 and taken at Lindsey, Lincolnshire, England. This is in respect to Specifications 6 and 7. Are there any objections?

DEFENSE: I direct the law member's attention to the part not deleted, right underneath the first deletion "after about 3 months". I move that entire paragraph be stricken as representing conclusions, reports and rumors.

LAW MEMBER: Objection overruled subject to other objections it may be accepted as Exhibit 8.

(Document referred to was produced and marked Prosecution Exhibit No. 8 for identification and was received in evidence.)

(Prosecution Exhibit No. 8, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution offers as Exhibit 9 affidavit of Lt. Colonel Martin Buston Sedgwick Saunders, Royal Artillery sworn to at 6 Spring Gardens, Westminster, England on the 13th of March 1946. This applies to Specifications 14, 6 and 7. That seems to be all. Are there any objections?

DEFENSE: I don't know if I have all the deletions here but there is a lot of irrelevant matter, but I have no objection to it.

LAW MEMBER: This is accepted as Exhibit No. 9 and will be read and the deletions will be noted as we go along.

(Document referred to was produced and marked Prosecution Exhibit No. 9 for identification and was received in evidence.)

(Prosecution Exhibit No. 9, excepting those parts stricken, was read by the prosecution.)

LAW MEMBER: Is it correct that paragraph 11 is out?

PROSECUTION: No, we did not read it to save time.

PRESIDENT: It says in paragraph 12 "in April 1944 we move to Mizoroda". In paragraph 13 it says, "here we were joined by 198 American civilian internees". The charge reads how?

PROSECUTION: At Fukuoka. All of these camps were in the vicinity of Fukuoka.

PRESIDENT: Is there anything to show that Mizoroda and Fukuoka were the same place?

PROSECUTION: It is a part of Fukuoka.

PRESIDENT: Will you prove that.

PROSECUTION: I do not think it is necessary. It is a matter of judicial notice.

PRESIDENT: This court would like to have a map.

PROSECUTION: Fukuoka is a Ken which embraces nearly the whole north portion.

PRESIDENT: Wait a minute. We do not want you to give evidence.

PROSECUTION: Sir, on page 1 of the affidavits, paragraph 4, states "the camp at Kumamoto was known as No. 1 Sub Camp, Fukuoka area and wherever we went after we left Kumamoto the camp itself was always called No. 1 Sub Camp, Fukuoka Area".

PRESIDENT: Maybe you had better not skip too much in the future.

MEMBER: I think we are losing too much time.

PROSECUTION: We will read the entire affidavit.

PRESIDENT: We will reverse the procedure and have you read the entire affidavits.

PROSECUTION: The prosecution offers as Exhibit No. 10 an affidavit of Arthur Edward Chalkley with reference to Specifications 8 and 14 sworn to on the 6th of March 1946 in the Borough of Hove.

DEFENSE: I have an objection with reference to page 5, the top of the page starting "about April". Then for the entire paragraph. This represents some typical affidavit testimony. It is clearly stated that the affiant was inside the hut and it states that others went outside the hut and he attempts to decide something that took place that he could not possibly see. I object to it.

PROSECUTION: I object to this new testimony. I do not see where it says he was inside the hut.

DEFENSE: I will be glad to point it out.

LAW MEMBER: I will read it first. I think your objection is out of line because it is a third party that is in the hut.

DEFENSE: It says "Gaesura came into the hut and ordered all men who were complaining ill to report outside the hut". He says "Gaesura then walked away" and later "I together with others, assisted the injured man back into the hut".

LAW MEMBER: However that may be, we will judge it in due course. The objection is overruled.

PROSECUTION: Any further objections.

DEFENSE: No further objections.

LAW MEMBER: The affidavit will be accepted and read as Exhibit No. 10.

(Document referred to was produced and marked Prosecution Exhibit No. 10 for identification and was received in evidence.)

(Prosecution Exhibit No. 10, excepting those parts stricken, was read by the prosecution.)

PRESIDENT: The court will recess until 1:15.

The Commission then took a recess until 1415 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The court will come to order.

PROSECUTION: The prosecution offers in evidence as Exhibit 11 affidavit of Samuel P. Swift subscribed and sworn to the 23rd of October 1945 on board the USS TAYON en route from Pearl Harbor, T.H. to San Francisco. This applies to Specifications 7 and 14.

DEFENSE: No objections to this affidavit sir.

LAW MEMBER: This affidavit is accepted as Exhibit 11.

(Document referred to was produced and marked prosecution exhibit 11 for identification and was received in evidence.)

(Prosecution Exhibit No. 11, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I may say there are two additional statements attached to this one by Vincen V. Williams saying, "I have read the above statement of Samuel P. Swift. I was a fellow prisoner with Swift and can testify to the truth and accurateness of his statement. I also have had the statements of Logan Kay and Nelson L. Johnson read to me and corroborate their information."

And another one by Arthur W. Yeamans, "I have read the above statement of Samuel P. Swift. I was a fellow prisoner with Swift and can testify to the truth and accurateness of his statement. I also have had the statements of Logan Kay and Nelson L. Johnson read to me and corroborate their information."

LAW MEMBER: Is the original available to look at?

PROSECUTION: Yes sir.

LAW MEMBER: It seems to me on this the word "Levine" was struck out and "Dotynn" put in place of it.

PROSECUTION: I only read "Dotynn". That should have been lined out I think.

LAW MEMBER: On page three the word "Levine" should be deleted and "Dotynn" substituted.

PROSECUTION: When I read it to you I only read "Dotynn".

PRESIDENT: There is another thing. That is the name Costski.

DEFENSE: Dester Kostecki is the correct spelling.

PROSECUTION: It was lined out on this copy.

PRESIDENT: And he has initialed it. The initials are crossed off on mine.

PROSECUTION: The prosecution offers in defense as Exhibit 12 affidavit of Nelson L. Johnson subscribed and sworn to on 28 October 1945. This is with reference to Specifications 7 and 8. Any objections?

DEFENSE: What specifications?

PROSECUTION: Specifications 7 and 8.

DEFENSE: No objections sir.

LAW MEMBER: Then the affidavit of Johnson will be accepted as Exhibit 12.

(Document referred to was produced and marked Prosecution Exhibit 12 for identification and was received in evidence.)

(Prosecution Exhibit 12, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: Prosecution offers in evidence as Exhibit 13 an affidavit of Lawrence E. Wedin signed on the 17th of September 1945.

The prosecution believes it will save time if it does not offer this affidavit. It has very little value in it so we will withdraw our offer.

PRESIDENT: Let the record so show.

(Affidavit of Lawrence E. Wedin above referred to was withdrawn.)

PROSECUTION: The prosecution offers in evidence as Exhibit 13 - number 12 was the last one accepted in evidence, Mr. Morrell?

REPORTER: Yes.

MEMBER: Does the record show you withdrew exhibit 13?

PROSECUTION: It was not offered so we introduce this as Exhibit 13. This applies to Specifications 2 and 14.

This is the affidavit of Francis I. Hession taken the 16th of September 1945.

DEFENSE: Paragraph 4, which is the only portion of this affidavit relevant is vague and general and contains conclusions with no foundation laid to qualify the witness for observation.

LAW MEMBER: Objection overruled. It will be accepted as Exhibit 13.

(Document referred to was produced and marked as Prosecution Exhibit 13 and was received in evidence.)

(Prosecution Exhibit 13, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution offers in evidence as Exhibit 14 affidavit of Dr. W. Ensing signed 2 September 1945 with reference to specifications 6 and 7.

DEFENSE: Sir, I can not see the reason for offering this. Everything in my affidavit has been deleted already.

PROSECUTION: No. It has not. I will go over it with you. This is page A.

DEFENSE: It is deleted here in my affidavit. I paid no attention to it and have not even read it. This was received from the prosecution.

LAW MEMBER: Which is offered, A, B or C?

PROSECUTION: A sir. It applies to Specifications 6 and 7.

DEFENSE: I would like to have an opportunity to read it because the copy given me by the prosecution was stricken.

PROSECUTION: It has been a mistake on our part.

PRESIDENT: The Commission will take a five minute recess.

The Commission then took a recess until 1400 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

DEFENSE: If it please the Commission, I have had an opportunity to examine this exhibit and have no objections.

LAW MEMBER: Is it clear to all concerned that this is a signed statement only?

DEFENSE: That is right.

PROSECUTION: It is signed and witnessed, - witnessed by Captain Kostecki or Doctor Kostecki and medical orderly Wiersma and Timmer ten Welde.

LAW MEMBER: The actual words will appear on the record. We agree it is not an affidavit.

PROSECUTION: Yes sir.

LAW MEMBER: It is a signed statement by Captain Ensing and is accepted as Exhibit 14.

(Document referred to was produced and marked Prosecution Exhibit No. 14 for identification and was received in evidence.)

(Prosecution Exhibit No. 14, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution offers in evidence as Exhibit 15 a deposition of Captain William Proudfoot Wallace dated 22 May 1946. This is with reference to Specifications 6, 7, 8 and 2.

DEFENSE: To which sir the defense has no objection.

LAW MEMBER: In that case the statement is accepted as Exhibit 15.

(Document referred to was produced and marked Prosecution Exhibit No. 15 for identification and was received in evidence.)

(Prosecution Exhibit No. 15, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution offers in evidence as Exhibit 16 an affidavit of Fredrick Shilton made at 6 Spring Gardens, Westminster, England on 28 May 1946. This is with reference to Specifications 15, 5, 6 and 7.

DEFENSE: The defense objects to paragraph 4 for the reason that it represents mere conclusions and rumors and in no way qualifies the affiant for observation purposes.

The same objection is made to paragraph 6 for the same reason.

LAW MEMBER: I feel these are part of the general picture and the Commission may be relied upon to treat them as such.

DEFENSE: No further objection to this exhibit.

LAW MEMBER: The statement is accepted in evidence as Exhibit 16.

(Document referred to was produced and marked Prosecution Exhibit No. 16 for identification and was received in evidence.)

(Prosecution Exhibit No. 16, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution offers in evidence as Exhibit 17 the affidavit of Albert Henry Jose Newman, Gunner, Royal Artillery sworn to 24 May 1946 at 6 Spring Garden, London, England. This is with respect to Specifications 13, 5 and 14.

DEFENSE: To which sir I would like to point out to the members of the Commission that paragraph 5 of Exhibit 17 relates to the same situation that paragraph 5 of Exhibit 16 does. I have here, sir, as a beautiful example of how little stock we can take in these affidavits. It relates to the same beating.

LAW MEMBER: Observations noted and affidavit accepted as Exhibit 17.

PROSECUTION: I made this point before. I want to object to the defense arguing against the affidavit if he has no specific objection to it. I think he has no specific objection.

DEFENSE: I believe the law member said my observations would be quite proper.

LAW MEMBER: I think I am responsible.

PROSECUTION: He could make such a statement and if I answered it it could continue for an hour.

LAW MEMBER: I would not like it to continue for an hour. Carry on.

(Document referred to was produced and marked Prosecution Exhibit No. 17 for identification and was received in evidence.)

(Prosecution Exhibit No. 17, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I now offer in evidence as Prosecution Exhibit No. 18 affidavit of Benjamin Hagen dated October 20, 1945 with reference to Specifications 2 and 14.

DEFENSE: No objections sir.

LAW MEMBER: The affidavit will be accepted as Exhibit 18.

(Document referred to was produced and marked Prosecution Exhibit No. 18 for identification and was received in evidence.)

(Prosecution Exhibit No. 18 was read by the prosecution.)

LAW MEMBER: This was accepted as an unsworn statement, Exhibit 18.

PROSECUTION: Yes sir. A signed unsworn statement.

We now offer in evidence as Prosecution Exhibit No. 19 the affidavit of Lyle Edward Graham sworn the 18th of July 1945 at Los Angeles, California. This affidavit applies to Specification No. 1.

DEFENSE: To which sir the defense has an objection to record on page 1, the last paragraph, two lines from the bottom, starting "this man was mean" continuing over to the next page ending "rattlesnake". That should be stricken as a conclusion scurrilous and highly inflammatory. The witness can testify as to acts but such things as this can only tend to inflame the Commission.

The rest is not definite as to time.

LAW MEMBER: I feel that if what you say is true it is just as likely to show the Commission how unreasonable the affiant is and as far as the Commission is concerned I do not think it will. Consequently I will overrule the objection and will take note of what you say.

DEFENSE: Objection is taken to the entire last paragraph because the affiant was in no position to say he observed. He could easily have said "I saw this". The fact that he did not say that was he did not see it.

LAW MEMBER: Observation noted.

DEFENSE: I will withdraw the objection and let it go as an observation.

(Document referred to was produced and marked Prosecution Exhibit No. 19 for identification and was received in evidence.)

(Prosecution Exhibit No. 19 was read by the prosecution.)

DEFENSE: May I have your indulgence for just 30 seconds, sir.

May it please the Commission, at this time I would like to introduce the Japanese counsel in this case. He was late in arriving. Mr. Tsushiya Chuzaemon.

PRESIDENT: Continue whenever you are ready.

PROSECUTION: I believe I have already offered this in evidence but I had better make sure.

I now offer in evidence as Prosecution Exhibit 20 affidavit of Colonel William D. North, 017345 dated 5 July 1946. This affidavit applies to specifications 8 and 14.

DEFENSE: Defense has no objections sir.

LAW MEMBER: And the affidavit is accepted as Exhibit 20.

(Document referred to was produced and marked Prosecution Exhibit No. 20 for identification and was received in evidence.)

(Prosecution Exhibit No. 20, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: The prosecution offers in evidence as Exhibit 21 a signed statement by Staff Sergeant Harry Lucas dated 22 September 1945.

DEFENSE: To which the defense would wish to record this objection on page 2.

PRESIDENT: The court does not have a map of this yet. This applies to Specification 14?

PROSECUTION: With regard to the back of page 1, the prosecution does not intend to read any of that.

DEFENSE: That is all stricken. Is it?

PROSECUTION: Yes.

DEFENSE: Sir, on page three the part that is not deleted there. Objection is taken that it is very vague and very general and for the further reason that they are attempting to place the command responsibility on the interpreter for other things that happened there.

LAW MEMBER: It is quite clear that it is hard to draw very much of an inference from what that man says. However, the affidavit will be accepted as Exhibit 21.

(Document referred to was produced and marked Prosecution Exhibit No. 21 for identification and was received in evidence.)

(Prosecution Exhibit No. 21, excepting those parts stricken, was read by the prosecution.)

LAW MEMBER: Did the prosecution say they were not offering page 2 of the statement?

PROSECUTION: Yes sir.

The prosecution offers in evidence as Exhibit 22 the signed statement -

LAW MEMBER: I think before you go further, a question is drawn to my attention. On the back of the first page there is a reference to something that follows and it does not seem logical to leave out the whole of the second page.

PROSECUTION: I read it very hurriedly now and it does have some reference to what follows and it can be read in.

PRESIDENT: Is page two offered to the court?

PROSECUTION: No sir.

LAW MEMBER: Well, take it as it stands then.

PROSECUTION: The prosecution offers the affidavit of J. F. de Wijn, medical officer, N.E.I.A. signed the 5th of July 1946. This refers to specifications 6 and 7.

DEFENSE: Sir, may it please the Commission, the defense has no objections but I would like to include paragraph 2 or page 3 and have that read along with the rest of it.

LAW MEMBER: It seems to me I am missing a copy somehow. If you want it included it is included. Therefore the affidavit will be accepted with that condition as Exhibit 22..

PROSECUTION: Sir, the court has ruled and I will abide by the ruling but this has no bearing on this case whatever.

LAW MEMBER: I take this view on this matter, that if you submit an affidavit to help you in your argument and the defense thinks certain portions will help them as part of their case, then it should be granted.

PROSECUTION: If the defense thinks it is of aid to them they will offer it as part of their case, not part of the prosecution's case.

LAW MEMBER: I will assume it is part of their case.

PROSECUTION: All right sir.

(Document referred to was produced and marked Prosecution Exhibit No. 22 for identification and was received in evidence.)

(Prosecution Exhibit No. 22, excepting those parts stricken, was read by the prosecution.)

DEFENSE: Sir, the defense is willing to stipulate that what is meant on page two is Fukuoka Camp No. 1. Later, some doubt may arise about that.

PRESIDENT: You just want that one paragraph included?

DEFENSE: I said that one sir. I would like to have the next paragraph also.

PRESIDENT: I understood you wanted all that portion of page three.

DEFENSE: No sir, I said paragraph 2 but I would like to have the next paragraph in also since it is part of this case.

LAW MEMBER: Paragraphs 2 and 3, all right.

PROSECUTION: The prosecution offers as exhibit 25 the affidavit of John Lopez dated 5 August 1946 with respect to Specification No. 1.

DEFENSE: To which sir, may it please the Commission the defense has no objection.

LAW MEMBER: The affidavit is accepted as Exhibit 23.

(Document referred to was produced and marked Prosecution Exhibit No. 23 for identification and was received in evidence.)

(Prosecution Exhibit No. 23 was read by the prosecution.)

LAW MEMBER: This refers to what specification?

PROSECUTION: To specification one sir.

The prosecution offers as Exhibit 24 the sworn statement of Corporal Glen J. Cherne. This is with respect to Specification 4.

DEFENSE: To which sir, may it please the Commission, the defense objects particularly to page two, starting with the 5th answer "one day in the latter part of December" and then for the rest of the entire page on the grounds that this is highly prejudicial testimony here and no effort is made to tie this up with any act committed by the accused.

PROSECUTION: May I say in that regard that Katsura's name is mentioned and on the following page, at the top of the page, the question is asked, "who ordered the beating" and then he answers "in my opinion the beating was ordered by Katsura".

DEFENSE: I believe the accused is charged with the beating, not with causing it.

PROSECUTION: Read the specification, "causing them to be beaten."

LAW MEMBER: I think the defense gets adequate protection out of the affidavit that this is only an "opinion" that Katsura was responsible.

DEFENSE: We are satisfied with that and withdraw the objection.

LAW MEMBER: The affidavit is accepted as Prosecution Exhibit No. 24.

(Document referred to was produced and marked Prosecution Exhibit No. 24 for identification and was received in evidence.)

(Prosecution Exhibit No. 24 was read by the prosecution.)

PROSECUTION: The prosecution offers in evidence as Exhibit 25 affidavit of Harry J. Forsberg dated the 24th of August 1946. This is with reference to specifications 6, 7 and 14.

DEFENSE: To which, may it please the Commission, the defense has no objection, but rather an observation, to point out in the 4th paragraph that the affiant has promoted Katsura to a captain and he also outlined the beating of Bokyan giving as the reason that "this same interpreter had broken the arm of a prisoner and the Dutch doctor tried to set the prisoner who received the broken arm off from work".

LAW MEMBER: The affidavit will be accepted as Exhibit 25.

(Document referred to was produced and marked prosecution Exhibit No. 25 for identification and was received in evidence.)

(Prosecution Exhibit No. 25, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I now offer in evidence as Prosecution Exhibit No. 26 the affidavit of Frank B. Thayer dated the 20th of August 1946 at Los Angeles, California. This is with reference to Specification 14.

DEFENSE: To which sir the defense has no objection.

LAW MEMBER: The affidavit is accepted as Exhibit 26.

(Document referred to was produced and marked Prosecution Exhibit No. 26 for identification and was received in evidence.)

(Prosecution Exhibit No. 26, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I now offer in evidence as Prosecution Exhibit No. 27 the affidavit of Benjamin James Marsh dated October 1946 at Santa Barbara, California. This applies to Specifications 10, 14, and 9.

DEFENSE: To which sir, may it please the Commission, I would like to have the advice of the Commission as to the proper manner of proceeding in this case. I have some specific objections and I also have evidence that this man was a collaborator.

PROSECUTION: I object to the defense giving testimony.

DEFENSE: Leave it in. I have a point I am trying to make.

PROSECUTION: I don't think the defense has a point or can prove it. The defense is now trying -

DEFENSE: I can prove it by affidavit handed to our office. This affiant has no legal status to make oath. I don't know whether he has been tried. If he has been convicted he would lose any status.

PROSECUTION: This is very highly prejudicial.

LAW MEMBER: It will not prejudice me one bit.

PROSECUTION: This is testimony on the part of defense counsel. If he wants to give testimony why don't we swear him in and let him take the stand.

DEFENSE: I am merely asking guidance. If it goes in as part of our case it goes before the Commission. If we can save time I will put it in now. It will go in evidence.

LAW MEMBER: Let us wait until it comes.

PROSECUTION: That is the proper time to offer it.

LAW MEMBER: If you do not think it of any value -

DEFENSE: Then, reserving my general objection, I would like to direct attention to page 4, paragraph 2 the 9th line starting "this man".

Specific objection is taken to that as mere conclusions and rumors and it is bordering on expert testimony and the affiant is admittedly a layman. That is the only specific objection we have to this affidavit.

LAW MEMBER: I think the objection is worth while your answering if you will do so.

PROSECUTION: Obviously, the man was there. Obviously he saw this beating and he believes that these beatings caused death. Now, the court can examine this statement. The court can say "does this man know what he is talking about"? If the court decides he does not know what he is talking about they can give little or no value to the statement.

LAW MEMBER: It is obviously something we are entitled to accept. It is as weak as can be but for what it is worth we will allow it in.

PROSECUTION: I wish to supplement that. I have offered every affidavit that I have because I think the court would like to see everything. I have withheld nothing and for that reason this statement is offered.

LAW MEMBER: The affidavit is accepted and will now be read. The general basis objection to this affidavit by the defense is simply recorded. It is so far not proven.

PROSECUTION: And one further point that I had is that the court exclude from their minds the statements made by the defense at the start of his objection.

(Document referred to was produced and marked Prosecution Exhibit No. 27 for identification and was received in evidence.)

(Prosecution Exhibit No. 27, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I now offer in evidence as Prosecution Exhibit 28 affidavit of Leonard Roy Ward dated the 16th of September 1946 at Los Angeles, California. There is only one sentence in this affidavit I wish to read. It is on page 4.

DEFENSE: Can I get your specification Mr. Deitch.

PROSECUTION: Number 14.

LAW MEMBER: The affidavit is accepted as Exhibit 28.

(Document referred to was produced and marked Prosecution Exhibit No. 28 for identification and was received in evidence.)

(Prosecution Exhibit No. 28, excepting those parts stricken, was read by the prosecution.)

PRESIDENT: The court will take a recess.

The Commission then took a recess until 1510 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The court will come to order.

PROSECUTION: I now offer as Prosecution Exhibit No. 29 affidavit of William J. Fossey. This affidavit applies to specifications 8 and 14.

DEFENSE: To which, may it please the Commission, the defense opposes no objections but would like to have included paragraph 3 on page 2.

LAW MEMBER: If the defense wishes that included it will be so included on their request and the affidavit on that condition will be accepted as Exhibit 29.

(Document referred to was produced and marked Prosecution Exhibit No. 29 for identification and was received in evidence.)

(Prosecution Exhibit No. 29, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I now offer in evidence as Prosecution Exhibit No. 30 affidavit of Edgar Franklin Burns dated the 18th of October 1946. This affidavit applies to specifications 11, 12, 2, 14, and 9.

DEFENSE: Sir, I direct your attention to page 2, paragraph 4 in line 2 thereof, starting with the words "Katsura was responsible" thence for the next five or six lines ending "in his own quarters" on the affiant's own statement he is merely passing on rumors, drawing conclusions and there is no attempt to qualify him for observation and the same is true two lines below " it was generally conceded" down to "Koreans who were friendly" I move these two sections be stricken for the reasons assigned.

LAW MEMBER: Then, prosecution, I would like to hear you specifically on the second objection and also on the first one about "Katsura was responsible". The rest may be of some value to us in other connection.

PROSECUTION: Sir, with regard to the first objection -

LAW MEMBER: Just the first line.

PROSECUTION: I think he has objected to more than the first line.

LAW MEMBER: I will rule the most stay in because it corroborates -

PROSECUTION: You mean Katsura was responsible. That is borne out by the

LAW MEMBER: I still have a doubt in my own mind. I feel that the Commission can cope with what is really meant and I will overrule the objection.

DEFENSE: One further objection to the paragraph on page 3. It is wholly irrelevant and has nothing to do with the case.

PROSECUTION: I am willing to strike that out.

LAW MEMBER: The last paragraph is struck out by mutual agreement and the affidavit is accepted as Exhibit 30.

(Document referred to was produced and marked Prosecution Exhibit No. 30 for identification and was received in evidence.)

(Prosecution Exhibit No. 30, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I now offer as Prosecution Exhibit No. 31 affidavit of Peter Russell French dated the 12th of June 1946 at Tamworth, Australia.

DEFENSE: What specification?

PROSECUTION: This applies to specification 14.

DEFENSE: May it please the Commission, the defense has no objection but we would like to include for consideration paragraphs 14 and 15.

sentence immediately following the part the defense has not objected to that "I worked in the kitchen for awhile and laborers would come in and bring beef to have the cook fix it with eggs".

You cannot object to part and not to the rest of it, the part that bears out the reason I offered this statement in evidence.

The defense is endeavoring to have his cake and eat it at the same time. If he had objected to the following sentence and stated the reasons, if the reasons had any value he might have something; but he has deliberately not objected to the sentence I have just read.

Furthermore this whole thing is borne out by other corroborating evidence. It is offered as part of the whole case.

DEFENSE: Sir, may I ask the prosecution -

LAW MEMBER: Wait a minute now.

PROSECUTION: On the objection "it was generally conceded", there again the defense stopped in their objections. They have not objected to the sentence "I got my job in the cook house by paying fifty American dollars for it. I held the job for two weeks and then someone else bought it".

LAW MEMBER: Speaking for myself, I have considerable doubt whether it applies to any specification.

PROSECUTION: Specification 14 sir.

DEFENSE: Yes sir, there will be. He has not indicated what he intends to read. May it please the Commission, at the time the defense objects to the attempted introduction into the evidence here of the testimony of Takeo Katsura in a previous trial taken during the trial for the following reasons.

PROSECUTION: I have not finished it yet.

DEFENSE: I thought the Commission said, "does the defense have any objection"?

PRESIDENT: I did.

DEFENSE: At the time Takeo Katsura was called into the Sakamoto case and he was called as a witness for the prosecution he was then in Sugamo Prison. The prosecution knows and it should be quite apparent that at some time later Katsura would be tried for one of these offenses.

At no time does the record show, and I am prepared to bring the court report in to give the best evidence, - at no time was the accused, Katsura, advised of his rights in respect to answering questions which might incriminate him. Had he been advised he would not have testified. Nowhere does it appear that he was ever represented by an attorney yet the prosecution called him as a witness for the prosecution knowing that he was going to be tried at some later date.

They knew his rights were placed in jeopardy at that time because he was in Sugamo waiting a trial and they knew that if he had been advised of his rights he would not have testified.

LAW MEMBER: For the defense the additional paragraphs will be added and the affidavit will be accepted as Exhibit No. 31.

PROSECUTION: May I say sir that the defense may be prejudicing the rights of an accused in the future by admitting paragraphs 14 and 15 at the time. It will be a matter of record. If the defense wishes to put that in he may do so.

DEFENSE: If I did not want it in, I am quite competent and capable of deciding how to handle the case.

PROSECUTION: All right. I wish the records to show that this will be read at the request of the defense.

LAW MEMBER: The record already so shows.

(Document referred to was produced and marked Prosecution Exhibit No. 31 for identification and was received in evidence.)

(Prosecution Exhibit No. 31, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: Sir, that completes my affidavit testimony. I do wish to read from the record of the trial of Yukichi Sakamoto, former Camp Commander.

PRESIDENT: Any objections by the defense?

I do not know why it is necessary to go further on this. SCAP directives go to the same point. They say, we are going to give these men a fair trial. How in the name of conscience can a man have a fair trial? He is brought in by the prosecution, forced to testify and never advised of his rights. I submit that if this testimony offered at the time is allowed to go into the record that it is highly prejudicial. It deprives the defendant of his rights and it would not be possible for him to have a fair trial sir. I know that much will be made out of the fact and they will tell you that you have to take judicial notice of this record. I do not go along with that line of reasoning. What some other Commission has done where they were derelict in their trust to these men, does not become binding on this Commission at all.

Your sole duty is to try the accused well and fairly and see he is given a fair trial. He was not advised of his rights. If he had been he would not have testified.

PROSECUTION: Are you through Mr. O'Brien?

DEFENSE: Temporarily.

PROSECUTION: I wish to point out that the defense represented Takeo Katsura at the time that Yuhichi Sakamoto was tried and they should have known that they would be representing him. The defense section represents all the accused in Sugamo. At that time the defense could have protected Takeo Katsura from making any statement that might have been prejudicial to him. There is no duty on the part of the court or the prosecution to warn any Japanese National as to testimony he may give.

Point two. This Commission is a fact finding body. I submit that Katsura will not be prejudiced unless he was falsely testifying at the Yuhichi Sakamoto trial. If he was telling the truth that is what this Commission is after.

Now, paragraph 2 (a)(5) of an order dated the 27th of December 1946, the subject being, "Amendments to Regulations Covering Trials of Accused War Criminals" states -

PRESIDENT: What is the date of it?

PROSECUTION: 27 December 1946.

"All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured."

And in conclusion I submit it is a matter which this court can take judicial notice of. The record of any previous trial tried by any of these commissions under 8th army authorities and in turn under SCAP. The court I believe should and has to take judicial notice of such records.

DEFENSE: I would just like to state sir, that apparently the prosecution in including ex post facto legislation is trying to contend that a

document of ten months ago can be put into this trial and regarded as a purported confession. This record shows conclusively an order was issued for the trial of Tuhichi Sakamoto. No defense counsel was appointed to protect Takao Katsura. The record shows he was called as a witness for the prosecution. He was in Saigon. They knew they were going to prosecute him at some later date.

PROSECUTION: Where fault is that, the prosecution or defense: Wasn't it up to the defense to advise him at that time. I specifically brought that point out in the last affidavit I read because I knew I will be able to use that in the record at some future time in the case of Hajime Tonda. It is a matter that all English speaking courts will take judicial notice of, - the records of any of the courts in their jurisdiction and especially in a case such as we have here where we have a record of a trial taken by order of the Supreme Commander.

PRESIDENT: Is all this testimony you are offering purely the testimony in this case?

PROSECUTION: I am also offering a portion of the testimony of Tuhichi Sakamoto.

PRESIDENT: In the same case?

PROSECUTION: Yes.

DEFENSE: I do not even know what they are trying to offer. I have not seen this purported document they have given the Commission. I just say this, that if the court or commission can take this record and use it in this trial now and say, this is what he said when he was not advised of his rights, then I have not heard such a statement that a court has to take judicial notice of another court's action. It is done nowhere under Anglo Saxon law.

PROSECUTION: This point is so clear cut to me that I should not need to answer, and admission against an interest is admissible any time in any court and in any place in the world. This point came up in a previous trial in which Mr. O'Brien and myself were involved and the Commission ruled against Mr. O'Brien. I am not stating it as a precedent but the court can take judicial notice of that ruling.

DEFENSE: If it is not stated as a precedent I do not know any other reason unless it is prejudicial. This Commission is not bound by any ruling of Colonel Easterday three weeks ago. I can point out where that Commission did not agree with admissibility of evidence as this law member has ruled and I do not contend the law member here is bound to follow what was done by the Commission before.

PROSECUTION: I have stated, not one good reason, but five good reasons, why this record, these extracts from the record of Tuhichi Sakamoto should be admitted in evidence. The defense at all times represented Takao Katsura or they should have known that they would be representing him in the future.

The second point is that Takao Katsura made these statements under oath. They are facts. That is what this Commission is after. You want the facts. If there is anything in the statement he made in this record when he takes the stand he can say, "I lied". I am presenting them as the truth and I am asking that they be admitted under the amendment to SCAP regulations.

PRESIDENT: The court will adjourn until tomorrow morning at nine o'clock.

The Commission then at 1955 hours on Wednesday, February 12, 1947 adjourned to meet at 0900 hours on Thursday, February 13, 1947.

WYMAN P. GROFF, COLONEL, INF.
President

Yokohama Court House
Yokohama, Japan
Thursday, February 13,
1947

The Commission resumed the hearing, pursuant to adjournment, at 0900 hours, at which time the members of the Commission, prosecution and defense, and the accused, the interpreters and the reporter were present.

PRESIDENT: The court will come to order.

LAW MEMBER: We do not want to open up the matter again. We however wish you to feel that you have been heard satisfactorily on the matter before us.

PROSECUTION: Well sir, I do not know whether I have actually pointed it out or not - page 5 of SCAP Rules. Paragraph 2 on page 5.

LAW MEMBER: Yes. I have that noted. I think you showed me that before. Do you feel you have been heard sufficiently?

DEFENSE: Yes sir. I am satisfied that the defense has presented their side of it and we are willing to abide by the Commission's ruling.

LAW MEMBER: The present question is the admissibility, as part of the prosecution's case of the record of the accused's evidence in the trial of a member of the staff of this camp. I can first say that there is no question that this record could and may yet be used in the cross-examination of the accused if he elects to testify. This for the obvious reason that a witness cannot be permitted to tell one story at his confederate's trial and another at his own without the fact being brought to light.

It should be observed, however, that if the accused were to elect not to testify, the record now offered would stand alone and, further, that if admitted, it will stand alone when dealing with any loose ends by the defense at the conclusion of the prosecution's case.

Now, on the point at issue, the ruling is that the record is admissible now and the basis for this is the direction of SCAP rule 5(d)(2). The Commission shall take judicial notice of proceedings, records and evidence of the Commissions.

In addition, we have Rule 5(d)(5) as amended by SCAP letter of November, 1946, which reads in part:

> "All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made."

The evidence in the former trial can not be distinguished from a statement under this rule.

Now, having ruled that this record is admissible, I propose to take the time to assist the members of the Commission in assessing the weight they will give to it.

The fact that it is admitted he still leaves the value of the evidence subject to the usual careful scrutiny which must be all the more careful if this evidence stands alone.

The operation of Rule 5(d)(5) leaves it open to the defense to attack the evidence by showing how it may have been procured. On the other hand, the fact that this record is admissible, as the rule says, without proof of its being voluntarily offered, does not in my view thereby establish any presumption that it was volunteered.

The Commission may presumably, and in a former case did - or put it another way, would, if necessary, have required the attendance of the witness and his testimony under penalty and, therefore, the voluntary nature of the testimony, if important, as it may be, is still a matter to be demonstrated by the prosecution if the fullest weight is to be given to it.

A further factor is the lack of any warning to the accused at the time this testimony was given. I find nothing in the SCAP or Eighth Army rules providing that such warning be given, nor any formal statement that a witness at these trials is entitled to excuse himself from answering incriminating questions.

I do find, however, that it is a practice adopted in some Commissions, and I give this as my own opinion, that it is a very proper practice to observe and the privilege, if not the right, to be excused from testifying if his interests are to be protected.

I feel there is no need, nor would it be proper, to observe upon the manner in which this was carried on at the former trial. However, the absence of such warning is just one factor which the Commission must bear in mind.

One further point in considering this, is that the members may have to distinguish in their minds any admissions of the accused in this testimony which are incriminating in themselves. They must distinguish these from mere admissions concerning details of the circumstances which may have quite a significance now but which might have been answered differently and yet truthfully at the time if the accused had been confronted at that time with the present charge and specifications.

Now, the evidence, as I have read it, is very simple and some of that may be unnecessary. Before reading the extract for the record, I want to know whether any specific objections are being made to any parts of this evidence on the ground of irrelevancy; and since there are a few lines of evidence of Nakamoto tendered by the prosecution, I would like to hear the defense.

DEFENSE: In line with that, we are standing on the original motion.

LAW MEMBER: And you are not making any specific objections?

DEFENSE: It is our theory that all should go out and we will abide by the Commission's ruling on that.

LAW MEMBER: I am not satisfied myself that the evidence of Lieutenant Nakamoto should be admitted so I will ask the prosecution to speak on that. As far as I know, Lieutenant Nakamoto is available and his evidence is the best evidence. On the other hand, since there is not much you will want to prove by his evidence, if you and the defense can agree to save the trouble of calling the witness -

MEMBER: This may help. I intend to call Captain Nakamoto as a defense witness and he will be here before the Commission.

LAW MEMBER: And you are not objecting to the pre-caution you bring in as part of their case the extract they have offered?

DEFENSE: I thought I made that clear yesterday.

LAW MEMBER: I may say I did not give that much thought when you were speaking. What is your view?

DEFENSE: I am only stating what has been stated before. I do not take the same view point as adopted here. I do not think the testimony of anyone in any case ought to be tendered as evidence in a subsequent case. I take that position as far as the accused is concerned. Nakamoto was on trial for his life and it is quite natural that, perhaps, in any matter of any responsibility which he could throw off on someone else, that would be the natural thing to do. His testimony should be discounted and he is going to be here as a live witness.

LAW MEMBER: My tendency is to disallow the parts of Nakamoto's evidence.

PROSECUTION: I take the position the Commission is bound by MCAP rules; that the Commission must allow Nakamoto's testimony to be admitted.

I also wish to point out that Nakamoto will be a hostile witness to the prosecution. Nakamoto has nothing to lose when he takes this stand. Perjury will mean nothing to him. What can the Commission do to Nakamoto if he perjures himself? The man is already serving a life sentence. I say this, under the circumstances, will be the best evidence. Of course, I reserve my right to cross-examine Nakamoto on anything they may bring forth but this, under the circumstances, is the best evidence.

DEFENSE: Might I enquire at this time, since the prosecution insisting that as evidence in chief, if they will not then be bound by their evidence and not allowed to have subsequent impeachment?

LAW MEMBER: I do not think this Commission is bound by any evidence given one time, but it is up to us to do our best to figure out the right evidence. The prosecution's point about being bound by Army rules - as I see it - we are bound to admit there was a trial and there were proceedings. The best evidence is Nakamoto himself and I rule that pages 256, 216 and 219 of the extracts from the former trial are not admissible. The remaining parts are admitted and will now be marked as Exhibit 32 and read.

PROSECUTION: May I say I am not offering this as an exhibit. I have prepared this solely for the convenience of the Commission. I would desire that the reporter take this down and put it in the record.

LAW MEMBER: Very well. It is not an exhibit.

MEMBER: As a member of the Commission, while recognizing the right of the Law Member to make a ruling as to the admissibility of evidence, I wish to take exception to what I believe is a violation of one of the rules of MCAP as to taking judicial notice.

PRESIDENT: As President of this Commission, I feel that the remarks of the member are out of order.

PROSECUTION: Sir, I will read these extracts from the trial of Yuhichi Sakamoto record which took place at Yokohama, Japan, on the 19th of February, 1946, before a military commission appointed by the Commanding General, Headquarters 8th Army. This is the testimony of Takeo Kateura, at pp. 76 and 77.

With regard to this testimony I am offering, I am offering it solely in corroboration of the affidavit testimony already in evidence.

EXTRACT FROM THE TRIAL OF [illegible]

I Testimony of [illegible]

Pages 75 & 77

Q. Do you know a prisoner of war whose name was Newman?
A. Yes, sir.

Q. What nationality was Newman?
A. An Englishman, sir.

Q. Did you ever strike Newman?
A. Yes, sir, Newman, sir.

Q. When was this?
A. At the Kumamoto Camp, sir, in the spring of 1943, sir.

Q. Where were you when you struck Newman?
A. I was in one of the huts, one of the huts the prisoners were living in, prisoners' quarters.

Q. Will you please relate to this Commission the facts and circumstances surrounding this particular beating?
A. There were report of someone losing money in the hut, sir, wherein I, Commandant and NCO named Nakayama, and I think Tamin entered the hut, I did not remember why we went into hut—probably for commandant's inspection going the rounds or something like that. Then the man who said he lost money was in hut that time. The man called Newman was working in hut. Commandant said Newman was the only one who was in this hut. He told me to ask Newman whether he had taken the money. Newman said "no".

Q. Then what happened?
A. Then commandant said, "He is the one must have taken," and I asked did Newman taken money. He said "no." Then commandant told me to slap him, so I hesitated, and he ordered me to hit again, so I hit him once. Then I wanted to quit. I didn't intend to hit again, but commandant ordered me to hit, so I hit him again.

Q. With what were you hitting him?
A. Slap, sir, with hand, sir.

Q. Were you striking him with your open hand or closed fist?
A. Open hand, sir.

Q. How many times did you strike Newman?
A. Twice.

Q. Was Newman punished any further?
A. Yes, sir.

Q. Will you please relate to the court what this punishment consisted of?
A. Commandant put Newman in guardhouse, sir.

Q. Did he make any statement at the time he put him in the guardhouse?
A. I do not remember, sir.

Q. How long did he keep Newman in the guardhouse?
A. Pardon me, sir. He put Newman in the guardhouse. Then he told me to gather everybody who was in the camp that day, so first I gathered cooks and medical orderlies, asked them if one of them ever taken money, so they say they don't know anything about money, so commandant say, "I would put you in the guardhouse until you confess, one of you confess," and they were all put in the guardhouse.

Q. How many were put in the guardhouse at this time?
A. About 16 or 17, sir. Maybe less, maybe more, but I cannot remember exactly.

Q. Did you hear Sakamoto make any statement to these men at the time he put them in the guardhouse?
A. No. He just asked, he said, "Somebody lost money in the camp," and he asked whether they know about the losing money or whether one of you have taken it. They said they don't know anything about the money, and he said, "I put you in the guardhouse until you confess."

Q. How long were these men kept in the guardhouse?
A. They were put in the guardhouse from about 10 or 11 o'clock in the morning to about the same time next day, sir.

Q. Were these men fed during this period?
A. No, sir, they were without food.

Q. Did you hear Sakamoto order anybody not to feed these men?
A. I think he ordered to one of the prisoners' man, Warrant Officer James.

Q. What did he say?
A. "These men will be put in the guardroom without food until they confess."

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Q. Did you ever at any time strike any et or prisoner except Chilton?
A. Yes, sir.

Q. Will you please relate the circumstances to this Commission?
A. Yes, sir. While we were at Mushiroda Camp, 1944, it was in the summer, probably July or August or Just—I do not remember exactly—one day while I was on the watch tower—I was told to stay up there and watch men work—commandant came around for inspection tour. As he climbed up tower he told me, "What are you doing here?"

Q. Who do you speak of when you refer to commandant?
A. Captain Sakamoto, sir. I didn't know him coming. I was lying on floor, floor of tower. He said, "You cannot watch men sitting down on floor. Look over there. Some men are not doing anythig,"

and he said, "Go and hit those men who are standing there," so I went down from tower and I start to walk toward men. He handed us to take the bamboo pole—I should say bamboo stick—behind me, so I took it and hit a few men in the shoulders two or three times each, and I stayed there for a little while and the commandant went away from tower and I went back to tower.

Pages 92 & 93

Q. How large was this bamboo stick with which you struck these men?
A. It was small bamboo, sir.

Q. Approximately how large?
A. About one inch in diameter, sir.

Q. And how long?
A. About two, three feet, sir. It was not long, sir.

Q. How many times did you strike these men?
A. I do not remember exactly, but two or three times each, sir, and I did not hit them hard.

Q. On what part of the body did you strike these men?
A. Shoulders, from back.

Q. Were the men able to continue their work?
A. Yes, sir, they weren't struck hard.

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Q. Did you personally ever use any of the Red Cross supplies at the camp?
A. I, sir?

Q. Yes.
A. For my own purpose?

Q. Yes.
A. No, sir.

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Q. Did you yourself personally ever use any of these supplies?
A. Yes, sir.

Q. Of what did these supplies consist?
A. Milk, sir.

Q. Why did you previously state to me that you had never used any of the Red Cross supplies?
A. Because I thought you said if I had taken them.

Pages 106, 107, 108 & 109

Q. You have stated that you have hit various prisoners of war at various times?

A. Yes, sir.

Q. Did you at any other time strike any other prisoners?
A. Yes, sir.

Q. When was this?
A. In Mashiroda Camp, sir.

Q. Was Captain Sakamoto the commanding officer at the time?
A. Yes, sir.

Q. In what year?
A. 1944.

Q. Do you know the approximate month?
A. I'm not sure, but it's around September or October, sir.

Q. Who did you strike?
A. I do not remember the name of the man, but he was a Dutchman.

Q. Did you strike only one person at the time?
A. Yes, sir.

Q. With what did you strike him?
A. Hand, sir.

Q. Why did you strike him?
A. One day while I was at working party on the watch tower, commandant came to tower.

Q. Are you speaking of Captain Sakamoto?
A. Yes, sir. Captain Sakamoto was there all the time. Other commandant was there only last two months or two and a half months. He was a Dutchman—

Q. What year was this?
A. 1944, sir.

Q. At what camp?
A. Mashiroda Camp, sir.

Q. Proceed. Why did you strike the prisoner?
A. Dutch party was shifting earth using trunk box and filled earth, and was passing that over the hill, and when they bring the car down one by one there was a little gasoline engine was waiting at the foot of the hill. They brought one by one and connect them, and was pulled by gasoline engine. Commandant car come Dutchman dropping instead of taking this car down slowly; they were letting car go. When they go down they go quite speed and hit the other trunk filled with the soil waiting down the hill. Rest of car come down. "The man there is letting trunk down," he said.

Q. Who said this?
A. Commandant, sir. Commandant said, "Tell them not to drop them. If they disobey, hit them." Then I went down from tower and went to these people and told them not to let the car go. They have

been told many times before. I mean not same day; day before or other day they were told many times not to do that, so I told them not to do that. "Commandant is watching from the watch tower. That time I did not hit them. I went back to tower. Commandant was still on top. I stayed with commandant for a little while, and then commandant went away. Then a little while later I went up the hill where they were working. Same party was digging here; the other party was digging there, and there; so I went there first and as I walked toward the other party I heard somebody shout, "Look out," so I turn around and I saw the car was speeding down, and a few men at the foot of the hill narrowly escaped being caught between two trucks.

Q. Then what did you do?
A. So I went there and asked those man who let the truck go. "Why did you let the truck go," and they said it was heavy and the party commander told them to let go; so I went to party commander and said, "Why did you do that," and I pushed him. He fell, and when he come up he said his side hurt.

Q. Did you hit him with anything?
A. No, sir.

Q. Did you have anything in your hand?
A. No, sir, I just put my foot behind his foot and pushed him.

Q. Was that a Jiu Jitsu move or Judo move?
A. I don't think so, no, sir. We couldn't use any Jiu Jitsu. I pushed him. Then he fell down, and when he come up, when he got up he got up right away and he said his side hurt, so I looked but I didn't see any wound.

Q. Did you strike him anymore?
A. No, sir.

Q. What did you find out later, if anything, had happened to this man? Did he suffer any injury?
A. Yes, sir. He said he hurt, so I looked but I didn't see any wound, any scratch or any wound, so he said it hurt so I told him to rest and he didn't do any work, and there was medical orderly--There was not always but sometimes one medical orderly was there at working party. I told medical orderly to take this man back to camp.

Q. Did you find out later that anything in particular had happened to this prisoner?
A. Yes, sir.

Q. What did you find out?
A. I came back to camp after 5:00 o'clock because we work there until 5:00 o'clock, 5:00 or 6:00 o'clock, sometimes 7:00, sometimes 8:00; it's not always the same. I went back to camp, and I went to medical inspection room to find out what was wrong with him, so doctor--I think it was American doctor--Dr. Hasteki told me that man's rib was broken or cracked.

been told many times before. I mean not same day; day before or other day they were told many times not to do that, so I told them not to do that. "Commandant is watching from the watch tower. That time I did not hit them. I went back to tower. Commandant was still on top. I stayed with commandant for a little while, and then commandant went away. Then a little while later I went up the hill where they were working. Some party was digging here; the other party was digging there, and there; so I went there first and as I walked toward the other party I heard somebody shout, "look out," so I turn around and I saw the car was speeding down, and a few men at the foot of the hill narrowly escaped being caught between two trucks.

Q. Then what did you do?
A. So I went there and asked those men who let the truck go. "Why did you let the truck go," and they said it was heavy and the party commander told them to let go; so I went to party commander and said, "Why did you do that," and I pushed him. He fell, and when he came up he said his side hurt.

Q. Did you hit him with anything?
A. No, sir.

Q. Did you have any stick in your hand?
A. No, sir. I just put my foot behind his foot and pushed him.

Q. Was that a Jin Jitsu move or Judo move?
A. I don't think so, no, sir. We couldn't use any Jin Jitsu. I pushed him. Then he fell down, and when he came up, when he got up he got up right away and he said his side hurt, so I looked but I didn't see any wound.

Q. Did you strike him anywere?
A. No, sir.

Q. What did you find out later, if anything, had happened to this man? Did he suffer any injury?
A. Yes, sir. He said he hurt, so I looked but I didn't see any wound, any scratch or any wound, so he said it hurt so I told him to rest and he didn't do any work, and there was medical orderly--There was not always but sometimes one medical orderly was there at working party. I told medical orderly to take this man back to camp.

Q. Did you find out later that anything in particular had happened to this prisoner?
A. Yes, sir.

Q. What did you find out?
A. I came back to camp after 5:00 o'clock because we work there until 5:00 o'clock, 5:00 or 6:00 o'clock, sometimes 7:00, sometimes 8:00; it's not always the same. I went back to camp, and I went to medical inspection room to find out what was wrong with him, so doctor--I think it was American doctor--Dr. Kostski told me that man's rib was broken or cracked.

Q. Now did you at any other time other than the occasions you have already mentioned, strike any of the prisoners of war?
A. Yes, sir.

Q. When was this?
A. Same place, sir; same working party.

Q. At what camp?
A. Mushiroda camp, sir.

Q. Was Sakamoto the commanding officer?
A. Yes, sir.

Q. What month was this?
A. September or October; around the same time this thing happened.

Q. Who did you strike?
A. I don't know the name of the person, sir. If I see him, I can identify him.

Q. With what did you strike him?
A. Hand, sir.

Q. Where did you strike him?
A. I struck him in the jaw, sir.

Q. How many times?
A. Once, sir.

Q. Why did you strike him?
A. One day the same place, the thing I mentioned before, they were making tea at working party for all these men, and issued them at mealtime, and the break time, and there were some complaint from men before that somebody was stealing tea. One day I went there. I saw a man stealing tea. I saw him. He filled his own canteen that American soldier use, and two water bottle filled with tea. I thought I scold him and let him go, but guard came around there. He was walking from this place where they were making tea to tower, and this man said, "What happened," so I said, "Nothing." He said, "Ah, stealing tea again.. Report to commandant."

Q. Did you report this to the commander?
A. No, sir.

Q. Why didn't you report it to the commandant?
A. Because I thought he would be probably put in the guard room, or something like that, so I hit him.

Q. Did you strike any other prisoners other than those you have already mentioned to us, while you were at any of the places Fukuoka Prisoner of War Camp was located?
A. Yes, sir.

Q. Other than those which you have related to the court so far?
A. Yes, sir.

Q. When?
A. Some Mushiroda Camp, sir.

Q. Was Sakamoto the commanding officer of the camp at that time?
A. Yes, sir.

Q. When was this?
A. About the same time, sir.

Q. Who did you strike?
A. Man reported to me--

Q. I said who did you strike?
A. I don't know the name of the man, sir.

Q. With what did you strike him?
A. Hand, sir.

Q. How many times did you strike him?
A. Once, sir.

Q. Why did you strike him?
A. One of the men reported to me that somebody stolen some wallet from him, and then when I asked them about this wallet the man said he didn't take, but some of the other men, four or five other men, identified this wallet was his, so I slapped him once, and I took wallet from him and give to other man.

Q. Was Sakamoto present at the time you slapped this man?
A. No, sir.

Q. Did you report this matter to him?
A. No, sir.

Q. Would you ordinarily be the man through whom Captain Sakamoto would issue an order of that type?
A. When he tells me, sir, yes, sir.

Q. Do you know who got that party started?
A. One day after the commandant goes home, I come from my office to our quarter where we eat, and went into dining room. Sergeant Miyohara and couple of the soldier and those corporal called Ono was there drinking beer. They offered me to drink beer, so I sit there, and then we all together drinking the beer. We were talking about music and dancing and songs, something like that. Then this Corporal Ono, he was new at the camp. He just came to the camp, say he had never seen prisoner of war sing or dance or do other things. I mean he has never seen the show put up by the prisoners of war, so Miyohara said, "Well, you can see them," and he told me to tell prisoners of war that they may have concert if they wanted to. Then I knew it was the date President Roosevelt died. We heard the news, we heard the radio news at 12:00 o'clock so I told Miyohara, "I don't think this is the day for concert." He said, "It's all right, they don't know

about the death of President." Then I not go right away. I was sitting there and was drinking the beer. Then he again told me, "Tell them they are going to have a party." By that time I forgot about President's death, because I was drinking. I went out. Usually we told English Warrant Officer called James. I went out to tell him, but I saw some other prisoner run into barracks, so I stopped him and I said, "If you want to have concert tonight, you can have a concert." Then I came back to dining room and was having beer with them, and later when I went out people were gathered in parade ground and they was having singing. I stayed there about four or five minutes and then went away, and when I came out again it was the end of their party--I mean concert party. Then I heard one of American officer blow bugle and it sounded like the tune like they play when they have a funeral, or something like that. I don't know the tune but it sounded like that in which they usually did not that, so right away I thought about the President's death. Then when I walked there Mr. Mostoki, American Mr. Mostocki told me, "Mr. Katsura, this is terrible." So I say, "What?" He said, "Here our President died, and Japanese telling us to have a concert," so I said, "Did you know the news?" He said, "Yes", so "Where did you hear?" "Some of the men heard working party," so I said, "I am sorry, Mr. Mostoki." Then he called Colonel Beecher and I told him also, "I apologize, I mean I am sorry." Then I went back to the dining room and told this corporal One that the men know about the President's death, and this is bad. I think it is bad, and he did not say anything; and Kiyohara at that time, I think he was-I'm not sure-officer of the day. That's all, sir."

PROSECUTION: With regard to the testimony of Yuhichi Sakamoto I should like to take exception to the ruling of the Law Member. I wish to know if I will be able to offer the extract of Sakamoto's testimony after Sakamoto testifies?

LAW MEMBER: Put it this way. We will be able to use it for cross-examining him with.

PROSECUTION: Yuhichi Sakamoto's testimony here impeaches Katsura's extract. The whole thing should have been offered together but I will offer it.

LAW MEMBER: You can certainly offer it.

PROSECUTION: I do not wish to offer it in part to the Commission. I wish to offer it in whole at that time.

LAW MEMBER: I won't make any ruling on it at the moment.

PROSECUTION: Alright sir, I will wait.

Sir, I also wish to offer in evidence the admissions of Takeo Katsura taken at Sugamo prison on the 20th January, 1946, as the prosecution's exhibit No. 32.

DEFENSE: Then, sir, I have to object at this time. I have not a copy of it. There has been a lot made of SCAP rules, about 24 hour notice to the counsel. I have never had a copy and have not seen it until this minute.

PROSECUTION: May I say that all these affidavits have been sent to the defense.

LAW MEMBER: Is this an affidavit?

PROSECUTION: I assumed the defense had this affidavit. About a week ago Mr. O'Brien and I got together and I attempted to furnish him with all the affidavits he was lacking and at that time I thought I saw this affidavit in his possession.

DEFENSE: This has never been served on me and if it had been , let the prosecution produce their receipt.

PRESIDENT: Mr. O'Brien, I don't like the attitude you have, nor do I like your attitude, Mr. Poitch. I should like you to be a little more gentlemanly in your remarks. If you want a continuance or a recess the Commission will grant it. I do not want you to be bickering.

DEFENSE: I am sorry if I have been carried away. SCAP rules do provide that anything to be offered as an affidavit or exhibit must be served on the defense 24 hours prior to the arraignment.

PRESIDENT: I think the Commission is well aware of that.

DEFENSE: I didn't see it until this minute. I don't think this can be considered as an exhibit.

PRESIDENT: The Commission will be very happy to recess for 24 hours to give you an opportunity to deliver it.

DEFENSE: I thought SCAP rules provided 24 hours before arraignment.

PRESIDENT: I think if you look further you will find that if at any time during the trial evidence comes up -

DEFENSE: Well, this is a lengthy document - eight pages. If I can be given, perhaps, ten minutes to read it?

PROSECUTION: I am quite willing to use this affidavit in rebuttal. However, Mr. O'Brien says he does have a copy of the other affidavit dated the 20th May. I will offer that in evidence provided there is no objection.

PRESIDENT: Are you withdrawing the other?

PROSECUTION: I will withdraw the other affidavit.

PRESIDENT: You can serve it now, then.

PROSECUTION: No. I will use this in impeaching the witness.

PRESIDENT: It is at least on the record now that Mr. O'Brien knows about it and has a copy of it.

DEFENSE: As to the other one, I did have a copy of that.

PRESIDENT: The further admissions are now offered and there is no objection.

DEFENSE: No objection.

PRESIDENT: The further admissions of the accused dated the 20th May, 1946, are now accepted as Exhibit 32.

PROSECUTION: Do you have any objections to this one, Mr. O'Brien?

DEFENSE: No. No objection.

(Document referred to was produced and marked Prosecution Exhibit No. 32 for identification and was received in evidence.)

(Prosecution Exhibit No. 32 was read by the Prosecution.)

PROSECUTION: The prosecution rests.

DEFENSE: At this time, may it please the Commission, the defense respectfully requests an adjournment of a reasonable length of time to go over the evidence that has been adduced. There has been quite a volume of it. I would like some time to marshal the facts and go over it with the Japanese attorney also in order to consolidate the matter thus far offered in preparation of the motion.

I wish also, sir, to advise the Commission that I have to get some medical treatment for my foot. I have a chipped bone, so I will not be able to do too much work this afternoon. It is purely a personal matter.

PRESIDENT: How much time would you want?

DEFENSE: I would like to have one day to work on this particular motion if that is not taking too much time of the Commission. I would like to suggest that we recess until Monday morning. However, if that is too long a time I can be ready tomorrow. I would, however prefer to put it over the additional day.

PROSECUTION: I would like to continue this case right now and finish the case up. The defense needs no time so far as I know to prepare their motion. I have offered the affidavits only that the defense has had in their possession for quite some time and they have had the opportunity to prepare their motions.

The ordinary sequence of a trial such as this is for the defense immediately to make their motions. I do not wish to unduly prolong this trial inasmuch as I am due to go home about May 4th and I have a number of trials which I wish to finish before I go. I do not want to waste so much time, but it will be a waste if we take a recess.

DEFENSE: Sir, I would like to make one observation. Mr. Deitch well knows I finished a case against him a week ago. I have not had months and months or days and days. I just got out of a case with a verdict last Monday and immediately started on this case. I have other cases in other areas I am working on, too.

PRESIDENT: The motion will be granted and the Commission will grant a continuance until tomorrow morning at 9:00 o'clock and I may as well inform the prosecution and defense that the Commission may not sit tomorrow afternoon.

Anything further?

PROSECUTION: May I ask that the defense advise me of the motions they will make? I do not need it in writing but I wish advice on the motions they will make.

DEFENSE: I will be very glad to go over it with Mr. Dalton and explain everything I intend to offer.

PROSECUTION: Thank you.

DEFENSE: On the matter of the Commission sitting tomorrow. I have two witnesses to bring from Augsburg. May we be reasonably certain that we will not sit.

PRESIDENT: This is off the record.

(Off the record discussion)

PRESIDENT: Is there anything further?

PROSECUTION: No sir.

PRESIDENT: The court will adjourn then until 9:00 o'clock tomorrow morning.

The Commission then 1015 hours on Thursday, 13th February, 1947, adjourned until 0900 hours, Friday, 14th February, 1947.

NORMAN P. GROFF, COLONEL, INF.
President.

Yokohama Court House,
Yokohama, Japan
Friday, 14th February,
1947

The Commission met, pursuant to adjournment, at 0900 hours on Friday, 14th February, 1947, all members of the Commission, the prosecution and defense, the accused, interpreters and reporter all being present.

PRESIDENT: The court will come to order.

Off the record.

(Discussion off the record.)

PRESIDENT: Are you ready to proceed?

DEFENSE: I would like to say this, sir, if it please the Commission, at the close of court yesterday morning, the prosecution offered a statement of the accused in evidence to which objection was taken. Since that time I have had opportunity to examine the statement and if the prosecution wishes to offer it at this time I will withdraw my objection.

PRESIDENT: What is the statement with reference to the camp commander?

DEFENSE: No sir. The statement taken from the accused in January, 1946. After the objection was taken, the court will recall that the prosecution withdrew their offer.

PROSECUTION: I have already stated that I will offer it in rebuttal. There is no reason to offer it now. Rebuttal will do just as well as now.

PRESIDENT: The defense may proceed.

DEFENSE: May it please the Commission, in view of the fact that it is just two days ago since I spent some time on a motion, I will dispense with that. My motion will, for that reason, be quite short.

If it please the Commission, the defense now moves to strike certain parts and certain specifications in the case at bar and/or for a finding of not guilty on those specifications.

With respect to specification No. 1 wherein it is alleged that the accused did wilfully and unlawfully mistreat, abuse and strike John LaPay. I wish to point out to the Commission that Prosecution's exhibits 6 and 19 refer to a beating of LaPay not in the prison compound immediately outside the barracks. Yet prosecution exhibit 23, which is LaPay's, the victim's own statement, makes no reference to a beating taking place outside the barracks in the compound. He refers to a time he was slapped by the accused in the mess hall.

I mention these discrepancies because I am satisfied that since the alleged victim made no mention of this, this evidence falls short of establishing the guilt of the accused beyond reasonable doubt.

With respect to specification 2, I think we should transgress this until we have an opportunity to offer evidence in chief on that point.

With respect to specification 3, the evidence shows that the accused struck Newman only, however, on the direct order of his commanding

officer. Hence, an allegation stating that the accused did "wilfully" mistreat falls by the way. The prosecution must be bound by its own evidence.

There is no evidence offered here that the accused did wilfully of his own volition and will strike Hennen. The converse is true. It was done on direct orders of his commanding officer.

Specifications 4, 5, 6 and 7 I am passing until our evidence has been put in. With respect to No. 8 wherein it is alleged that the accused did wilfully and unlawfully mistreat and abuse Albert A Roby, Jr., an American prisoner of war, by beating him and confining him without proper protection from the cold. The evidence adduced - I have reference to Exhibit 7, the affidavit of Colonel Loscher - stated that Major Roby was hit by the accused or by his direct orders. Exhibit 15, the affidavit of Captain Wallace, refers to a "dog box" as a form of punishment, but it does not state that the accused put anyone in this dog box.

Exhibit 18 does not refer to Robie. Exhibit 20 says he was there but it does not say the accused had anything to do with placing him there.

Exhibit 29 says Robie was made to stand by the guard house but does not say the accused forced him to stand by the guard house.

So, I submit specification 8 absolutely fails by the weight of evidence here. Not only is there no evidence, or evidence beyond a reasonable doubt, but there is not a scintilla of evidence to connect this exhibit with the accused. Quite the contrary is true.

Specification 9 I am passing for the time.

Before going into specification 10, on one phase of it I wish to state that the only evidence offered regarding this particular specification refers to Exhibit 27 which states that the accused in the winter of 1945 beat a Dutch prisoner who stopped to warm his hands. The Commission will recall that when Exhibit 31 was offered that the defense requested that a certain paragraph be included. That paragraph, you will recall, states that a Dutch prisoner was beaten for stopping to warm his hands over a fire and beaten by Hondo, not by Katsura. There is absolutely no evidence to sustain this specification.

I would like to renew the thought made two days ago that the court must judicially notice that VE-Day occurred before the winter of 1945 and that the accused was incarcerated in Sugamo prison in 1945. Hence it would be a physical impossibility to have violated any rule of land warfare. For that reason this specification fails.

With respect to specifications 11 and 12, I want to suggest to the Commission that the only evidence offered in support of these two is Prosecution Exhibit No. 30 and I merely want to point out that this evidence in exhibit 30 is entirely uncorroborated by any evidence whatsoever. I think this uncorroborated testimony does not put the case beyond reasonable doubt.

With respect to specification 14, I merely wish to renew the motion made two days ago with reference to 'contributing to death'. I think the brief submitted at that time bears out sufficiently that this should be stricken; plus the additional fact that there has been no evidence offered here in any way tying up the accused with the death, or contributing to the death of any prisoners of war.

Therefore, the defense at this time moves for an order conforming with the facts here set out.

PRESIDENT: What is your request?

That the clause 'thereby contributing to the death of a number of them' be stricken.

PRESIDENT: And for all the others?

DEFENSE: To strike them or find the accused not guilty of them. That applies to specifications 3, 8, 10, 11 and 12.

PROSECUTION: May I ask whether you have just covered 1, 3, 8, 10, 11, 12 and 14?

DEFENSE: That is right. The rest I don't care to discuss until I have offered some evidence.

PROSECUTION: Sir, the only point the defense has made with regard to specification 1 is that in the affidavit of LaPay he says he was beaten in the mess hall. I can answer that very quickly by reading the affidavit of John LaPay. That affidavit says:

> 'One day while at Fukuoka Prisoner of War Camp, I believe the date to be some time in May 1944, another prisoner known to me as Ed Young, another civilian employed with me at Wake Island, and I were taken to a machine shop outside the camp to work. We were held at this shop until late evening and upon our return to camp we found we had missed our evening meal. We went to the guard barracks and informed Katsura that we had missed our evening meal, and asked him if he could get us something to eat. Katsura took us to the barracks where we usually eat our meals. Upon our arrival there Katsura told us that if we had missed our meal it was our own fault as the other prisoners should have saved something for us. After telling us this he took off his Tabo shoes (tennis shoes, rubber soled) and slapped us across the face several times with them and then struck us two or three times in the face with his firsts. Katsura then walked off telling us never to bother him again. Other than scars about my face, I received no permanent injuries as a result of this beating.'

The defense has made a point and said this happened in the mess hall. Considering the statements of Williamson and Graham that it happened in the barracks, LaPay said it happened in the mess hall. I have just read Exhibit 23 and LaPay says 'He took us to the barracks.' I don't know whether defense has a point that he was taken into the mess hall. That is the only point the defense has made regarding specification No. 1.

With regard to specification 3, the defense has stated that Katsura beat Newman on the orders of Captain Sakamoto. I will read from the affidavit of A. H. J. Newman:

> 'Finally in the officers' hut Katsura said to me 'You have had a fine time haven't you' and struck me on the head with the four pound ballheaded hammer.'

There is nothing to show that he received orders to strike him on the head with a four pound ballheaded hammer. Up to that point the court might find he was acting under orders. Preliminary to that

Hamman said:

> "Sometime in the middle of 1943 while at Kimamoto he and Takio Katsura discovered that the man had boxes for which I had supplied the wood. They called me into the hut where these boxes were discovered and Nakamoto struck me in the face with his fist which knocked me towards Katsura; Katsura thereupon struck me in the face with his fist and knocked me back again towards Nakamoto four or five times I was punched to and fro in this manner."

Then he says,-

> "Katsura said to me 'You have had a fine time haven't you' and struck me on the head with the four pound ballheaded hammer."

It seems to me that Katsura assumed the authority to hit him with the hammer. He did not receive an order.

The defense, with regard to specification 8, has gone to some trouble in mentioning that the affidavit of William J. Fossey does not mention that Katsura beat Major Roby; and it does not say that Katsura put him in the 'dog house' but I say, reading Fossey's affidavit along with the other affidavits, the Commission can use it as corroborative evidence. I offer all these affidavits so the court can get a big picture. I am not offering each affidavit to stand on its own.

He said,

'A Major Roby...was made to stand by the guard house all night during extremely cold weather. Beatings were a specialty with Katsura. English and Dutch prisoners were his favorite victims.'

Thomas mentions the affidavit of Marth and he says that Colonel Marth does not state that Katsura put Major Roby in the dog box. But reading the statement as a whole the court may decide that Katsura did do this. He says:

'One of the Japanese at this camp Katsura took exceptional pleasure in beating the men and then placing them in confinement in the 'black box' without proper clothing and shoes. Lt. Col. Albert Roby, Veterinary Corps, was placed in the 'black box' and left there until his feet froze.'

The defense has more conveniently left out the most important affidavit in making their motion. They have not mentioned the affidavit of Kenneth A. Wheeler. He says:

'Mr. Katsura, the camp interpreter, usually carried out the actual punishing of prisoners. Punishments included standing at at attention for long periods of time in the bitter weather and the placing of prisoners in a 'dog box'. The box was made from slats with wide cracks between and so constructed that it was impossible to stand inside. The prisoner consigned to the 'dog box' was allowed one blanket in the bitter cold and no shoes whatsoever.'

'Major Roby, VC, USA, was consigned to the 'dog box' in March 1945 for a minor infraction of a camp rule. Major Roby was first severely beaten by Mr. Katsura. He remained in the 'dog box' for several days and during this time suffered frost bite of-

both feet and very severe exposure. Previously an American prisoner had been assigned to the 'dog box' for tearing a Japanese blanket. As a result of this exposure the prisoner died.'

Captain Wallace makes reference to the dog box but I never intended to offer Captain Wallace's statement to tie Roby up with this incident. It was just part of his statement. However, I believe the part defense left out with reference to Kenneth B. Wheeler amply takes care of the specification.

Now, with regard to specification 10, the main point made by the defense I believe is that the specification reads:

'In the winter of 1945'.

I submit that January and February and March of 1945 is the winter of 1945. I also submit that the court can take judicial notice of the fact that there were no prisoners of war at any camp in Japan - prisoners of war of the Japanese - in January, February or March, or November or December of 1945. Obviously, the prisoner of war, Benjamin J. March meant that this unknown Dutch prisoner was confined in January or February or March of 1945.

The fact that we have one statement does not make any difference. A prima facie case has been made out with regard to this specification. It is the burden of the defense to come in and disprove this specification. The burden itself does not rest upon the prosecution.

The same thing applies to specification 11.

The defense has made the point that we have uncorroborated evidence. We have only one affidavit, the affidavit of Edgar Franklin Burns. I submit one affidavit is as good as 100 affidavits. If the Commission please, the affiant knows what he is talking about. I also submit that here is a prima facie case and the burden rests on the defense to come in and prove this is not so.

With regard to specification 12, I did not quite get the point the defense made. Was it that specification 12 had only one affidavit and there was nothing to corroborate that affidavit? May I ask?

DEFENSE: That is right.

PROSECUTION: Well sir, the same point is made. Whether we have one or a hundred, it does not make any difference. A prima facie case has been made.

Now, with regard to specification 14, the only objection the defense is making - the motion the defense is making is that the words 'thereby contributing to the death of a number of them' be stricken. Here I wish to point out the affidavit of James Otto Williamson who states:

'...a Japanese interpreter by the name of Takeo Katsura administered many beatings to Allied prisoners of war, some of which resulted in death. One beating which I observed was that in which Katsura unmercifully beat an American civilian by the name of John LaPay. This beating occurred late in the summer of 1944.'

'Katsura was one of the most vicious of the Japanese personnel at the camp. I heard from other prisoners of war that beatings administered by him resulted in the death of an unknown half-caste Dutch-Indonesian, an English barber, name unknown, and an American soldier, name unknown.'

How strange it is that in a camp with one American doctor, a British doctor and two Dutch - how strange it is that these doctors saw nothing about any beating causing any death.

PROSECUTION: May I object, sir. There is no evidence in here that there were four doctors.

DEFENSE: If memory serves, I believe Colonel Boecher states - does not state there were any deaths.

At no time in criminal law has the burden of proof shifted to a defense to establish its innocence. This burden lies clearly with the prosecution. It never shifts at any time during the course of a criminal trial. If the Commission has any doubts about that I should be very anxious to submit the legal points on that particular question, sir.

PROSECUTION: I have something to say on that. With regard to the remarks Mr. O'Brien just made. Any motion such as he has just made should be made on the basis of facts before the court. If there was a statement made by any one of these affidavits that there were four Allied doctors in camp Mr. O'Brien should indicate it. Without such a statement Mr. O'Brien is testifying.

Now, with regard to the burden of proof. In all cases, civil, criminal, courts martial, before this Commission, the prosecution has the burden of proving a case. All the prosecution has to do is to make out a prima facie case. Then the burden of coming forward with evidence to disprove it is on the defense.

The affidavit of Benjamin J. Marsh states:

"This man beat many prisoners of war until they died."

Then we have the affidavit of Albert H. J. Hamman in which he states:

"During either January or February 1943 the Japanese authorities ordered that no prisoner of war should return the tins of Bully Beef, which had been issued to us just before the visit of representatives of the Red Cross. On the same day I was working in the dysentery ward of the Camp Hospital and Takio Katsura, who was the camp interpreter came in with a guard and searched the hut. He found a tin of Bully Beef under the blanket of a gunner who was seriously ill with dysentery. Katsura said to this Gunner, whose name I do not know, 'What are you doing with this?' The gunner answered 'I am hungry', Katsura replied 'You knew you had to give it in'. Katsura then pulled the gunner out of bed and beat him about twelve times across the back and shoulders with a bamboo about three-quarters of an inch thick. The blows were struck viciously, Katsura raised his hand above his shoulder before striking the gunner who lay on the ground. The gunner was wearing tropical battledress. About ten days afterwards this gunner died."

That is all the prosecution has in answer.

DEFENSE: Sir, I just want to make this one observation. Isn't this pretty flimsy evidence of 'experts'? Medical testimony by a steam fitter, a surveyor, an enlisted man who was a carpenter and another civilian. We don't know what his background was.

I submit that in none of these specifications has the defense made out its case. It is now up to the defense to disprove the points brought out by the prosecution.

DEFENSE: Sir, if I may make this one short statement.

Affidavit 18 shows that Aging was a doctor and that there were four Allied doctors. De Wijn was a doctor. Exhibit 25 shows that De Wijn is a doctor and two other affidavits show that Captain Wallace and Major Kostecki were doctors. I think the evidence shows there were four doctors in the camp.

PRESIDENT: We will have a recess.

The Commission then took a recess until 1000 hours at which time the members of the Commission, the prosecution and defense, the accused, interpreters and reporter resumed their seats.

PRESIDENT: The court will come to order.

LAW MEMBER: The Commission has considered the motion by the defense and the ruling is that all motions are denied.

DEFENSE: We are ready to proceed, sir.

If it please the Commission, I will outline, or attempt to outline completely the pattern the defense will take in this evidence. I will callas witness two other interpreters of Branch Camp No. 1, one of the hospital orderlies, the camp commandant Sakamoto and one other man who was working at the camp in a civilian capacity and the accused.

I believe that the evidence will disclose, and the accused will testify that he did on one or two or more occasions slap or otherwise mistreat some of the Allied prisoners of war. He is going to frankly admit what he did and then explain any circumstances which may in any way mitigate or show the reason why he committed such acts.

I believe the evidence will also disclose that the life of an interpreter in a prisoner of war camp was a pretty difficult one. I believe the evidence will show that the camp commandant in charge was arrogant, autocratic and thoroughly militaristic; that he demanded and received implicit obedience to his orders.

I think the evidence will disclose that when the interpreter, the accused in this case, was requested by a prisoner of war officer to relay a request to the camp commander it was done and he replied, "Don't bother me with such trivials." The same day another prisoner of war would say "Go back to the camp commander and tell him we have to have this or that;" and the camp commander would say, "If you come back again you will have trouble". And that occurred three, four, five and six times in the day. Allied prisoners of war would seek out an interpreter and say, "Go to Sakamoto and do this" and he would say, "It will do no good. I have done it twice before." They might have misunderstood his statement to be a refusal to carry out their requests.

At this time I would like to call Chozo Huruyama.

CHOZO HURUYAMA

a witness called by the defense was sworn and testified as follows:

PRESIDENT: I would like to ask how long this witness has been in the court room?

DEFENSE: He first came in this morning.

PRESIDENT: Was he present during the time the court was in session before?

PROSECUTION: Yes. He was. However, sir, I will waive any objection.

DEFENSE: I honestly sir, do not know when he came in. I asked the interpreter to have him brought in and Mr. O'Brien did not know he was in.

PRESIDENT: The Commission does not want any witnesses in the court room.

DEFENSE: I understand that.

DIRECT EXAMINATION

Questions by Defense:

Q Please state your full name?
A Chozo Huruyama.

Q And how old are you?
A Fifty-two.

Q Are you married or single?
A Married.

Q What is your business or profession?
A Methodist minister.

Q You are a minister?
A That is right.

PROSECUTION: I think it might be advisable to swear this man under the Christian oath.

DEFENSE: I thought he was a Buddhist myself.

PRESIDENT: Swear him then.

(The witness was resworn with the Christian oath.)

DEFENSE: What education have you received?
A I was in Duluth Theological Seminary, Madison, New Jersey, and graduated at Pacific School of Religion, Berkeley, California.

Q And when you graduated, when was that?
A When? 1922.

Q And when didyou come to Japan?
A 1936.

Q Do you know the accused, Takeo Matsura?
A Yes. I know him.

Q Was he at Branch Camp No. 1 during the time you were there?
A Yes.

Q And what were his duties?
A Army interpreter.

Q Would you see Matsura often?
A Yes. Every day.

Q Were his duties confined to the compound and the prison camp or elsewhere?
A Yes. Field too.

Q And your duties were in the camp all the time. Is that right?
A Yes.

Q Did you see, or did you afterwards discover that the accused had struck a Dutch prisoner of war by the name of Streefkerk?
A I remember the name but I heard that he did strike Dutch prisoners, don't

Q And were you called over to act as interpreter?
A Yes.

Q Who was present at the time you arrived?
A A Japanese doctor of the camp and two prisoners who were alleged to be hit.

Q And was one of these prisoners a Dutchman?
A Yes.

Q I see. Now, during the war, didyou serve in any capacity with the Japanese Imperial Army?
A Yes. Civilian interpreter for the Camp No. 1.

Q And did you have a tour of duty at Fukuoka Branch Camp No. 1?
A Yes.

Q When did you arrive at Branch Camp No. 1?
A First part of June, 1945.

Q June of 1945 you arrived there?
A 1944.

Q And how long did you remain in Branch Camp No. 1?
A May 1945.

Q And what were your duties at Branch Camp No. 1?
A Civilian interpreter.

Q With whom did you work?
A Well, for every officer of the camp and everybody.

Q That is you would act as liaison worker between Japanese officers and prisoners of war?
A Yes.

Q Who was your camp commandant during your tour of duty at camp No. 1?
A Tuhichi Nakamoto.

Q Well, was Katsura called in by anyone and asked about this incident?
A You mean to that office where I was interpreting?

Q Then or later, if you know?
A I don't know.

Q Did you yourself talk to Katsura? About this incident?
A Yes.

Q And what did he have to say about it, if you recall?
A Just about the same story.

Q And during the course of the conversation with Katsura were you led to believe that this matter had been patched up between him and this prisoner?
A Yes. That is what I heard from Katsura before they came back to the camp.

Q It was clear that [illegible] this Dutch prisoner had violated the rules of the camp? Is that correct?
A Yes.

Q Do you know Dr. De Wijn?
A Yes. I do.

Q Shortly following this incident, did you have occasion to see Dr. De Wijn?
A Yes.

Q Did you notice any marks or discolorations about his person?

Q And did you act as interpreter for this Dutch prisoner?
A Yes. I did.

Q Did he state to you he had been hit or struck?
A No. Yes. Hit.

Q And did he state by whom he had been hit?
A Matsura.

Q And did you pursuant to someone's request attempt to get the full story of what had happened?
A Yes.

Q And will you please relate the full story to the Commission?
A Well, they were running a train on the track to carry dirt, or earth from one place to a lower level place and the train came to the steep grade and started to run fast and those people let the train go.

Q By "those people" you mean these Dutch prisoners?
A Yes. They let the train go without controlling it or putting on brakes and the train went down fast and they bumped into each other. Then Matsura saw that and those prisoners had been ordered to control the speed of the train by putting on brakes when it came there two or three times. That time they did not do that again so Matsura hit the prisoners by throwing a piece of hard mud.

Q And this one prisoner was injured. Do you know the extent of his injuries?
A They said broken rib.

Q And what occurred after that, if you know?
A I don't know.

A His face was swollen up.

Q And did you enquire as to the manner in which he received his injuries?
A No. I did not.

Q Did you find out how Mr. De Wijn had sustained his injuries?
A The swelling disappeared after two or three days.

Q Do you know how Mr. De Wijn -

PROSECUTION: I object to the answer. It was not responsive.

LAW MEMBER: He said it. It will not do any harm.

Defense: Do you know how Mr. De Wijn received his injuries?
A He was hit by Katsura.

Q Did you know the details?
A Well, yes. These prisoners patched up with Kato and they were not supposed to report that to anybody but after that they reported it to Mr. De Wijn and Mr. De Wijn said he would report that case to the camp commander, Sakamoto, and when Katsura came back to the camp he heard that and he got mad because they patched it up on the field and the prisoners forgave Katsura for what he had done; so he got mad and he thought De Wijn talked to these prisoners.

PROSECUTION: I would like to object to this testimony upon the part of the witness, on the grounds that it is pure hearsay. Katsura told the witness and this witness is telling the court. I would say the best evidence would be Katsura telling us his story himself.

Here we have a second party relating Katsura's story. If we can get this in directly, I know the accused does not have to take the stand if he does not wish to but he should not be allowed to get this story in indirectly.

DEFENSE: I would merely like to state if the Commission wants all hearsay excluded he would not have any case.

LAW MEMBER: We are not dealing with that question.

PROSECUTION: I say we have the accused. There is no necessity for this hearsay.

LAW MEMBER: I think we can accept the evidence as to anything the accused said during the event. It is proper evidence in the ordinary way. I see no reason to object. The objection is not sustained.

PROSECUTION: I am not renewing my objection, but I am pointing out to the court that this is not a part of the res gestae. This man was not there during the conversation between the prisoner of war and Katsura and therefore it should not be admissible. But I am not renewing my objection. I am willing to listen to his testimony but I wish to point this out to the court.

LAW MEMBER: The Commission would like to point out to the Prosecution that any statement made by the accused may be offered in evidence; and this

is not hearsay. This is one of the exceptions to the hearsay rule. I think that is true.

PROSECUTION: Alright, sir.

(Question repeated)

WITNESS: He got mad at Mr. Do Vijn because he was the one that tried to advise the prisoners and they accepted his advice to report the incident to the camp commandant so he hit Dr. Do Vijn on the face.

Q Did you see Mr. Do Vijn on the day following this?
A Yes.

Q What did you notice with reference to any injuries on his person?
A I saw his face swollen up.

Q Was he able to walk?
A Yes. He was doing his duty too.

Q And did the swelling subside in a short while?
A

PROSECUTION: What do you mean by a short while? Objection to "a short while."

DEFENSE: I withdraw the question.

Q Did you see Mr. Do Vijn the next day?
A Yes. I did.

Q Did you see him that day and every day thereafter?
A Yes. Almost every day.

Q How long was it after the beating was administered to Dr. Do Vijn that the swelling had subsided?
A I think two or three days.

Q In addition to the matter you have stated, did you ever see Katsura strike any other prisoner of war?
A No. I did not.

Q Was Sakamoto a stern disciplinarian?
A Yes.

Q Was Katsura a good soldier?
A Yes. He was.

Q During the period of time you worked with Katsura what would you say with reference to his general characteristic make-up?
A I thought he was a nice man and he was to me. I saw him speak nicely and kindly to some of the prisoners.

Q Was he pretty generally regarded as a fine man by the prisoners or do you know?
A Yes. Those prisoners I knew regarded him as a nice man.

Q Would you say from association with Katsura that he had a cruel and mean temperament?
A No.

DEFENSE: Your witness, Mr. Deitch.

CROSS EXAMINATION

Questions by Prosecution:

Q Did you say you were at Fukuoka main camp?
A Yes.

Q When were you at Fukuoka main camp?
A From the first part of June, 1944, to the first part of May, 1945.

Q When were you at Fukuoka Branch Camp No. 1?
A No. I misunderstood your question. I was never at the main office. I was at the first camp from the beginning, from the first part of June, 1944, to the first part of May, 1945. I have never been at the main office. No.

Q Now, when did this incident in which the Dutch prisoner of war was concerned take place?
A You mean the month?

Q Yes and the year?
A Well, I don't remember. I am sorry.

Q Do you remember the year?
A Well, I think 1944 because we moved. That incident happened at the Mushiroda camp No. 1, but we moved to Nakazaki January 18, 1945, so it must have been 1944.

Q What part of 1944?
A In Autumn I think.

Q Could t have been summer or could it have been the spring?
A I do not remember. Not spring.

Q It could have been the summer?
A Yes.

Q Now, you say that you acted as interpreter following the incident in which the Dutch prisoner of war sustained a broken rib. Is that so?
A Yes. Yes.

Q How long after the incident did you act as interpreter?
A Might after they came back to the camp.

Q The same day?
A Yes.

Q Now, you said two prisoners of war were slapped or hit by Katsura at that time? Were they both Dutch?
A Yes. Both Dutch.

Q What happened to the other prisoner of war?
A I don't think it serious, injury he had.

Q Now, can you describe the two Dutch prisoners of war?
A You mean figures?

Q Yes.
A It is hard for me to do that.

Q Well, you seem to remember the conversation?
A I do.

Q It seems to me you should be able to remember their size? Can you describe the prisoners of war you acted as interpreter for?
A Not so very high but a little higher than I am. One was.

Q Which one?
A The one that had broken rib; but it is hard for me to describe them. They were not pure white, I think.

DEFENSE: Sir, if it may help the defense is willing to stipulate that the one receiving the fractured rib is Streefkerk.

PROSECUTION: No. I would like to continue the cross-examination.

PRESIDENT: May the record show that the prosecution does not agree to the stipulation.

PROSECUTION: Were they pure Dutch?
A No. You mean white?

Q Yes.
A No. I do not think so.

Q You say you don't think so. Do you know?
A Yes. I know.

Q Was one of these Dutchmen an officer?
A No, no.

Q Or both?
A No. They are not officers.

Q How do you know?
A Well, officers are not supposed to work in the field you know at hard labor. At least, at camp No. 1 they did not let officers work in the field, you know.

Q Is that the only reason you say he was not an officer?
A And I recall, you know - I recall that I heard this man who had broken his rib was an noo or something.

Q Did Natsura describe the beating of Streefkerk to you?
A Yes.

Q Well, will you describe the beating to the court?
A He threw a piece of hard mud.

Q Speak a little louder, please. You say he threw a piece of hard mud?
A And hit the rib.

Q Which rib? Which side?
A I don't remember.

Q You say you saw the other man injured? What did Natsura say to the other man?
A I don't know about that.

Q Didn't you act as interpreter for both of them?
A They did not say that.

Q Who was doing the questioning during this examination?
A Mr. Sasaki, at camp No. 1.

Q Didn't he ask how the other man was injured?

LAW MEMBER: We have to hear this. Will the witness speak a little slower and up a little bit?

PROSECUTOR: Now, was Katsura present at the time of thisinterview?
A No. He was not.

Q There was just you, the doctor - that is the Japanese doctor, the two Dutchmen that were injured. Is that so?
Now did the Dutchman who had the broken rib appear at the time of the interview?
A I did not see he was suffering. I did not see he was suffering very seriously.

Q Do you know whether it was a broken rib or broken ribs?
A Broken rib.

PRESIDENT: Was that singular or plural?

WITNESS: Singular.

PROSECUTOR: When did you talk to Katsura about this incident?
A I think the next day.

Q The next day?
A Yes.

Q Have you talked to Katsura within the past week?
A You mean this last week? No.

Q Have you talked to defense counsel within this past week?
A No.

Q Who have you talked to?
A I talked to one of the Japanese men who worked in his office.

Q Was he an investigator?
A Yes. I think so.

Q Now, you say that one of these Dutch prisoners of war had violated a regulation of the camp. Was this a printed regulation that was violated?
A What?

Q Was it a printed regulation that had been violated?
A No. I don't think so.

Q What sort of a regulation was it?
A That they had to obey the guard while they were in the field. I think that is a written regulation.

Q Now, was Captain Sakamoto present at the time? When Katsura beat these
A prisoners of war?
A I don't know.

Q Was his name mentioned during the interview?
A Yes. In this way, that they are going to report to him.

His name was not mentioned.

PRESIDENT: Who was "him"?

PROSECUTION: Captain Sakamoto.

WITNESS: No. His name was not mentioned.

Q You have stated that Dr. De Wijn's face was swollen and that the swelling started to subside two or three days afterwards?
A Yes. That is my memory.

Q Now, how long afterwards could you tell that Dr. De Wijn had been beaten? In other words, how long afterwards were you able to look at his face and see that damage had been done to his face?
A Next day.

Q Let me put it this way? Could you see he had been beaten a week later by looking at his face?
A No.

Q Now, you state that this matter was not supposed to have been reported to the camp commander. Why was it not supposed to have been reported to the camp commander?
A Well, Matsura and they patched it up and told me not to report it to the camp.

Q "They"?
A Those prisoners.

Q The two of them?
A Yes.

PRESIDENT: I am trying to understand, is that "patch" it up or "paced" it up?

WITNESS: Patch; make up the difference.

PROSECUTION: Now then, why did Katsura beat Mr. Ko Sijn?
A Because he tried to make these prisoners accept his advice to report the incident to the camp commander.

Q Why didn't Katsura beat the two Dutchmen again if they violated the agreement?
A I don't know about that.

Q Did Mr. Ko Sijn in any way violate any agreement with Katsura?
A I don't know.

Q Did Mr. Ko Sijn have any agreement with Katsura?
A I don't know.

Q Did Mr. Ko Sijn speak to Katsura before this incident of the beating?
A I don't know.

Q I want to make sure I have this point straight. You say the prisoner whose ribs were not broken was in the room at the time of the interview?
A Yes.

Q And no questions were asked of him as to what happened to him?

A No.

Q What was he doing in the room?
A He was standing with the man whose rib was broken.

Q And you don't know how he was beaten?
A No. I don't.

Q But you do know he was beaten?
A Yes.

PROSECUTION: Your witness

REDIRECT EXAMINATION

Questions by Defense:

Q Do you know what Katsura's rank was in the Army?
A Jotohei. I do not know the equivalent in American rank. Maybe Pfc.

Q Who was directly over Katsura, if you know?
A Well, commandant.

Q And who else?
A And neo.

Q RECROSS EXAMINATION

Questions by Prosecution:

Q Will you state the ranks of Japanese soldiers from the bottom up?
A In Japanese?

Q Tell me, you have one star, two star and three star. Do you have anything below that? Tell me.
A How many stars? One star.

Q That is an equivalent to private?
A Yes. I think so.

Q And then what?
A And two star.

Q Let me ask you the question this way,- A one star private is equivalent - withdrawn. Is there anything lower than a one star private?
A No.

Q A one star private is equivalent to a private?
A Yes. I think so.

Q A two star private is equivalent to a Pfc?
A I cannot tell you. I don't know.

Q You have one star, two star and three star?
A Yes.

Q And then what above that?
A A yellow, gold line. A lance corporal in English.

Q Then what do you have? One star and
A Gold line.

Then sergeant.

Q And that is the bag?
A No. We have another one,- three stars and one gold line.

PRESIDENT: Questions by the court?

EXAMINATION BY COMMISSION

Questions by Members:

Q Witness, you have told us a good deal about what happened. Did you see any of the actual beatings or strikings?
A No.

Q Then you brought your information from, in the first case, Matsuura and the Dutchman and the Japanese doctor?
A Yes.

Q And I think you said you got it from De Sijn and Matsuura?
A I didn't hear anything from De Sijn.

Q The second one - the story of De Sijn - did you get it from De Sijn?
A No.

Q From the camp commander?
A No.

Q From Matsuura?
A No sir. Other soldier there.

Q Now, going back to the interview with the two Dutchmen and the doctor, can you tell us that you knew the second one was beaten?
A Yes.

Q Who told you that?
A When someone came to call me to interpret for them they came to my office and he said the two Dutchmen were hurt.

Q Hurt?
A Yes. He came and interpret for the doctor.

Q Who was it who came?
A Well, I don't know, someone from the medical office, you know.

Q Was it a prisoner of war or a Japanese?
A Japanese.

Q And he stated that the two men were hurt?
A Yes. That is why I understand the other one was hit.

Q Did you enquire from the second man what happened?
A No. I did not enquire. The doctor did. I just interpreted.

Q Did the doctor examine them in your presence?
A No.

Q Are you quite sure the second man was beaten or hit?
A Yes. I think. Yes. I am sure.

Q Are you sure because he looked as if he had been hit?
A Well, he did not show any injuries but I don't know by looks.

Q Did Matsura tell you he hit him?
A No. He didn't.

Q The only man that told you is the man who said, Come on down to the office. Is that right?
A Yes.

Q And he was a Japanese?
A Yes.

Q Did he say Matsura hit that man?
A Well, no. He did not. He did not mention Matsura's name at that time, but I found out at the doctor's office when we - when I started to interpret for them.

Q Had one of the Dutchmen told you that Matsura had beaten them both?
A Well Dutchmen didn't tell me. Doctor told me.

Q Who was the doctor?
A Dr. [illegible].

Q Do you know whether both of those men had received medical attention after the interview?
A I don't know but I suppose they did.

[illegible]: Mr. Maruyama, how long did you spend in the United States?
A In Japanese counting, about twenty years.

Q Were you born in the United States?
A No.

Q When did you go to the United States?
A 1917.

Q Didyou come back to Japan to enter the ministry?
A Yes.

Q Now, when you were on duty at this camp, where didyou live?
A Well, I lived in Hajimura near here. About half an hour from Yokohama station.

Q What were your hours in the camp when you served as interpreter?
A That was in the afternoon.

Q What I mean is when did you go on duty in the morning and leave in the afternoon?
A In summer time, eight o'clock in the morning and left there five o'clock in the afternoon. But in the winter time we go there at nine o'clock in the morning and leave there at four o'clock.

Q Just specifically what were your duties in the camp?
A Interpret for everybody. Interpret for everybody who wanted me to, sir.

Q Did you have an office?
A Yes. I have an office for myself. I had to make other papers.

Q Did you have clerical duties in addition?
A Well, yes. I think you can say clerical because I had charge of typewriting letters of prisoners of war to their families.

Q What I am trying to get is,- didyou stay in this office until you were called out to do a job of interpreting?
A Yes.

Q Or were you out around the various parts of the camp all the time?
A No. I sat in the office and when someone wanted me they called me at the office.

Q How many times a day would you be called to do a job of interpreting?
A Sometimes two times; sometimes three times. Not very often.

Q How many interpreters were there on duty in this camp?
A Civilian interpreter only myself, beside Katsura. Katsura is the army interpreter.

Q What is the distinction between the dutiesof a civilian interpreter and those of an army interpreter?
A I don't belong to the Army. I served only as civilian for the Army.

Q Where was Katsura on duty?
A Katsura. You mean where?
Q Yes.
A He went on the field where the prisoners worked.

Q Did he have an office?
A No. He does not have. He had office before I came at that camp. Same office that I had.

Q Then, as I take it, his duties were with the prisoners? That is when they were out round about and your duties were primarily in the office?
A Yes.

Q Tell me if I am mistaken, you were taking care of clerical work and were called on occasionally to do a job of interpreting when the accused was not available or present. Is that correct?
A Yes.

Q Which one of you was regarded as the senior interpreter?
A The duties are different. I worked in the office. He worked in the field. There was no seniority.

Q Did you have any authority over prisoners of war?
A No. I just interpret for those who have authority.

Q Did the accused have any authority over the prisoners of war?
A Well, I don't know.

Q How much time a day would you say you spent out of your office?
A From eight o'clock in themorning in summer time.

Q I mean outside your office round about.
A It depends on the things that happened, which required my presence. Not very much. For the most part I was in the office.

Q

Q. Did your contact and duties in the camp require you to be very much in contact with the prisoners of war?
A. Well yes. I interpreted a commandant then he spoke to the prisoners, then he got them together and sometimes made a speech, and I had to interpret so they knew me and like me and give me letter of appreciation and everything.

Q. Did you ever see any beatings in the camp?
A. No.

Q. You never saw any at all?
A. No.

Q. You never witnessed any?
A. No.

Q. Did you ever see any mistreatments?
A. No. No. I don't see.

Q. Did you ever hear of any?
A. Yes. I heard, but I don't remember exact, definite things or places.

Q. Did you ever hear or not of any mistreatments by Ketsura other than the one you have testified to?
A. No. I don't.

Q. Did you know any of the prisoners of war in the camp?
A. Yes.

Q. Name who you knew.
A. One is Mundy. John Mundy was typist for me in my office. I used to know a lot of names but you know, an old fellow forgets.

Q. Did you know the name of medical officers?
A. De Wijn and the other Dutch medical officer and Kostecki. Captain Kostecki, I think.

Q. Do you know the name of any British medical officer?
A. I know him by face, but just as I mentioned, I try to recall. No. I do not recall. I know him very well.

Q. Did you ever discuss or talk with any of the prisoners of war about their troubles and hardships of prisoners of war?
A. No.

Q. Did they ever tell you of the troubles they had ?
A. Yes.

Q. Were you a friend to the prisoners of war?
A. Yes. I was as kind to everybody they came to me to talk, but not about mistreatment.

Q. Did you hear of any reports of mistreatment when prisoners of war came into your office?
A. No.

Q. Now, Ketsura was an interpreter in the camp with you, just what authority did he exercise in that camp?
A. Ketsura. I don't know because I am just interpreter in my own office and stayed most part of it in that office you see.

Q Was he a good friend of the camp commander?
A You mean Matsura?

Q Yes.
A No. He was just a subordinate.

Q Did the camp commander ever show any evidence of leaning upon him?
A I don't know.

Q Did Matsura exercise any more influence in the handling of the prisoners of war because of him speaking English and knowing American customs?
A I don't know.

Q Was Matsura in any way your boss or in charge of your work or activities?
A Matsura?

Q Yes.
A No.

Q Testimony has appeared before this Commission that Matsura was an important man in the camp and that he exercised a lot of influence. Would you say that was correct or do you not?
A I do not think it is correct. The sergeant major did exercise his influence.

Q Did you ever see any Red Cross supplies in the camp?
A Yes. Then they distributed among the prisoners.

Q Were all of the Red Cross supplies received distributed to the prisoners?
A I think so. The commandant was very strict about that.

Q Where were the Red Cross supplies kept?
A In the store house.

Q Did you ever see any of the Red Cross supplies being consumed or used by any of the Japanese camp personnel?
A No. I did not.

Q Do you know whether any of them were consumed or used by the Japanese personnel or not?
A I don't know. I never see and I do not think they did. He was very strict, the commandant.

Q Did you know Captain Wallace, the medical officer?
A Oh yes. That is the name of the British doctor.

Q How do you regard Captain Wallace?
A I don't talk with him very often but from the appearance he was a gentleman and he was quiet rather.

Q Well, from your knowledge of Captain Wallace would you be inclined to believe any statement he should make, or not?
A I am not acquainted so well with him.

Q Do you know a prisoner of war by the name of Chilton?
A Yes. I do.

Q Did you know him very well?
A Not very well.

Q Did you ever talk with him?
A Yes. He told me once he appreciated my work as interpreter for the camp. He was the one that said that. I remember clearly.

Q Did he express his appreciation to you for all you had done for making his sojourn as easy as possible ?
A I didn't get you.

Q Did you know a prisoner of war called Newman?
A Yes. He was British prisoner.

Q Did you ever hear any reported information or rumors about any mistreatment that he may have received?
A No. I don't. He was a carpenter. He works in front of my office every day. I saw him. He claims he was suffering from beri-beri.

Q Was Newman's carpenter shop in a position where he could see the kitchen?
A Well, I don't think so from that place.

Q Did you have an adequate sugar ration in the camp?
A I don't know about that. It is not mine.

Q Did you ever drink tea in the camp?
A Yes. We have mess hall in the camp for ourselves. There I drank tea.

Q As an interpreter, did you ever drink tea at any other times? In the morning or other than regular meals?
A No.

Q Do you know if someone ever did that?
A I did not know.

Q Did you know if the prisoners of war made box es to put their things in?
A No.

Q Did you ever hear any allegation that such boxes as were made were broken or destroyed?
A No. I did not.

Q Did you know a Colonel North in the camp?
A Colonel North. I don't know. The only colonel I know was Saunders. That was the only one-when I was there.

Q Did you know Colonel Meecher in the camp?
A Yes. I do.

Q What was Colonel Meecher's position in the camp?
A He was a senior officer at that time. The prisoners whenever they made contact with commandant did it through him and that is all, I think.

Q Would you say that Colonel Meecher was in a position in that camp to know what was going on?
A You mean the whole thing?

Q Yes.
A I don't know. I don't think, but in his own barracks. He was only there two or three months.

Q During that time he was there?

A I don't think he knows everything. But he knows things in his barracks maybe among those who came with him from Philippines.

Q As one of the senior officers in that camp wasn't Colonel Boecher fairly well familiar with things that affected the prisoners of war?
A I can't tell anything like that.

Q Did Colonel Boecher ever come to your office?
A Yes. He came to my office when he wanted to tell something to the commandant.

Q Can you remember how many times he came to the office to talk to the commandant during the time he was there?
A Three or four times.

Q In two months?
A Yes.

Q Did you know an English prisoner of war by the name of Warwick?
A Warwick I do not know. I may be know but do not know the names of them.

Q Who was in charge of the camp when the commandant was away?
A Neil, sergeant major next in command.

Q Was the sergeant major very active in command of the camp?
A Yes. Active.

Q Did he delegate any of his duties to you or to the other interpreter?
A No. I do not think so. Not me anyway.

Q He didn't?
A I don't do anything except interpreting and I refuse to do anything except interpreting.

Q What do you mean by that? Do you imply that the accused-witness had other things to do other than interpreting?
A I do not know about him. I am civilian interpreter, you know. Just employed for interpreting. That is all.

Q As a soldier, would he have had other duties?
A I won't know about soldier.

[illegible]: No further questions.

[illegible]: No questions.

[illegible]: I believe you said you were a Methodist minister?
A Yes.

Q What was your occupation in the United States?
A Minister of the different churches where I was. First I was an associate minister at Seattle, Japanese Methodist Church. Next I was pastor of the San Jose, California, church; then Greeley, California; then back to Oakland, California. I was pastor there before I came back to this country.

Q When did you come back to this country?
A 1936.

Q Why?

A Over there the second generation of people had grown up so pastoral work had to be done in English; but my English was not perfect and it is not good enough for these young people who speak only English and I thought my place would be Japan.

Q You came to Japan in 1936?
A Yes.

Q And what did you do after you came to Japan?
A I was pastor, Methodist Church, until 1937 - March 17 - 1942.

Q Did you have a civilian occupation in addition to being pastor of a church?
A At that time, no.

Q Did you hold church services in the prison camp?
A No. We weren't have that. We could not have that.

Q Why?
A We had it Christmas and Christian Christmas.

Q Did you have Easter?
A No.

Q You said you could not hold services? Why?
A Well, I don't know. The commandant did not allow us that.

Q He did not allow that?
A I never asked him.

Q You are a minister of the gospel?
A Yes.

Q You did not hold church services for prisoners of war?
A I did not hold services but I did my prison work, therefore I tried to be kind.

Q You did not hold church services?
A No

Q Did you ever tell the camp commandant you would like to hold church services?
A Yes. I did.

Q What did he say?
A He was not in favor.

Q How many times did you tell him that?
A Once.

Q Did any prisoners of war die in this camp while you were there?
A Yes.

Q Did you hold funeral service?
A I prayed for the body. Not in public.

Q In your office.
A Yes.

Q You didn't hold any funeral services at the body or at the grave?
A No.

Q Now, you said that Ishiura spoke kindly to some prisoners?
A Yes.

Q Did he speak kindly to all prisoners?
A Yes.

Q Did he speak unkindly to some prisoners?
A I did not hear.

Q What was the name of these two Dutch prisoners who were brought in?
A I don't remember the names.

Q Was one of them named Streefkerk?
A That is the sound that I remember.

Q Was he there that day?
A Yes.

Q That day?
A When I interpreted. Yes.

Q Was one of these prisoners Streefkerk?
A I think so.

Q What was the name of the other prisoner?
A I don't remember.

Q Do you know what the 'dog house' was?
A Yes. I heard.

Q What is the dog house?
A It is where the prisoners were put in.

Q Tell us about it. What did it look like?
A It is a small room that has windows near the top of the wall and they are locked up there.

Q What was the sides made of?
A At the first camp?

Q At Camp No. 1?
A I do not know really. I did not look into it.

Q You were in?

PROSECUTION: If you could give him the date I think it will help.

Q You were in Camp No. 1 in 1945, weren't you?
A Yes.

Q What was the dog house made of in that camp in March, 1945?
A Wooden.

Q Wooden roof?
A Tall wood and then waterproof paper, I think. I am not sure

Q Was there waterproof paper on the sides?
A No. I do not think so.

A No. I do not think so.

Q Did you ever see this dog house?
A Yes. I looked in.

Q Did you ever go in?
A No. Never.

Q Did you ever see any prisoners in there?
A Well, from the window when I passed by that place.

Q You saw them?
A I did not actually see them.

Q You have never seen anybody in the dog house?
A You are not supposed to get close to it.

Q Why?
A I don't know.

Q You are not supposed to go close to it?
A Well, I don't think so.

Q What food were the prisoners given who were in the dog house?
A The same as other prisoners.

Q How do you know?
A Once I saw a soldier carry the food.

Q How many prisoners would be put in this dog house?
A One in one room.

Q Not two in one room?
A I don't think so.

Q How many rooms in the dog house?
A Two or three in that camp.

Q How high was the ceiling?
A Not so high. Well, I could not reach the ceiling.

Q You could not reach the ceiling?
A No. I cannot.

Q You say you remember this Dutch prisoner whose name was Streefkerk?
A Yes.

Q Was he an officer?
A No. I don't think so.

Q He did been working out in the field?
A Yes.

Q Did you know Roby?
A No. I do not know.

Q You don't know Roby?
A No.

Q You know De Wijn?
A Yes.

Q Did he ever work in the field?
A No.

Q And you know Kostecki?
A Yes. I do.

Q Did he ever work in the field?
A No sir.

Q What work did the officers do?
A They did something around the camp, cleaning up or -

Q Clean the bath house; clean the latrine?
A No. Not the bath house but yard. Pick up the papers and so on. They arranged the chickens and vegetable garden.

Q Why did they do that?
A They take care of that, I think. Commandant wanted them to do that.

Q The commandant made them do that?
A Yes.

Q Did the officers work in the field?
A No.

Q If I told you that Streefkerk was an officer would that be news to you?
A Yes.

Q You did not know Streefkerk was an officer?
A No.

Q Did De Wijn ever work in the field?
A No. He did not.

Q Did De Wijn take care of the prisoners when they were sick?
A Yes.

Q Now, you never saw any prisoners beaten?
A No. I did not.

Q Did you ever beat any prisoners?
A No. No. I cannot think of that, beating anybody.

Q No. I would not think so being a minister of the gospel.
A I never beat anybody in my life.

PRESIDENT: Cross-examination?

FURTHER REDRESS EXAMINATION

Questions by Prosecution:

Q What sort of a man was Dr. De Wijn?
A Physically?

Q No, character.
A I didn't get acquainted with him.

Q Do you know Dr. Ensing?
A Yes.

Q What sort of a man was Mr. Ansing?
A I can't tell the characters of them.

Q Do you speak Dutch?
A No. I do not know.

Q Now, when you were called into this room to be an interpreter, there were two Dutchmen, yourself and the doctor?
A Yes.

Q Who were you interpreting for?
A The doctor, but when they speak to the doctor I have to interpret for them too.

Q What did they speak in? What language?
A I thought English.

Q They were half-caste Dutch-Javanese.
A Yes. I understood half-caste.

Q Isn't that the Batak language?
A I remember they spoke.

Q Do they speak English and Dutch-Javanese? What is the language of Dutch Java?
A I don't know.

Q What language did these Dutchmen speak?
A They spoke some English, not very well, but I could understand it.

Q What language were these two Dutchmen speaking?
A I thought one spoke some English so that I could understand.

Q Did he tell you his story?
A Yes.

Q Did he tell you how he was beaten?
A Yes.

Q How was he beaten?
A Ketsura threw a piece of hard mud at him.

Q What is the story Ketsura told you?
A No. They told me, interpreting. Ketsura did next day.

Q Didn't you say earlier that they did not tell you the story how they were beaten?
A No. I interpret them and they talk to the doctor and I had to interpret to the doctor.

Q Now, did the other prisoner who was injured have anything wrong with his jaw?
A No. I do not.

Q How was he injured?
A Shot

Q There were two Dutch prisoners?
A Yes.

Q Did he have a broken rib or ribs?
A Yes.

Q How was the other Dutch prisoner injured? In what manner was he injured?
A The only thing I heard was he had hit him.

Q Did he have a dislocated jaw?
A No. I don't know about that. No.

Q Do you know whether Matsura drank whisky or wine?
A No. No. I never saw him. I only saw him during the day time and, you know.

Q Was there any complaint made to you concerning Red Cross supplies?

DEFENSE: I believe that was not gone into on direct examination.

PROSECUTION: The Commission brought that out.

DEFENSE: I don't feel I am quite in a position to object to questions by the Commission.

PRESIDENT: Why not? I want to clear up that point right here. The prosecution and defense may at any time attack any question put by the Commission.

DEFENSE: Alright sir, I will bear that in mind. But I believe on my direct examination the Red Cross was not gone into. But if the ruling is that since the Commission went into that I will not press my objection.

PROSECUTION: How large was the room in the dog house? The width and the length?
A In the Camp No. 1 at Hainangki?

Q Camp No. 1, 1945, from January to June?
A I don't tell you exactly. I just looked inside. I did not look directly but they have place for guard and then back of that guard room they have dog house.

Q Was the -
A And I never went into back of that guard house. I went to the guard room and then just peeked in so I cannot tell how big it was.

Q Was the dog house a separate building?
A A separate building with a guard room by the gate.

Q A guard room by the gate?
A A guard room in front of the building and back of the building and that stood at the gate.

Q Could you see cracks in the wall of the dog house side?
A No. I cannot tell you.

Q You saw Kumana work in front of your office?
A Not during that January, 1945, to June, 1945. That was -

Q I didn't ask you about January or June. When did Kumana work in front of your office?

A In 1944 from June till I went there - until the time they moved to the other place.

Q Approximately when was that?
A June, 1944, to January, 1945.

Q What was his job? Was he a carpenter?
A Yes.

Q Did you ever see him making boxes?
A Yes and making boxes and furniture.

PROSECUTION: No further questions.

DEFENSE: Nothing further sir.

PRESIDENT: Anything further by the Commission?

FURTHER EXAMINATION BY COMMISSION

Questions by Members:

Q You said that some prisoners had died while you were at the camp? Do you know how many?
A I cannot tell how many but quite many died during January - During February and March, 1945. Among the prisoners who came from Philippines they came there, everybody sick.

Q Do you know what caused the death of any of them? Did you ever hear a doctor say why one of them died?
A Yes. I think malnutrition. Lack of food on the boat.

Q Any other reason other than malnutrition?
A No. I believe not. Everybody was sick of malnutrition.

PRESIDENT: Any further questions?

PROSECUTION: Just one.

FURTHER REDIRECT EXAMINATION

Questions by Prosecution:

Q You say this Mundy kept the records for you?
A Yes.

Q Did he keep track of the number of prisoners that died?
A He had to come back to the office.

Q If I were to ask you how many prisoners died would you be able to make an estimate?
A During what time?

Q Let us say from June, 1944, to June, 1945.
A Only a few prisoners from the Philippines. I don't know. Two or three. And after them prisoners from the Philippines we had quite a bit.

Q Would you say there were over a hundred?
A I remember 50 something.

Q If Sergeant Handy made the statement that over one hundred prisoners died in that period, would you say that that was a true statement?
A Well, not during my stay there. If he did, he meant from the beginning the camp started in 1943, you know.

Q Was Sergeant Handy an honest man?
A He was a good man.

Q Did you trust him?
A Yes.

Q Did he have a fine character?
A Oh yes. Fine character. He was a good man.

PROSECUTION: No further questions.

PRESIDENT: Any further questions.

Apparently none, the witness is excused. We will take a recess.

The Commission then took a recess until 1127 hours at which time the personnel of the Commission, the prosecution and defense, the accused, interpreters and reporter, resumed their seats.

PRESIDENT: The court will come to order.

DEFENSE: At this time the defense will call Yasutaro Satanabe. We are going to endeavor to conduct this examination in English and if we cannot handle it, we will switch to Japanese. I think he can handle it, however.

YASUTARO SATANABE

a witness called by the Defense was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Defense:

Q Please state your full name?
A My name?

Q That's right.
A Yasutaro Satanabe.

Q How old are you?
A Forty-seven.

Q What is your business or occupation?
A Present time?

Q Yes.
A English teacher.

Q And what education have you received?
A Agricultural school and University.

Q Are you a graduate of Kansai University?
A Yes.

Q And have you received your degree?
A No degree.

Q When did you finish your studies at Kanazawa University?
A When I was 25 years old.

Q That would be about 27 years ago then?
A Yes.

Q And at the present time you say you are an English instructor?
A Yes.

Q And where are you employed?
A Now I am employed in the Girls' Higher School.

Q Were you ever in the Japanese Imperial Army?
A Yes.

Q And when did you become a member of the Army?
A When I was 21 years.

Q Well, during the period of time you were in the Army, did you have occasion to work at Fukuoka Branch Camp No. 1?
A I was appointed on the 29th of November in 1943.

Q That is you went to Camp No. 1, November 28, 1943?
A Yes.

Q For how long a period of time did you study at Camp No. 1?
A Until 15th of April next year, 1944.

Q So you were at Branch Camp No. 1 for a period of three or four months?
A Yes. Four months.

Q And in what capacity did you serve in Camp No. 1? What were your duties?
A I was appointed to the main base and officers' base, both camps, in the main office and Sub-Camp No. 1. I was employed in censoring letters.

Q Your job was censoring letters?
A Yes.

Q Did you also do some interpretation?
A Yes.

Q While you were at Camp No. 1 did you have occasion to know Takao Matsura?
A Yes.

Q And what were Matsura's duties at Camp No. 1?
A He served as an interpreter.

Q Did you ever have occasion to see Matsura strike a prisoner of war?
A I don't know.

Q Did you ever see Matsura strike a prisoner of war?
A No. I have never seen him.

Q Did you ever hear or has it ever been reported to you that he struck prisoners while you were there?
A No. I have never heard.

Q Did you have occasion to see Matsura frequently?

A Yes.

Q Would you see him every day?
A Not every day.

Q Well, how often would you see him?
A Off and on.

Q What would you say with reference to Katsura's general characteristics? Would you say he was kind?
A I thought him kind and a good man.

Q Did you ever see him engaged in any cruel acts towards the prisoners of war?
A No. I do not know.

DEFENSE: I think that is all the direct.

PROSECUTION: I have one question.

CROSS EXAMINATION

Questions by Prosecution:

Q Did Katsura ever tell you he had ever beaten a prisoner?
A Beg your pardon.

Q Did Katsura ever tell you that he had beaten any prisoner?
A No.

Q Are you sure?
A I am sure.

PROSECUTION: No further questions.

PRESIDENT: Redirect?

DEFENSE: No redirect.

PRESIDENT: Questions by the court.

There appearing none the witness is excused.

DEFENSE: Shall we start on another witness? The next witness will be Sakamoto and he will take some time.

PRESIDENT: We have approximately half an hour. Yes.

DEFENSE: I cannot understand it. I left word to have Sakamoto and another prisoner brought down from Sugamo. I will put this witness on.

KINBAKU TOMITA
a witness called by the Defense was sworn and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY DEFENSE:

DEFENSE: Will you advise the witness that he need not testify if he feels that any answer he might give might tend in any way whatsoever to incriminate him.

WITNESS: Yes.

PRESIDENT: Just a minute. You will ask him. You direct your remarks to the witness and let the interpreter interpret.

DEFENSE: And will you ask the witness -

PRESIDENT: No.

DEFENSE: I don't quite -
Having been so advised of your rights, do you still wish to testify in this case?

PRESIDENT: Just a moment, Mr. Interpreter. I don't want conversation held between the interpreter and the witness. I want you to interpret the question of counsel and I want you immediately to interpret back the reply whether it is germane or not, whether you understand it or not. I don't want you to try to explain what the question means. Let the counsel explain through you.

INTERPRETER: I do not know what instructions I have to follow.

PRESIDENT: You follow these instructions of this Commission. You should interpret the question and the answer and will not hold conversation with the witness.

INTERPRETER: Whether he understands it or not?

PRESIDENT: If he does not understand it - if it does not appear to be the answer, you will interpret it. Do you understand?

INTERPRETER: I have not worked with a Commission with such a ruling.

PRESIDENT: The reporter will please reread the question that counsel asked and you will ask the question and give the court the answer.

(Question repeated)

WITNESS: I do not know about the rights.

DEFENSE: You have rights which you may exercise at this time. If you feel that any of the testimony that may be brought out here by questions to you, or answers, or responses may in any way tend to incriminate you, you need not testify.

PRESIDENT: What was the answer?

WITNESS: Yes.

DEFENSE: Now then, being aware of your rights, do you wish to testify in this case?
A I think that I would like to testify.

Q Please state your name.
A Kinosho Tomita.

Q And where do you live?
A Miyazaki Ken, Minami Hain Gun, Agata Mura.

Q How old are you?
A Thirty four.

Q Are you married or single?
A I am married.

Q What is your business or profession?
A I am a clerk at the office of the Company.

Q And what type of work do you do as a clerk.
A I handle finance.

Q Were you ever a member of the Japanese Imperial Army?
A Yes.

Q When did you join the Army?
A February 1st, 1941.

Q And for how long a period of time didyou remain in the Army?
A I believe four years and ten months.

Q While in the Army did you ever, or were you ever assigned to Branch Camp No. 1, Fukuoka?
A Yes.

Q When did you first arrive at Branch Camp No. 1?
A I believe it was the end of November, 1942.

Q And for how long a period of time did you remain at Camp No. 1?
A To the end of July, 1945.

Q When you first arrived at Branch Camp No. 1, what was your rank or rating in the Army?
A I was the intendance sergeant.

Q What was the highest rank or rate you held in the Army?
A I was Intendance Sergeant Major.

Q What were your duties at Branch Camp No. 1.
A I handled the intendance affairs.

Q Could that be work similar to accounting and keeping records?
A Yes. Keeping accounts and handling the finance.

Q Was your work done in an office?
A Yes.

Q Who was your immediate superior?
A The Camp commandant Sakamoto. The camp commandant has changed several times.

Q During the period of time Sakamoto was at Branch Camp No. 1 who was next in charge under Sakamoto?
A It has changed several times.

Q Was there anyone immediately superior to you other than the camp commandant?
A Yes.

Q And who was this party and/or parties over you?
A There were some who held higher ranks than me but the work was done directly under Sakamoto.

Q Do you know Yukio Katsura?
A Yes.

Q How long a period of time have you known him?
A From the time I went to the camp and to the time I left the camp.

Q What were Katsura's duties at Camp No. 1?
A Interpreter.

Q Did he have any other duties in addition to interpreting?
A He went to observe the working place under the orders of Sakamoto.

Q How much of Katsura's time was spent away from the prison compound?
A It depends upon the place.

Q While - Would you say, as a general rule, that Katsura spent most of his time away from the place with work parties?
A There were days when he stayed at the camp throughout the day.

Q How often would you see Katsura? Was it daily, or several times a week, or how often?
A I saw him every day.

Q What time of the day or night would you see him?
A I saw him at one in the morning and evening practically all the time.

Q Did you during the period of time you were at camp No. 1 ever see Katsura strike a prisoner of war?
A No.

Q Were you told, or did you afterward discover, that Katsura had ever struck a prisoner of war.
A I have heard.

Q And relate to the Commission what you have heard.
A I have heard from somebody that Katsura had beaten a prisoner. I do not know the circumstances.

Q Do you know what the dog house is in that camp? Camp No. 1?
A What is the dog house?

Q Do you know of a black box, dog box, or a place that prisoners were held in for violation of any regulations?
A Yes.

Q Are you able to describe this dog box?
A I can.

Q Well will you do so?
A By black box do you mean the guard house?

Q Describe the guard house.
A The cell was in the guard house.

Q How many rooms were there in the guard house?
A It differed at different places but there were from two to three rooms.

Q How large were these rooms?

PROSECUTION: Sir, may we fix the time?

DEFENSE: I will get to that.
A I believe the room, the one room, was six feet square.

Q With particular reference to the guard house at Mushiroda Camp was it about the same dimensions as you have just related?
A I believe the size was about that.

Q For the record, how many times was Camp No. 1 moved?
A Three times.

Q When you first went to Branch Camp No. 1 in 1942 where was it located?
A Kumamoto.

Q And when was it moved from Kumamoto and to where?
DEFENSE: In this case I have to ask a question to the witness because I do not know what the subject is.
A It was there for one year and moved to Kashi.

DEFENSE: Ask him when it was moved from Kumamoto to Kashi.
A I believe it was in November of 1943.

Q And when was it moved from Kashi? and to where was it moved?
A May 1944 to Mushiroda. I believe it was in April.

Q And did the camp remain at Mushiroda to the end of the war?
A No, it changed again.

DEFENSE: I think this would be a suitable time if the Commission cares to recess.

PRESIDENT: Do you want to pursue that question? His answer was, "No, it changed again."

Q Where did it move to?
A To Mukosaki.

Q And when was it moved to the latter place?
A I believe it was in January of 1945.

PRESIDENT: That is all.

The court will adjourn until Monday morning, February 17th, at 0900 hours.

The Commission then at 1200 hours on Friday, February 14th, 1947, adjourned to meet at 0900 hours on Monday, February 17th, 1947.

NORMAN P. GROFF, COLONEL, INF.
President.

Yokohama Court House
Yokohama, Japan
Monday, 17th February
1947

The Commission met, pursuant to adjournment, at 0900 hours on Monday, 17th February, 1947, all personnel of the Commission, the prosecution and defense, the accused, the interpreters and the reporter, being present.

PRESIDENT: The court will come to order.

PROSECUTION: Let the record show that I now hand you the original substituted specifications.

REPORTER: Yes, sir.

PROSECUTION: The prosecution wishes to apologize for being late. We waited approximately one hour for transportation.

PRESIDENT: Let the record so show.

DEFENSE: We are ready to proceed, sir.

PROSECUTION: I remind the witness that he is still under oath.

WITNESS: Yes.

DIRECT EXAMINATION (continued)

DEFENSE: At the close of the last session you described the various locations of the various prisoner of war camps. Now, at how many of these camps was Yuhichi Sakamoto camp commandant?

A He was the camp commandant at four places.

Q Now, you worked under Sakamoto, did you?

A Yes.

Q In your opinion, was Sakamoto to be classified as a stern disciplinarian?

A I think he was a strict disciplinarian.

Q Did he demand strict obedience from his subordinates?

A Yes. He demanded strict obedience.

Q If Kataoka, as a superior private, had refused to carry out one of Sakamoto's orders, what in your opinion would have been done with Kataoka?

PROSECUTION: Objection to the question. It has no relevancy.

LAW MEMBER: I overrule the objection.

WITNESS: Dependent upon the degree, he might have been punished. He would have been punished if he refused to carry out one of Sakamoto's orders.

PROSECUTION: Objection. It is calling for pure conjecture on the part of the witness. The Law Member ruled that the best evidence would be the witness who would handle such a situation himself.

With regard to my quoting from an extract of the testimony of Yuhichi Sakamoto, the defense has assured the court that Sakamoto will be called as a witness. I therefore suggest that the best evidence

would be Yuhichi Sakamoto himself rather than ask this man what Yuhichi Sakamoto would do under the circumstances. I think the question is rather foolish.

DEFENSE: I merely wish to note that this witness worked in the same camp and worked at the same time as Sakamoto and that he is familiar with order in the camp.

LAW MEMBER: I think the answers are self-evident. It would be surprising if they were not just what you would expect.

DEFENSE: I am through.

LAW MEMBER: I overrule the objection.

WITNESS: It depends upon the circumstances and upon the type of order that was issued.

LAW MEMBER: I think you have gone far enough with that.

DEFENSE: Yes. I am through.
On Friday you testified with regard to the black box or the guard house. Did you at any time see any Allied personnel, prisoner of war officers, put in this black box or the guard house?
A No. I have not seen.

PRESIDENT: Mr. O'Brien, that question could have been very easily broken into two parts.

DEFENSE: It was lengthy. Yes sir.

PRESIDENT: Split the question for the purpose of interpretation.

DEFENSE: Do you know, or did you have occasion to observe any Allied prisoner of war officers being forced to work away from the camp compound?
A I have not seen.

Q Did Katsura have authority to assign prisoner of war jobs to the prisoners?
A The procedure was to receive an order from the camp commandant to assign work.

Q Did you ever hear of any occasion wherein Katsura sold so-called 'soft jobs' to any of the Allied prisoners of war?
A No. I have not.

DEFENSE: You may cross-examine.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q I show you this paper and ask you if that is your signature?
A Yes. It is my signature.

Q Now, I ask you if you have beaten a prisoner of war?

LAW MEMBER: Before you go any further. You have probably done all that is necessary in that regard.

DEFENSE: May I say this off the record?

(Discussion off the record)

LAW MEMBER: Let the record show that the witness has been advised that he does not need to testify to any matters that might tend to incriminate him.

DEFENSE: And it might be advisable to recall that this advice was given Friday afternoon.

LAW MEMBER: That is immaterial as to when it was given.

(Question repeated)

WITNESS: I would not like to testify.

PRESIDENT: On what grounds?

PROSECUTION: Sir, I might be able to bring this out. I ask you if you did not make this statement:

> "In the three year period that I was with them, I struck them approximately thirty times. On a few occasions I used a stick or piece of wood that happened to be lying nearby. Other times I just slapped them, never knocking them down or drawing blood from them."

WITNESS: I think there is a slight error in this.

Q Was this read back to you?
A Yes.

Q Was this translated to you?
A When it was translated back to me I said I hit them lightly just to warn them. I said that because they do not understand the language I spoke. I said that I struck them lightly twenty or thirty times to warn them.

Q Did you strike them lightly with the stick or piece of wood which you picked up, which happened to be lying nearby?
A No. You are mistaken.

Q Did you sign this statement?
A Yes.

Q Who interpreted this statement for you?
A I believe the interpreter.

Q Was he a Nisei?
A I believe so.

Q Now, this question was put to you, "Did the camp commander know about you slapping these prisoners?" You answered, "No." "The camp commander never had authority to give out punishment and I slapped them without him knowing it." Was that your answer?
A Yes.

PROSECUTION: No further questions.

PRESIDENT: Redirect?

DEFENSE: No redirect, sir.

PRESIDENT: Questions by the court?

Appearing to be none, the witness is excused.

DEFENSE: At this time, sir, the defense offers in evidence as Defense Exhibit No. 1 being an extract from the affidavit of Gerald K. Rogers.

PROSECUTION: The prosecution objects to this extract for a number of reasons.

Reason No. 1. The affidavit itself was a copy of the original affidavit. The prosecution has in its hands the original. The prosecution was never asked for the original so that a copy could be made of the whole affidavit. Where the whole affidavit is in the area I think it is the duty of the defense to submit the whole affidavit, not to offer a certified true copy of an abstract of the affidavit. That is my first reason.

LAW MEMBER: Well, let us deal with that one first. I don't know the background of all this. If the original is available, and if the court can see it and it is simpler to do that, that would seem to be the simplest way to deal with it.

PROSECUTION: The court should have the entire affidavit. At the beginning I believe the defense intended to withhold this information from me. The defense would not tell me the name of the affiant. I would be glad to furnish the original so a true copy could be made of this affidavit. This is the procedure this court has to abide by under SCAP rules regardless.

There is another reason why the defense should have offered the affidavit. I know if I did offer something like this the defense would cry to high heaven.

DEFENSE: The prosecution did offer such evidence in the case of Yuichi Sakamoto.

LAW MEMBER: Is the original available now?

PROSECUTION: No sir. I had not been instructed to bring it down. The defense does have a true copy of the entire affidavit and I would not have objected if a true copy of the entire affidavit had been made.

DEFENSE: I might say this.-

PROSECUTION: When they selected a paragraph and then think they can get up with this before any Commission I think it my duty to explain this to the Commission and the Commission should not accept such an extract.

LAW MEMBER: I think the Commission should be permitted to see the entire affidavit and if we can agree on that let us get on. Are you prepared to offer the entire affidavit?

DEFENSE: I am, except to point out that the affidavit does not deal with this case. It deals with the Oema case. I have the true copy and if the Law Member wishes to see it it is correctly transcribed that is satisfactory; but the affidavit has nothing to do with this particular case.

PROSECUTION: I take it this is a true copy. That is the reason we have

PRESIDENT: Questions by the court?

Appearing to be none, the witness is excused.

DEFENSE: At this time, sir, the defense offers in evidence as Defense Exhibit No. 1 being an extract from the affidavit of Gerald K. Rogers.

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DEFENSE: The prosecution did offer such evidence in the case of Yuhichi Sakamoto.

LAW MEMBER: Is the original available now?

PROSECUTION: No sir. I had not been instructed to bring it down. The defense does not have a true copy of the entire affidavit and I would not have objected if a true copy of the entire affidavit had been made.

DEFENSE: I might say this,-

PROSECUTION: When they selected a paragraph and then think they can get up with this before any Commission I think it my duty to explain this to the Commission and the Commission should not accept such an extract.

LAW MEMBER: I think the Commission should be permitted to see the entire affidavit and if we can agree on that let us get on. Are you prepared to offer the entire affidavit?

DEFENSE: I am, except to point out that the affidavit does not deal with this case. It deals with the Gamm case. I have the true copy and if the Law Member wishes to see if it is correctly transcribed that is satisfactory; but the affidavit has nothing to do with this particular case.

PROSECUTION: I take it this is a true copy. That is the reason we have

the rule for red-lining if the whole affidavit does not apply in any case.

DEFENSE: I have no objection to offering the entire affidavit though I think it is an irrelevant exhibit. This one paragraph is all that is relevant.

Getting back to the excerpts from the Nateura case, a few paragraphs were chosen from several pages.

LAW MEMBER: I think I am prepared to rule on this. Here is the affidavit, the whole of it. We will accept as much as the defense wants to offer to support its case and as much more as the prosecution wants us to read.

PROSECUTION: Now for the second objection.

LAW MEMBER: Will there be any more?

PROSECUTION: Yes sir.

LAW MEMBER: We will deal with them in due course.

PROSECUTION: The reason I wanted the entire affidavit in evidence pertaining to Benjamin J. March is because the defense has said that Benjamin J. March is at present being tried as a collaborator.

LAW MEMBER: You objected to his saying so.

PROSECUTION: I want that to be brought to this court's attention. I want the defense to now prove that this man is now being tried and I believe the only evidence the defense has is to give me these affidavits. If such -

DEFENSE: How easy it is to twist words!

LAW MEMBER: That has nothing to do with this affidavit.

PROSECUTION: Yes sir. It certainly does. I wish to find out where he got this information. He said this man's affidavit should not be allowed in this court, that he is being presently tried as a collaborator.

DEFENSE: No such statement was made. Objection was taken at the time the Marsh affidavit was offered. I asked if the prosecution had information that Marsh had been tried and been disenfranchised and lost his rights of citizenship and that would go a long way. It was not a statement but a question and the record will so show.

PROSECUTION: I have no such recollection myself.

LAW MEMBER: I don't want any more of this discussion at all. I will read it and see if it makes any difference and go along from there.

If there is any objection arising out of any previous challenge I will overrule it as an objection and ask if there are any further objections to the affidavit or anything further you want included.

LAW MEMBER: All counsel on both sides has said will depend more on what interpretation is put on this extract. As it is, it is accepted as exhibit A of the defense. That is, the extract.

PROSECUTION: One more point, sir. I am not sure which affidavit has the other information in it, but I believe the affiant mentions three or four collaborators, or three or four probable collaborators, not just one. I don't know which affidavit it is, but he has two of them.

DEFENSE: It is in the next one.

LAW MEMBER: Well, don't you object until the evidence is offered.

PROSECUTION: I won't object any more on this.

DEFENSE: Are you ready to proceed?

PROSECUTION: I wish to make the point for the record. I am not objecting to the Law Member's ruling but I am objecting to defense tactics. When the defense feels that they can get by by giving a bald statement and believing they can get away with it, I believe something should be done about it.

DEFENSE: I move the last remarks be stricken from the record. It is an invented fact.

LAW MEMBER: I am not going to hear any more on the subject. Let us go along from here. Unless the prosecution wants to include some further portions of this affidavit we will accept it.

PROSECUTION: Which affidavit is being offered?

DEFENSE: Rogers.

PROSECUTION: I have a still further objection.

The main point in making all these objections. Actually, I do not care whether this affidavit is admitted or not, but I want to show to what ends defense will go to prove a point. An affidavit such as this would be admissible under ordinary circumstances if it went to disprove the credibility of the witness. However, this discredits the character and nothing more of Marsh. It does not say Marsh was a liar. If Marsh was here, defense could attack his credibility but the defense would not be allowed to attack Marsh's character if he was here.

And still furthermore, a fourth point. This incident occurred at Camp 1[illegible] before the incidents or whatever is described in this extract occurred at Camp 1[illegible], before the affiant was in Camp No. 1. It has nothing to do with Camp No. 1

(Document referred to was produced and marked Defense Exhibit A for identification and was received in evidence.)

(Defense Exhibit A was read by the Defense.)

PROSECUTION: Do you have a copy of the original affidavit?

DEFENSE: Just a copy. I wanted to give this to the Law Member.

This time, sir, the defense offers in evidence extract from the perpetuation of testimony of Gunner Henry Conlit.

PROSECUTION: I make the same objections to this extract of an affidavit which is in the possession of the prosecution and also in the possession of the defense. It is offering a portion when they have the whole; and also all other objections made concerning the affidavit of Harold K. Rogers will apply to this affidavit extract.

LAW MEMBER: Is there any possibility that any additional portions of this testimony is in any way relevant to this case? If it is then we should be sure that we get in all that could possibly be relevant.

PROSECUTION: Well, sir, this affidavit has quite a bit more than the defense offered.

LAW MEMBER: About Marsh?

PROSECUTION: About other collaborators. It has a bearing on the case I believe. He has complained about one.

LAW MEMBER: Will you tell us how much more you want to put in then?

DEFENSE: I believe, sir, that they want the following three paragraphs after this. That is on page 4, down to "Boise, Idaho". Is that right, Mr. Deitch?

PROSECUTION: Yes.

LAW MEMBER: In dealing with the matter, subject to your other objections, I am ruling that that be included. The other objections are overruled. The extract will be admitted as Exhibit B.

(Document referred to was produced and marked Exhibit B for identification and was received in evidence.)

(Defense Exhibit B was read by the Defense.)

PROSECUTION: Now, sir, may I ask the court to direct the defense that this in no way is to be a precedent for future cases, this offering extracts of affidavits when the original copies are available. It was my understanding that the whole should be offered and the impertinent parts ruled out.

LAW MEMBER: I am sure no commission will be governed by what we do and in this case we are merely taking out the part that is of some value.

PROSECUTION: The defense has already quoted Tokichi Sakamoto as a precedent and they will see it as agreement in all cases.

LAW MEMBER: I think enough has been stated.

DEFENSE: The defense will call the accused as a witness and would like a few minutes.

PRESIDENT: The court will take a recess.

The Commission then took a recess until 1015 hours at which time the personnel of the Commission, prosecution and defense, the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The court will come to order.

DEFENSE: At this time the defense calls the accused Takeo Katsura. He advises that he would also like to take the Christian oath as well as the other oath.

PROSECUTION: I remind you that you are still under oath, sworn at the beginning of this trial.

TAKEO KATSURA

a witness called by the defense, having previously been sworn, was further sworn on the Christian oath, and testified as follows:

QUESTIONS BY DEFENSE:

Q State your full name.
A Takeo Katsura.

Q Speak loud so every member of the Commission can hear.
How old are you?
A Forty.

Q Are you married or single?
A Single, sir.

Q Were you a member of the Japanese Imperial Army?
A Yes sir.

Q And when did you become a member of the Japanese Army?
A October 1st, 1941, sir.
Q Now, prior to joining the Japanese Imperial Army had you resided in the United States of America?
A Yes sir.

Q When did you first arrive in the United States?
A In April, 1927, sir.

Q And where did you first make your home in the States?
A In a small village about twenty miles from Galveston, Texas. Webster.

Q How did you originally effect an entry into the United States?
A I was apprentice sailor on the boat.

PRESIDENT: Let me ask him what was the name of the village.

PROSECUTION: The defense has already quoted Ichichi Sakamoto as a precedent and they will use it as precedent in all cases.

LAW MEMBER: I think enough has been stated.

DEFENSE: The defense will call the accused as a witness and would like a few minutes.

PRESIDENT: The court will take a recess.

The Commission then took a recess until 1815 hours at which time the personnel of the Commission, prosecution and defense, the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The court will come to order.

DEFENSE: At this time the defense calls the accused Takao Katsura. He advises that he would also like to take the Christian oath as well as the other oath.

PROSECUTION: I remind you that you are still under oath, sworn at the beginning of this trial.

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A Takao Katsura.

Q Speak loud so every member of the Commission can hear.
How old are you?
A Forty.

Q Are you married or single?
A Single, sir.

Q Were you a member of the Japanese Imperial Army?
A Yes sir.

Q And when did you become a member of the Japanese Army?
A October 1st, 1941, sir.
Q Now, prior to joining the Japanese Imperial Army had you resided in the United States of America?
A Yes sir.

Q When did you first arrive in the United States?
A In April, 1927, sir.

Q And where did you first make your home in the States?
A In a small village about twenty miles from Galveston, Texas. Webster.

Q How did you originally effect an entry into the United States?
A I was apprentice sailor on the boat.

PRESIDENT: Let me ask him what was the name of the village.

A Robinson. R-o-b-i-n-s-o-n.

(Question repeated)

Q Did you this time jump ship and go into the United States?
A Yes sir.

Q Did you receive any education in the United States?
A Just two years.

Q Where did you receive that education?
A Mountain, Tenna.

Q Did you reside in any other place?
A New York and Connecticut.

Q And when did you arrive in New York?
A About August/39, sir.

Q And did you remain there for the period of time you were in the United States?
A Up to November, 1937, sir.

Q And while you were in the States, what type of work did you do?
A I was working for private family as butler-chauffeur; sometime as cook.

Q How did you happen to leave the States? That is, were you deported?
A Yes sir.

Q When were you deported from the States?
A April 1938, sir.

Q And why were you deported from the States?
A My people went to Florida in November, 1937.

Q You mean your people?
A The people I was working for.

Q Employer?
A I drove them to Florida and they stayed in a little village near St. Petersburg and one day I had auto crash. Then police question me and they found I entered the States illegally so they deported me to Japan, sir.

Q And when did you arrive in Japan?
A End of April, 1938, sir.

Q And when did you join the Army?
A October 1st, 1941, sir.

Q Did you enlist in the Japanese Army or were you drafted?
A Drafted, sir.

Q And did you state to the authorities the type of work you would prefer to do in the Japanese Army?
A I asked the Sergeant Major in my company who was in charge of personnel sending them out to various places. I told him I did not want to go to front so if there was any chance, please use me as interpreter.

Q And did you explain to him why you did not want to go to the front or be

in combat?
A I did not fight, sir. I did not want to fight.

Q Was it because you did not want to fight or you did not want to fight the United States?

PROSECUTION: Let the witness testify, not the defense.

DEFENSE: I will withdraw the question.

LAW MEMBER: Yes. Rephrase that.

PROSECUTION: He has already told him what he wants.

DEFENSE: Yes. I think we can leave that line. Did you become an interpreter immediately upon joining the Japanese Army?
A No sir. I was appointed as interpreter in November, 1942, sir.

Q And during the first year in the Army what type of work did you do?
A Training was finished after six months and after that there was guard duty or some other kind of duty.

Q What was the highest rank or rating you ever held in the Japanese Army?
A Three star private.

Q And what would that compare to in the American system of ratings?
A Probably superior private, sir.

Q Would it be comparable to Pfc or corporal in the American Army or do you know?
A Between the three star private and corporal there is a rank with lance corporal, sir.

Q Now, after you became an interpreter in November, 1942, to what camp were you assigned?
A Fukuoka prisoner of war camp No. 1.

Q And where was that located at the time of your first assignment?
A Kumamoto.

Q And what was the name of the camp commandant?
A I have forgot his name but I think it was something like Captain Takata or Takayama.

Q What other camp commandants did you serve?
A In Camp No. 1? Sakamoto and Yoshi.

Q Was Sakamoto the last commandant you served under?
A No sir. First Takayama, probably his name was. Then Captain Sakamoto and then Yoshi.

Q During what period of time did you serve under Captain Sakamoto?
A From January 1943 to, I think, about April or May, 1945, sir.

Q What type of officer was Sakamoto?
A Very strict and very stubborn.

Q Did he insist that his orders be immediately carried out?
A Yes sir.

Q What would happen if you would refuse to carry out one of his direct orders?
A I would be punished, sir.

Q Do you recall a Dutch prisoner of war by the name of Stroefhoek?
A I don't know the name but I think so.

Q Do you recall striking or hitting a Dutch prisoner of war?
A Yes, sir.

Q When did this occur?
A July or August, 1945, sir.

Q Do you know what this prisoner's rank or rating was?
A At the time he was sergeant major, sir.

Q Was he a commissioned officer to your knowledge?
A No sir.

Q Relate the incident to the Commission.
A Yes sir. On working party, Hachiroda Camp, they had a wooden tower built where the commander ordered me to sit up in tower to watch the men working. One day commander came to tower and some of the Dutch party were pushing truck from hill on car.

Because it was a hill, instead of pushing they have to pull truck to make car slow down. At the end of the hill the gasoline engine that was used for pushing these cars, ten or twelve small cars, was waiting and prisoner of war who was pushing this car was told by commandant not to let them go down by itself.

One day when I was in tower the commander came and he was telling me in the tower that Dutch party was letting the car down and cars were hitting each other at the foot of the hill. So, commandant told me to go there and put end to it and to hit them.

So, I went down from the tower and went to this party and told them commandant is watching from the tower so do not let cars down. I warned them also and said commandant sent me there to hit them. At that time just warned them and returned to the tower. I was staying up with commandant on the tower and after about ten or fifteen minutes commandant went away.

Then, later on I went to the other party working around and suddenly I heard someone shout 'Look out!' at my back. I turned around and saw one of the cars was speeding down without any man on the car and hit the other car at the foot of the hill and a few men who were waiting at the bottom was almost caught between two cars, but they escaped by jumping out from between the cars. So, I went there and asked them why they let the cars down. The man said it was heavy and commander told them to let them go. So I saw commander. I got mad and pushed him down.

Q By 'commander' you have reference to this Dutch prisoner of war?
A Yes. I guess so. What I mean, commander is the Dutch who was in charge of this working party. So I pushed him down and picked him up. Then he told me that his side hurt. So I told him to unbutton his shirt and I saw the place he pointed out to me but I could not see anything. But he told me it hurt so I told him if it hurt, don't work. At the same time I told him, if you want to go back to camp you may go back to camp.

Q. What would happen if you would refuse to carry out one of his direct orders?
A. I would be punished, sir.

Q. Do you recall a Dutch prisoner of war by the name of Streefkerk?
A. I don't know the name but I think so.

Q. Do you recall striking or hitting a Dutch prisoner of war?
A. Yes, sir.

Q. When did this occur?
A. July or August, 1945, sir.

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A. At the time he was sergeant major, sir.

Q. Was he a commissioned officer to your knowledge?
A. No sir.

Q. Relate the incident to the Commission.
A. Yes sir. On working party, Mushiroda Camp, they had a wooden tower built where the commander ordered me to sit up in tower to watch the men working. One day commander came to tower and some of the Dutch party were pushing truck from hill on car.

Because it was a hill, instead of pushing they have to pull truck to make car slow down. At the end of the hill the gasoline engine that was used for pushing these cars, ten or twelve small cars, was waiting and prisoner of war who was pushing this car was told by commandant not to let them go down by itself.

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Then he was sitting there for about ten minutes and he told me he wanted to go back to camp. So I say, "Guard" and one of the guards and a medical orderly took this man back to camp.

Q When you speak of this Dutch prisoner of war as commander, you have reference to his military rank or the title for the type of work he was doing?
A He was a sergeant major.

Q What type of work was being done at this time?
A Pushing earth on car.

Q What type of cars do you have reference to? Could you describe them?
A A wooden box put on some flat floor and having four wheels and run on rails.

Q Now, did you have any officers, Allied prisoner of war officers doing that type of work?
A No sir. No officers.

Q Are you sure of that?
A Yes sir.

Q After the Dutch prisoner came back to camp what, if anything, further did you do?
A They went to camp. I mean this man, with one Japanese guard and prisoner of war medical orderly went back to camp. I stayed in working party and then I returned to camp at five o'clock in the evening and went to medical inspection room. American doctor whose name was Kontoski - he was a captain - he was in the medical room so I spoke to him about this man. Captain Kontoski said one of his ribs was broken or cracked. It was the same day this thing happened.

Q Did you talk to this Dutch prisoner who had his rib injured?
A Yes sir.

Q Did you talk to him that same day?

A When he was down, I pulled him up and he got up so I told him I didn't mean to hurt him. I am sorry. I apologize to him. He said he knew I did not mean to hurt him but I just pushed him down.

Q You thought everything had been patched up and taken care of at that time?

A Yes sir.

Q Did you strike a Dutch doctor, De Rijn?

A Yes sir.

Q Will you relate to the Commission the circumstances leading up to that?

A Yes sir. After this thing happened, I think it was the next morning before I went to the working party, or this same day in the evening. I don't remember exactly. I was called to the commandant's office. There was Japanese there whose name was Kanda. Those two were in the office. Then I went into the office commandant smilingly told me "I hear that you have hurt someone." So I said, "Yes sir." "I didn't mean to hurt him but it just happened so." So commandant told me if men disobey you can hit them but never hurt them. That is all he said and he told me to go out. So I came out.

One of the prisoners, I don't remember his name, came to me and Dr. De

Then he was sitting there for about ten minutes and he told me he wanted to go back to camp. So I say, "Guard" and one of the guards and a medical orderly took this man back to camp.

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Q Did you talk to this Dutch prisoner who had his rib injured?
A Yes sir.

Q Did you talk to him that same day?
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A Yes sir.

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A Yes sir.

Q Will you relate to the Commission the circumstances leading up to that?
A Yes sir. After this thing happened, I think it was the next morning before I went to the working party, or this same day in the evening. I don't remember exactly. I was called to the commandant's office. There was Japanese there whose name was Kanda. These two were in the office. When I went into the office commandant smilingly told me "I hear that you have hurt someone." So I said, "Yes sir." "I didn't mean to hurt him but it just happened so." So commandant told me if men disobey you can hit them but never hurt them. That is all he said and he told me to go out. So I came out.

Some of the prisoners, I don't remember his name, came to me and Dr. De

Wijn had told this to camp commandant. Although this man who was here did not see Dr. De Wijn go to commandant except Handa apologized to him. There was talk among all British officers and Dr. Kostecki and the other doctor came to report to the commandant. But Dr. De Wijn insisted to go to commandant and he told the commandant. So, while this prisoner of war did something wrong I did not go to commandant. I tried my best to make things easier for them all the time although every now and then I slap some of the men, most of the time I was hiding everything from commandant about these men.

Q What led to your striking Dr. De Wijn?
A I got mad at Dr. De Wijn's deed and I went over to officers' hut and ask Dr. De Wijn and asked him why he did that. He knew I was always doing a favor for them and never report to commandant yet, when I make such a mistake, to report this to the commandant. So I slap him a few times and pushed him on the bed.

Q Where did this take place? Was this in his hut?
A In the hut.

Q Who else was present?
A Most of the officers were there because it was right after supper time.

Q Did you strike him with your open hand or closed fist?
A I think I hit him with the hand closed.

Q Approximately how many times?
A Five or six times.

Q Did you strike him with a club or hand or any other instrument?
A No club, sir.

Q Did you knock him down?
A No sir. I pushed him on the bed.

Q Approximately how long did this take place?
A I should say not more than five minutes.

Q What was Dr. De Wijn's condition when you left him?
A He was alright, sir. I did not see any injury or anything like that.

Q Was he bleeding?
A No sir.

Q Any signs of swelling upon his face.
A Not at that time sir.

Q Did you see him the day following?
A Yes sir.

Q Did you notice any signs of swelling upon his face?
A Yes sir. He was swollen up a little bit.

Q Did you have any conversation with him the day following this?
A No sir. Not next day but may be one week or ten days later I saw him and I told him I was sorry.

Q Did he seem of the opinion to accept your apology?
A Yes sir.

Q What was said, if you recall?
A I told him I didn't mean to do that but I got mad and I am sorry. He said, That is alright. He knows.

Q Do you recall a prisoner by the name of Newman?
A Yes sir.

Q What was his nationality, if you recall?
A British.

Q Did you have occasion to strike him?
A One time at Kumamoto Camp.

Q When was this, if you remember?
A About March or April, 1943.

Q And where did this take place with reference to a portion of the prison compound?
A One of the huts.

Q Whose hut?
A Prisoner of war's hut where they were sleeping.

Q Who was present at the time this took place, if you recall?
A Captain Sakamoto and Sergeant Major Nakayama and Sergeant Tomita.

Q What were the circumstances under which you struck or assaulted Newman?
A One day we went to the huts and Newman was there working. One of the prisoners was there who came to the commandant and said he lost his money. So, commandant wanted me to ask Newman whether he knew about money or where he took the money. Newman said, 'No.' Captain Sakamoto said Newman was the only one in this hut. He must have taken it. He ordered me to slap him. I hesitated to do it. He told me again to hit and I slapped him. I slapped him one time and I quit. Captain Sakamoto ordered me again to slap him so I slapped him again and then we walked out.

Q Did you at any time strike Newman of your own will and volition?
A No sir.

Q It was done as a result of a direct order from your superior officer?
A Yes sir.

Q And that is the only reason you struck him?
A Yes sir. He was treated kindly by me for three years and I never -

Q What kind of work did he do?
A Carpenter's work.

Q Did you see him frequently - every day?
A Every day, sir.

Q Did you ever have any other difficulty with him?
A No sir.

Q Did you ever strike him over the head with the hammer?
A No.

LAW MEMBER: Let him carry on.

DEFENSE: Yes sir. I think I am on the right track now and that LaFay came out of the hut and that you struck him at that time.

PROSECUTION: I still think Mr. O'Brien is a little mixed. I wish to point it out so as to get him on the right track.

LAW MEMBER: We will note it.

DEFENSE: What is the truth regarding that evidence?

A I think LaFay stayed with me more than an hour and five months and during this time I never hit LaFay but I heard that LaFay was hit by sergeant major Kusuda at roll call time.

Q Did you yourself ever conduct roll call?
A No sir.

Q Did you have authority so to do?
A No sir. It is the duty of officer of the day, sir.

Q What were your working hours?
A From seven o'clock in the morning to five in the afternoon but sometimes seven or eight.

Q. Did you ever criticize any house he made for the prisoners?
A. No sir.

Q. Did you ever strike him for -
A. As the commandant went by - went around the hut, there were all kinds of house made for the hut so the commandant ordered Newman to take them all from shelves and hut. Commandant ordered Newman to destroy them. That is all, sir.

Q. Were they destroyed?
A. Yes sir. Some destroyed by Newman himself.

Q. Was Newman hit at that time?
A. Sir?

Q. Was Newman struck at that time?
A. No sir.

Q. Do you recall John LaFay?
A. Yes sir.

Q. Did you have occasion to, or did you ever, strike John LaFay?
A. No sir.

Q. There has been some evidence offered for the Commission that on one occasion you ordered the man in a certain hut out for muster or roll call and that Lagay was slow in coming out to the call and on another occasion that he was beaten for having too weak a voice in answering to roll call.

PROSECUTION: I am not objecting but I think defense has the evidence a little bit mixed up. I think he is applying incidents to LaFay which belong to others.

Q Did you ever pull night duty?
A No sir. Never sir.

Q There is also some evidence offered that John LePay and James Young - Do you recall James Young?
A No sir.

Q That they came in late from work duty and went to see you about some food and were then taken to a hut where they were usually served, whereupon you said if the men did not save food for them they would have to go hungry; that you then took off your shoe and struck them.
A No sir. I remember such a thing happened. If you want me to tell what happened, I will tell.

Q Yes. What were the circumstances?
A At that time LePay and the other man was working in machine shop in Fukuoka right in town. I went to them as interpreter. LePay and the other man sometimes went, sometimes two or three more, were given their lunch by the man who had this machine shop - the owner of the machine shop. They had a lunch beside the lunch they took from camp.

In the evening before they returned to camp they also had supplied by these people their supper. They had their own supper at this machine shop and when they got back to camp they had their own supper in camp.

One day, through the fault of Kagu and his hut there was no supper for them. LePay came to me about there being no supper for them so I went to cookhouse and tried to give them food but there was no food left so I told LePay "You had supper before you came into camp so, as I can't get any food from cook house you can wait until next morning." That is all, sir. They were never hit.

Q LePay states that after you telling them they were going to miss their meal you took off your tabi shoes and struck them across the face several times?
A During my three years in the camp I never wore tabi. And LePay also states that he came to see me in the guard house and I never stayed in the guardhouse during this three year period.

Q Now, what type of guard houses did you have at Branch Camp No. 1? To be more specific, will you describe that building or portion of the building known as the "black box" or "dog box"?
A Yes. All Japanese regiment has a guard house at the main entrance. It is a gate house. Back of this gate house there is some cells built like the cell I am in in Yokohama; same type of cell only it is wood. It is a wooden cell.

Q How large is it?
A Different places had different sizes and this cell the prisoners of war called dog box. Japanese civilian call them pig box.

Q What is the size of this box? How high? How wide? How many can it accommodate?
A Sometimes one man or two men were placed in a small one. The smaller one was about six or seven feet by ten.

Q And how high was the ceiling?
A At Kumamoto, Murata and Kashi, only roof. There was no ceiling fixed. But at Hakozaki camp a ceiling was about seven feet.

Q. Now, as a rule, what type of prisoners were incarcerated in the black box?
A. Those who disobeyed orders or broke some kind of regulation. After commandant questioned they were put in this cell. Those prisoners who were placed in this cell had to go to working party during the day. When they came back from the working party they were not allowed to go back to their old hut but placed in this cell during the night.

Q. What type rations would they receive while incarcerated in the black box?
A. Usually one half rations but I have seen some of the men were not fed any food.

Q. And what type of clothing or other equipment were they allowed?
A. The clothing they were wearing.

Q. Who had authority to put men in the black box?
A. Commandant, sir.

Q. Is he the only one who had authority to order anyone placed in the black box?
A. Yes sir.

Q. Did you ever order anyone placed in the black box?
A. No sir.

Q. Did you know Major Roby?
A. Something, after I read a few days, something reminds me it may be Major Roby.

Q. And to what have you reference?
A. One day in March I think it was at Hakonaki Camp, American Major who came from Philadelphia who was sitting in our camp for two or three months was caught by one of the guards cooking some dried cuttlefish on a stove made of tin. He was cooking outside his hut and was caught by the guard. This guard was taking this Major to commandant's office and I happened to see them on my way to go to some place in the camp and this Major stopped me and asked me to fix with the guard so he did not have to go to the commandant so I told the Major it is now too late because you are near commandant's office. I cannot fix it. It is too late.

So, I went away and this Major was in commandant's office and later one of the men called me to the commandant's office so I went there and interpreted. And when Captain Sakamoto asked the Major where had he gotten that dried cuttlefish and then Major said he bought from man called Marsh. So this Captain Sakamoto told this Major did he not know whether it was against the rule to cook some food in the ground. So this Major said he knew it.

The commandant did not slap him or do anything and the commandant let him go. Later, Marsh was called by the commandant. Commandant sent me to get Marsh and so I called Marsh. I took Marsh to the commandant's office and Marsh told me on the way to commandant's office. I asked him first where he got the cuttlefish so Marsh told me he bought it from the Aoreans on working party so I told him I do not believe. You had better tell the truth. So Marsh told me that he bought them cuttlefish from one of the Japanese civilian guards whose name was Ono. Marsh asked me never to mention about this Ono to the commandant because he was going to tell the commandant he bought it from the Aoreans on the working party. So I say about making Ono some trouble and Marsh asked me not to mention his name. Marsh said he would sooner be punished than bring Ono into trouble so I did not say anything to this commandant where Marsh had got this fish.

Then March went into commandant's room commandant asked me some questions and March told the commandant he got it from Moreno and March was hit by commandant by fencing stick two or three times and placed in the guard room for about three days.

Q What portions of March's body was struck by this fencing stick?
A Shoulders.

Q By fencing stick you mean a sabre. Do you?
A Yes. A sabre, sir?

Q What size is that?
A I think five inches diameter at the centre of the stick and both ends are smaller.

Q Now, getting back to Major Roby, didyou ever see him confined in the black hole
A No sir and I would like to tell a little more story about this if possible.

Q Go ahead.
A And after I told this One that March told me that he bought cuttle-fish from him and I told One, you had better stop that because one of these dys he would be bound to get into serious trouble by selling things to prisoners of war. So he was kind of mad about March. That is all I know, sir.

If Major Roby or March was ever hit or slapped or mistreated, probably this had been by One but not by me.

Q Did you ever strike an American major?
A No sir. There were about 150 or more American officers or men from Philippines and I never mistreated this group, sir. And during my stay of three years in the camp I never mistreated any officer besides Mr. De Nijs, sir.

Q You mentioned March. What type of a man was March?
A I think he was a terrible type because I have been in America morethan ten years and I know American people. This March, according to the other prisoners who came from No. 18 Camp said March had done terrible thing in 18 camp. And when this No. 18 camp joined No. 1 camp, the camp I was staying at from the beginning in April, 1944, two or three days later, when I went to sick man's hut, Marchcame to me and said, "Mr. Matsura"; and I said, "Yes". "Haven't I seen you some place in the United States". He had heard all about me from the prisoner of war already and he said something like that and I thought he was a funny man because of the way he talked and the other man who came with this March told me before that March was a bad man so -

Q What type of work was March doing at this camp?
A He was medical orderly. He was carpenter by his trade but he cheated the Japanese camp staff at No. 18 and enlisted as experienced nurse. At that time there was no interpreter at that camp. The Japanese believed him and put him as medical orderly in the sick hut. Then when he came into No. 1 camp he was still doing medical orderly's work and one day Mr. Kuroshi came to me and wanted to throw March out from the medical section.

Q Did he say why?
A Because he did not know anything about taking care of sick man. So

Dr. Mostecki asked me to ask Japanese sergeant major in medical inspection room. His name is Yamanishi. I asked Yamanishi about what Dr. Mostecki said and Yamanishi said he has been medical orderly for long time in No. 18 camp in the district as such and he could not take him out from the district medical orderly. I told Captain Mostecki and later on he asked me again the same thing so I asked two or three times and finally he was taken out from medical orderly's job.

Q Was March selling privileges to the Allied prisoners of war?
A I do not know, sir.

Q Did you ever hear reports of that?
A No reports; but rumors.

Q Other than the one incident?

PROSECUTION: Will you fix the time? May we fix the time when these rumors were heard?

LAW MEMBER: If counsel will. Otherwise you can later on.

DEFENSE: With reference to the time you heard these rumors can you pin that down to a date definite?
A Soon after they came to No. 1 camp; probably the end of April or May, 1944.

PROSECUTION: I hate to cut in but I would like to know what sort of privileges this man could sell.

DEFENSE: If the prosecution has an objection he may direct it as an objection. If there is to be a discussion on it, let us have an objection.

PROSECUTION: I wish to know what kind of privileges. It is not clear in my mind and I do not know how he can be clear in his mind.

LAW MEMBER: Your proper course is to cross-examine him on that yourself.

DEFENSE: Other than this one incident where March was selling this major some fish, do you know of any other occasions where he sold food to the Allied prisoners of war?

A No sir. But whenever I walked around the camp I saw March talking to some Japanese guard in the corner of some building and whispering and as soon as I saw they would go away. It happened several times. Other than that I don't know, sir.

Q When March was medical orderly, did he serve in any capacity in the barracks of the Allied prisoners of war?

A Not in No. 1 Camp, sir.

Q Now, did you yourself ever strike March?

A No sir.

Q So, if he says that he had received a broken ear drum, could that have been from the beating he received from Captain Salmonson?

A I don't think so, sir, because he did not hit the face. He hit the shoulder.

Q Did March ever complain to you about having captained a fractured air drawer
A No sir.

Q Was ever any report made by March to Allied prisoner officer?
A I never questioned. I don't know.

Q Were you ever questioned about such an occurrence by Allied officers?
A No sir.

Q Now, with reference to Red Cross food items. Did you at any time cut and use Red Cross supplies?
A I am sir.

Q About how often and what type of items?
A Almost all kinds of stuff which came in in the parcels.
PRESIDENT: I don't understand the 'parcels'?

DEFENSE: He said, 'Almost every kind of food that came in those boxes'. Now, going back a bit to the disposition which was made of Red Cross food supplies. Who was in charge?
A Sergeant-major Tamita, sir.

Q Did he work in conjunction with any Allied prisoner of war officer?
A Yes sir.

Q And who was the Allied prisoner of war officer?
A It changed several times. But one time it was Lt. Colonel Saunders. Another time Dr. Kostecki.

Q And they would work in conjunction with the Japanese personnel. Is that true?
A Yes.

This Red Cross stuff was put into a store house and it had two locks and two keys; one, sergeant major Tamita had; and the other one Dr. Kostecki and the other officer who was in charge of the stores.

Q So, it would have been impossible to open the store room in which supplies were kept unless both the senior Allied officer was there as well as the Japanese personnel?
A Yes.

PRESIDENT: Objection. There is no reference here that Dr. Kostecki was the senior officer of the camp. He said sometimes Saunders, sometimes Kostecki. It changed frequently.

LAW MEMBER: Was your objection to the senior prisoner of war? Let us qualify the question. He means the officers detailed to look after Red Cross parcels.

DEFENSE: Yes. I will take that correction.

LAW MEMBER: Will you ask the witness what he means?

DEFENSE: When you said that Kostecki sometimes had charge of supplies or that sometimes he was the senior prisoner of war officer -
A He was not senior officer. Senior officer was Colonel Saunders. But after Colonel Saunders went away, Dr. Kostecki was in charge of Red Cross and Dr. De Wijn was in charge of library where they kept books. They divided the jobs.

Q Was there joint control of Red Cross supplies by Allied prisoner of war officers and Japanese personnel regarding custody?
A Yes sir.

Q And would it have been possible for the Japanese to withdraw from the Red Cross supplies stock without consent of Allied officers and Japanese personnel who had that particular duty?
A No sir.

Q Did you yourself ever withdraw any Red Cross supplies from the warehouse or store room?
A No sir. Whenever this stuff was issued it was the captain, commandant who issued them although sergeant major Tomita had a key they could not take the stuff out from storehouse without commandant's personal appearance at the place.

Q Now, with reference to the Red Cross supplies, you had some. Where did you get them?
A It was given to me by some prisoners.

Q Do you recall the names of some of those prisoners of war who gave you those food items?
A Yes.

Q Will you state their names?
A Regimental sergeant major Jones, British warrant officer first class and warrant officer second class, Smith, White, Sergeant Handy and also cookhouse sergeant Hogan and some other men, sir; but I cannot recall their names right now.

Q What was the reason for their giving you some of their supplies?
A When they did not have cigarettes or something like that I very often gave them my cigarettes and whenever I had some kind of candy I buy at canteen I give to them. So, naturally, when they got their own Red Cross stuff they give me some of them knowing that I have been in United States for a long time I like that food; and they give it to me and later, to pay this back I give them cigarettes.

Q Where would you receive the cigarettes you gave them?
A I bought from Japanese canteen, sir.

Q Going back to this guard tower at the work field, would you describe it with reference to its height?
A About ten or twelve feet high, sir.

Q Do you recall a prisoner by the name of Jones?
A I recall him very well, sir.

Q What was his nationality?
A He was a native of Guam.

Q What was the nature of his job?
A Carpenter.

Q Did he ever go into the field to work?
A No sir.

Q So, if a statement was made that you pushed him off this watch tower, would that be true?
A No sir.

Q Why was it not true?
A In the first place, I did not push Kuoso from the tower and in the second place he never went out to where the tower was. As carpenter he never went out from the camp.

Q Would Sakamoto come out to the work party every day?
A Almost every day, sir. Just inspecting.

Q Would he order you to keep the prisoners all working?
A Not to keep working, sir, but sometimes he pointed out some special party and told me they do not work hard, to hit them, but I did not do so.

Q Did you ever line up a group of workers and run up and down the line striking them with a club?
A No sir. But one time I hit some of the Dutch party operating this truck, with bamboo stick. That was by order of the commandant.

Q When was that? Do you recall?
A July or August at Mushiroda Camp.

DEFENSE: The next phase I intend to go into will consume a considerable amount of time.

PRESIDENT: We will recess until 1:15.

The Commission then took a recess until 1315 hours at which time the personnel of the Commission, prosecution and defense, the accused, the interpreters and reporter, resumed their seats.

NORMAN P. GROFF, COLONEL, INF.
President.

Q. Why was it not true?
A. In the first place, I did not push Sunoco from the tower and in the second place he never went out to where the tower was. As carpenter he never went out from the camp.

Q. Would Sunoco come out to the work party every day?
A. Almost every day, sir. Just inspecting.

Q. Would he order you to keep the prisoners all working?
A. Not to keep working, sir, but sometimes he pointed out some special party and told me they do not work hard, to hit them, but I did not do so.

Q. Did you ever line up a group of workers and run up and down the line striking them with a club?
A. No sir. But one time I hit some of the Dutch party operating this truck, with bamboo stick. That was by order of the commandant.

Q. When was that? Do you recall?
A. July or August at Kuchiroda Camp.

DEFENSE: The next phase I intend to go into will consume a considerable amount of time.

PRESIDENT: We will recess until 1:15.

The Commission then took a recess until 1:15 hours at which time the personnel of the Commission, prosecution and defense, the accused, the interpreters and reporter, resumed their seats.

[redacted]
President.

Q How well did you know him?
A I knew him very well. He was one of the men best treated by me while in camp.

Q Prosecution Exhibit No. 10 states that in March 1945 certain things occurred. Do you know whether Barratt was at Camp No. 10 in March 1945?
A He was sir.

Q It is further stated that at about 4:30 in the afternoon of a certain day that you ordered the prisoners to come out from their compound - from their hut, and that Barratt was ill and was the last to come out. When he arrived outside you hit him over the head with a bamboo stick and continued to hit him for some time. What have you to say about this evidence?
A One day, it was in the morning and commandant ordered me to call men out from number one hut where Gunner Barratt was in. When I ordered them they did not come out. I called several times and still they did not come out so I tried to get them to come out. I took the stick and went in and they all ran out and Barratt was the last to come out. I hit the bed and wooden stanchion to scare him but did not hit him directly.

Q With this stick you had in your hand did you bring it in contact with any portion of his body?
A No sir.

MONDAY AFTERNOON
February 17, 1947

PRESIDENT: The court will come to order.

PROSECUTION: The accused is on the stand. I remind the accused that he is still under oath sworn to at the beginning of this case.

WITNESS: Yes.

DEFENSE: Do you recall an allied prisoner of war by the name of Olen J. Shoemo?

A I don't know sir.

Q Or James Ackerman? Evidence has been submitted, the affidavit of Jack Morse Wolf, that he saw you beat an American soldier named, Private Chaney of Oklahoma; that you struck him with a shovel handle and kicked him and used judo on him until he was exhausted. What have you to say?
A I do not remember that I ever went in the same work party as Jack Wolfe and I don't do such things.

Q Did you ever see Jack Wolfe out on a working party when you were present?
A No sir.

Q In prosecution Exhibit 24, testimony of Corporal Shoemo, it states that you had ordered a guard in December of 1944 when the prisoners were sitting around a fire - that you had ordered those guards to beat he and Ackerman. What is the truth in reference to that?
A I never in all the three years of my stay in this camp, never ordered any Japanese guard to beat any prisoners. I don't remember their names.

Q Do you recall a British prisoner of war by the name of Ronald Barrett?
A Yes sir.

Q And when he left the hut and came out into the compound did you hit him with that stick?
A No sir.

Q Did you on any other occasion have any incidents with Sumner Barrett?
A No sir. He was one of my best friends.

Q And at no time did you strike him with a club or fist or open hand?
A No sir.

Q Do you recall a prisoner of war Lulicich?
A No sir.

Q Evidence of Prosecution Exhibit No. 20 states that in May, 1944, "they had us pushing cars on tracks and we were working in a cut getting the dirt and pushing it out on the airport and levelling it off. Kastura came out and was driving Otto Lulicek of Newport, Washington. He was trying to make him work faster. He took a shovel and hit Lulicek over the head and knocked him down."

What have you to say about that evidence?
A I don't remember that incident.

Q Did you ever hit a prisoner over the head with a shovel?
A No.

Q Do you recall William F. Ryan?
A No sir.

Q And Lee Wilcox?
A No sir.

Q The evidence states in the same exhibit:

"A fellow by name of Bill Ryan from Portland, Oregon, lit a cigarette. This was about midnight. Kastura and another Jap army guide came down in our hut. There was about 80 of us in the hut. They got everybody in one end of the hut out of bed -- tore everything off the shelves and the beds and went through all the personal belongings, hunting for matches. They started beating up on Ryan. Kastura must have knocked Ryan down fifteen or twenty times and a man by name of Ely Wilcox (also from Oregon) received the same treatment."

What have you to say regarding the truth of this testimony?
A I don't know sir. I was never on duty at night.

Q Did you ever pull any special duties after working hours?
A No sir.

Q Did you ever go into the huts around midnight?
A Yes sir but it was in Nakozaki. No, at this time the camp was at Mushirada.

Q What were the regulations of this branch camp regarding smoking?
A Fifteen minutes or twenty minutes after each meal.

Q Were they allowed to smoke in the evening?
A No sir.

Q Were you ever ordered to have a search made for matches in the prisoner's hute?
A No sir, but I remember something like that happened one time. It was carried on by guards. I did not see it but I heard it.

Q You did not participate in it yourself?
A No sir.

Q Do you recall Albert Cleaves?
A No.

Q Were you ever ordered to conduct a search by Captain Sakamoto for bully beef?
A Yes.

Q And when was this order issued?
A At the Kumamoto Camp.

Q When was that?
A I don't know the exact time but it was early in the summer.

Q And what were those orders you received?

PRESIDENT: What orders?

WITNESS: In 1945 sir. The Commandant first issued corned beef and cheese and butter, something like that from Red Cross supplies. At that time there were many men with diarrhea and these men were eating these things without being cooked. The diarrhea got worse so he ordered me to go around and collect tin cans of beef so I went around to collect them. In one of these huts when I collected, one was short so I tried to get it and asked everybody questions and they did not know. One man said he did not have it, he did not get it. I asked a few questions whether he really did not get it so he said he did not get it. I ordered Bombardier Chiltern to see his haversack and Chiltern found it. I got mad because he lied and I hit him a couple of times but not pulling him out from bed and striking him.

Q With what did you strike him about his legs?
A With a little stick.

Q What do you call a stick?
A A stick about one foot or two feet long.

Q What diameter?
A About the size of my thumb.

Q You struck him how many times?
A I think about twice.

Q During the trip you made to pick up this corned beef were the prisoners reluctant to give up the beef?
A I don't know what you mean.

Q Did they want to keep the cans of corned beef?
A No. They agreed the corned beef should be cooked and taken to the cook house and then immediately to them, but one man hid his share.

Q Is that the only difficulty you had with prisoners regarding the collecting

of the time of beef?
A Yes sir.

Q Did you make it a practice to be especially harsh or to beat Dutch prisoners of war?
A No sir.

Q It has been stated in the evidence thus far that you made it a practice so to do. What was your practice with the Dutch prisoners of war?
A I got along with them all right.

PROSECUTION: I don't know which question he is answering. I would like to ask Mr. O'Brien to ask one question. He has asked four questions.

PRESIDENT: It is your witness, if you are satisfied with the answer.

DEFENSE: That is right. Did you have any duties at Camp No. 1 other than as interpreter?
A Yes sir.

Q What were they?
A Go on work parties with the men.

Q Were you always out with the working party or sometimes in camp?
A While there was regular army interpreter, Mr. Watanabe, I went out on working party every day, sir, but when we leave our camp and there was no interpreter in camp I stayed in the camp.

Q Which of the three interpreters was used most often as liaison for the prisoners of war?
A I, sir.

Q Were you the link between the camp commander and the prisoner of war officers?
A I don't understand.

Q Were you used as interpreter between the camp commander and allied officers?
A Yes sir.

Q Is it just that there may have been some misunderstanding in the way in which requests were made to you and in turn delivered to Sakamoto?
A Yes sir.

Q Will you relate the manner in which some of these misinterpretations could have taken place?
A Yes sir.

Q Will you so relate.
A There was plenty of misunderstanding about me. I was trying my best to do things.

Q Well, be specific. Did you on any occasion receive numerous requests by many allied officers to see the camp commandant about the same matter in the same day? Do you understand the question?
A Yes sir.

Q Are you able to continue?
A Yes.

(Question repeated)

A Commander Sakamoto was a terrible man, sir. Prisoners of war asked me to

do something for them. I went to the Commandant and every time, with no exceptions, he gave me hell, sir. He told me to tell them to "Go to hell". Always, in Japanese he said, "Naka ie". All the time I go to him he says, "Naka ie" - "Go to hell". So prisoners called Commandant, "Nakayama"-"Nuggar", and I knew this but if I report this to Commandant that they call him fool they would be punished but although Nakamoto was a bad man he still was my commander and men calling him Nakayama, or damn fool, just didn't sound nice to me. Still, I did not want the men to get in trouble so I did not report to him.

Many times Colonel Saunders sent me to Commandant. He just would not listen. He would not do anything. He just gave me hell. That is all. When I told Colonel Saunders he did not like me. That is all. I was sandwiched between the prisoners of war and Commandant and did not know what to do most of the time. Many times they told me to do things for them and I asked Commandant and he said, "No". Sometimes I told them it was impossible to do things for them and just as they thought I am the one who is doing things. Prisoners of war thought, some of them, I was one with them because I had been in the States more than ten years and I spoke English. They just seemed to think I was one of them and they asked me to do some kind of favor and when I could not they blamed me. I am no good. Japanese camp staff tells me to do something and if the men did not obey they think I am no good. I was with them.

One time Commandant and Sergeant Gudo, medical orderly, and Sergeant Major Nakayama called me and gave me hell because they thought I was not good to them. Sometimes guard, when I am talking to men and he lets them come to me and say, "what the hell are you laughing about", and they slap me. I have been slapped by guards many times when I was in Kumamoto. The whole thing was misunderstanding. I did my best.

Q You think it is possible that some of the affiants stated you refused to take their complaints to the camp Commandant and that they misunderstood; that you said that you had just been to the Camp Commandant?

PROSECUTION: I object to the leading. The witness is quite capable of testifying and I object to Mr. O'Brien putting words in the mouth of the witness.

I have not objected too much. This has been going on throughout the trial.

LAW MEMBER: I support you in this one.

DEFENSE: I can certainly ask these questions in 12 or 15 questions but I am trying to shorten this a little bit.

Will you describe some of the other difficulties you may have encountered by virtue of the nature of your work?

A There was one time men was working in the field at the airport and rain started. Contractor quit the job. Contractor's men left their job in a little while that rain might stop soon. I told working party men to come to a shed. The rain stopped in a little bit but it was difficult to work in the field. No contractor's men was there. No Korean workers were there. They had all left so I took these men back to the camp and as soon as we entered the main camp gate Commandant's office was right there. "What the hell did you come back"? So I told him it was rainy and muddy and difficult to push the car so Commandant told me to go back to push the car. I said, "We can't". He said, "Go there and push the

our just the same, even if you have to swim in the sand". I can't say anymore sir. I took them back to work. It was impossible to work but we just fooled around there until five o'clock and we went back there. Prisoners think I was just no good. That is all sir.

Q How did you get along with the rest of -

PROSECUTION: Can we get the time on this?

DEFENSE: I am getting a little nettled. They can bring out anything they wish on cross examination. I think I would like to try this case the way I want.

LAW MEMBER: I think you are getting a fair break up to now. I think it would be well to have it in my notes at the right place when this happened, if it means anything at all.

DEFENSE: I have no objection to this sir, except I can try my own case.

When did this incident occur?
A About July or August 1944, sir, at Kushireda camp.

Q What were your relations with the Japanese personnel at Fukuoka Camp No. 13?
A Not so good sir.

Q Why was that?
A They thought I was too much of a pro-American. They just hated me.

Q Have you related everything to the Commission truthfully and as best you are able to recall?
A Yes sir.

Q Have you anything further you wish to add?
A Yes sir.

Q Please relate it.
A During my stay in camp for three years under three commandants I never touched any prisoner of war under the other two commandants, only Sakamoto. He ordered me. I was instigated by him and the men. I had to obey because I was a three star private. I had to take orders from all non guards, - two corporals, sometimes three or four sergeants. The sergeant major and the commandant and doctor and the commandant of the guards who came from different regiments and changed every month. They came into our camp, corporal of the guard and two lance corporals and 13 men, sir, who were on guard duty at a prisoner of war camp. They came into camp first every morning and went back to their own regiment at the end of the month and were replaced by other guards who came from other regiments. These guards were the ones that were mistreating the men sir.

Q Have you anything further?
A I just want to beg the Commission to consider the situation I was in, sir.

DEFENSE: You may cross examine.

CROSS EXAMINATION

Questions by Prosecution:

Q Do you have a scar on your stomach?
A Yes sir.

Q How did you get that scar?

A While I was living in New York I think it happened in 1935 or '36, Japanese man whom I know and whose name is Yamamoto who had restaurant way down town in Battery Place in Manhatten Island way down town. It was on Sunday that Yamamoto telephoned me to come to this restaurant and he would give me some supper. So I went down and after we had supper we came home.

Then I lived at 66th Street between Columbus Avenue and Central Park West. It was half past eleven or twelve o'clock at night when we got off 66th Street subway station.

Q Who was there?
A Yama, sir, a man who had restaurant and invited me for supper.

Q Yama or Yamamoto?
A We called him Yama. We went to see Yama over at 45th Street and after we stayed there a few minutes we came out. When we were on our way to apartment we were just passing to go to picture theater, Loew's. As we were in front I was saying something to Yama and when I turned I did not see Yama, and when I turned around I saw Yama was knocked down by somebody. I went there and saw this man. "What are you doing"? Then right away he hit my stomach. I thought it was a safety pin or something and when I saw he had knife in his hand so I tried to hit his hand in which he was holding a knife. He started to stab me all over my body so I had to fight to defend myself and we had a fight there. I went to store there. The owner of this store was Jewish man whom I know very well. His name is R. Goodrich and I went to booth to telephone.

Q What time of night was this?
A About half past eleven or twelve at night.

Q And where was it?
A Between 66th and 55th Street, Broadway.

PRESIDENT: Do you want a long answer?

PROSECUTION: I want a long answer. I want to know how he got that scar.

Why was Yamamoto attacked?
A I don't know because I was apart from him.

Q Did you speak to Yamamoto afterwards?
A Yes.

Q What did Yamamoto say concerning the incident?
A Pardon me, not next day, sir; more than a month.

Q What did Yamamoto say concerning the incident about one month later?
A He said he got hit without reason.

Q He did not know why?
A No sir.

Q You were just walking along and suddenly Yamamoto was hit?
A That is right sir.

Q Had you been drinking?
A Yes sir.

Q What were you drinking?
A Beer sir.

Q How many others were walking beside you and Yamamoto?
A Myself and Yamamoto.

Q Were you talking to him while walking with him?
A Yes.

Q You did not observe him leaving your side?
A No.

Q How many men attacked you?
A Two South Americans. We went to felony court in New York for this case.

Q Were the two South Americans caught by the police?
A Yes sir, same night. Police came there at the time we were fighting and I was taken to Bellvue Hospital and I stayed in Bellvue Hospital about a month.

Q Did you appear in felony court?
A Yes sir.

Q And what happened to the South Americans?
A I think one of them was sent to jail sir.

Q And what happened to you?
A Nothing happened, sir.

Q Didn't they ask you at that time what you were doing in the United States?
A Yes sir.

Q What did you say?
A Working for family.

Q Did they ask you how you got in the United States?
A No sir.

Q How about the time you were deported?
A Nothing happened.

Q What happened then?
A I was laid up in St. Petersburg and then sent to county jail in Tampa, Florida. I stayed there about three weeks and they sent me home.

Q Do you expect this Commission to believe that you do not know the reason you and your friend Yamamoto were attacked?
A What reason?

Q Repeat the question.

(Question repeated)

A I want everybody to believe it. I wish you - you can get record at the felony court.

Q Did you ever see these people that attacked you before that incident?
A No sir.

Q What year did this incident occur?
A I think 1936, the first of March, sir, because I spent, I think master in Bellvue Hospital, sir.

Q Who were you working for at that time?
A I was not working for anybody at that time. I was working for man named Cecil Hall, the man who wrote the play "Three Men on a Horse". I was working for him. This was wintertime and he lived at Westport, Connecticut and they wanted to go to London for the winter and had asked me if I wanted to stay in such a lonely place as Connecticut and they wanted me to go back to New York.

PRESIDENT: Before you go further, I wonder are we getting anywhere. I am not sure I am interested in seeing this go further unless you are getting somewhere.

PROSECUTION: Katsura, what is your religion?

A Before, I did not have any special religion. I believed in God.

Q What is your religion now?
A Christian, sir.

Q When did you become a Christian?
A Last year.

Q Where were you when you became a Christian?
A Sugano, sir.

Q Is your back matted with hair?
A No sir.

Q You have no hair on your back?
A No sir.

Q I would like to see this man's back, sir. Will you please take off your blouse and shirt?

PRESIDENT: If the witness will stand sideway to the Commission -

LAW MEMBER: Do you want to draw anything to our attention?

PROSECUTION: I don't know whether that is dirt or a mottled condition.

MEMBER: His right back seems to be mottled. One affidavit called it "leopard spots".

PROSECUTION: Yes sir. Let the record show that his right side and left side has a mottled condition.

Now regarding the incident when the Dutchman sustained a broken rib or broken ribs you say that the camp commandant was in the field early in the day?
A Not early in the day.

Q Was the camp commandant present when you beat the Dutchman?
A No sir, no sir.

Q What did you do to this Dutchman? How did the Dutchman sustain the injury to his ribs?
A I pushed him down. I put my foot behind him and pushed him.

Q You recall one of the defense witnesses saying that the Dutchman had a clod of dirt thrown at him.
A No sir.

Q Didn't you hear that?
A Yes.

Q And didn't he say you told him that?
A I don't know sir.

Q Isn't he a friend of yours? Didn't he testify on your behalf?
A I think so sir.

Q Doctor Dettyum said you beat Streefkerk and knocked him to the ground 15 or 20 times. Is Doctor Dettyum telling the truth?
A No sir. Maybe this man -

Q Wait a second. The answer is "no sir". Now, at the same time there was another Dutchman who was injured. This other Dutchman sustained a broken jaw. You have stated in one of your affidavits that you knocked a Dutchman out with a blow to the jaw. Was this the Dutchman when you knocked out?
A No sir. I did not knock the Dutchman out.

Q Well, who did you knock out? Who did you knock out with a blow to the jaw?
A I thought he was American.

Q You knocked an American out with a blow to the jaw?
A Yes sir.

Q When did that happen?
A About the same time.

Q When did this occur?
A The summer of 1944 sir.

Q And why did you hit him?
A He stole tea.

Q And who did he steal the key from?
A Tea, t-e-a, for drinking. But he did not have broken jaw.

Q You said there were two Dutchmen. You have heard the testimony to the fact that there were two Dutchmen who came back and this other interpreter acted as an interpreter for Doctor Kanda. He said both these Dutchmen were injured by you. What happened to the other Dutchman?
A I don't know about the other Dutchman. There was one man.

Q Why was the other Dutchman there?
A I don't know sir.

Q Didn't the interpreter tell you about this incident?
A I heard him saying yesterday sir.

Q Didn't you describe the incident afterwards?
A Yes sir.

Q Didn't he tell you there were two men there?
A No sir.

Q How many men did he say were there?
A He mentioned one man with a broken rib.

Q Why did he say there were two men there at the time of the interview. Was he lying?

DEFENSE: I object.

LAW MEMBER: Will you repeat the question. I think that question is quite proper. "If you know" should be added perhaps. The question is, "Why did he say there were two men there at the time of the interview" and if he said so, "was he lying". Do you know?

A I don't know sir. Maybe there were two men, but I did not hit two men. Maybe two men came to the Commandant but I did not hit.

Q Now, which of the three stories do you wish the Commission to believe, - that this Dutchman's ribs were broken by a clod of dirt; second, this Dutchman's ribs were broken when you pushed him; third, Doctor DeWynn's statement that you knocked this man to the ground 14 or 15 times?
A My statement sir. I could not have known this -

Q All I asked you was, which statement do you wish this Commission to believe. Your answer is "my statement".

Now, at the time this incident occurred did you tell the Dutchman whose ribs were broken to say when he got back to camp that he was hit by a truck?
A No sir.

Q Now, did Doctor DeWynn speak English?
A Yes sir.

Q Did Ensign Streefkerk speak English?
A Yes sir.

Q What did Ensign Streefkerk look like? What was his appearance?
A I think he was Indonesian and Dutch mixed.

Q You say you knew LaPay?
A Yes sir.

Q Describe John LaPay.
A He is medium size man for American and he had extraordinary large thumb and fingers, sir.

Q Was he a soldier?
A No sir. He was a civilian from Wake Island, sir.

Q How old a man was he?
A I think about 30, between 30 and 35.

Q How tall was he?
A Maybe 5 ft 6½ or 7.

Q How much did he weigh?
A I think he weighed about 175 or 180 pounds.

Q What color of hair did he have?
A Brown, sir.

Q Are you sure?
A I think it is what you call dirty brown.

Q How many times a day did LaPay eat? Don't you understand the question?
A Yes sir.

Q How many times a day did LaPay eat?
A Usually three times but this special time when he went with me to the machine shop he had breakfast at the camp, two lunches, because the contractor gave him a lunch and his own lunch brought from camp and before leaving this place he had supper and no supper at camp.

Q You say the contractor at Fukuoka got LaPay a lunch and LaPay brought his own lunch?
A Yes sir.

Q And you say the contractor gave him a supper and when he got back to camp he said he did not have supper? If he had his supper from the contractor why did he make inquiries about another supper? Didn't you go to the cook house to find out about his food?
A Yes, when LaPay said his supper was not there - so whether he had supper at contractor's or not -

Q Didn't you say this morning he had his supper at the contractor's?
A Yes.

Q Why did you go to the cook house to get him another supper?
A Because it is natural.

Q Were you trying to be kind?
A Yes sir.

Q You were trying to get a fifth meal for the man that day. Is that true?
A Yes sir. I do not care how many meals he has as long as he has a right.

Q This morning you said you never wore tabe shoes. What kind did you wear?
A Regular Japanese army shoes.

Q Did any of the army men wear tabe shoes?
A No sir.

Q They all were army shoes?
A Yes sir.

Q Now you say that a guard caught Major Roby cooking cuttle-fish?
A Yes sir.

Q What was the name of the guard?
A He was a guard who came from the regiment and only stayed one month. I don't remember his name.

Q Do you remember the incident?
A Yes sir.

Q Did you read all the affidavits in this case?
A Yes sir.

Q You say you remember Benjamin J. Marsh?
A Yes sir.

Q Did you read the description concerning Marsh in the affidavit?
A Yes sir.

Q And you agree with the description?
A Marsh's description sir? I don't think I read about Marsh's description sir.

Q The portion in there which said, "I will ask you to describe March".
A He was a slender man, tall; not very tall.

Q How tall?
A About 5 ft. 6 to 7.

Q Five feet six or seven?
A Yes.

Q And slender?
A Yes sir.

Q How much did he weigh?
A Maybe 150 pounds. He said he had some wound in back. sir.

Q Did he have dark hair or light hair?
A Light brown sir.

Q Brown?
A About the color of your hair.

Q What sort of complexion did he have?
A Not very white sir.

Q Not very white. Can't you give a better description of his complexion?
A Ordinary American sir.

Q Like this man (indicating)?
A No sir.

Q Like me?
A I think like this man, sir.

Q Let the record show that the court reporter is light complected. Now, I will ask you whether your description is better than Roby's description. Roby's description is as follows:

Five feet seven to five feet eleven. Who is more correct? You said he is about five feet six?
A He was five feet seven, maybe more. He was not very tall for an American.

Q You indicated that he was rather light complected. Roby said "dark complexion". What do you say to that?
A Dark as my color?

Q Dark complected?
A No sir.

Q You said March had a slender build. Roby said he has a stocky build.
A I say slender.

Q You say he weighed 150 pounds. Roby said 180 to 190 pounds.
A Maybe he would have weighed more than 150 pounds.

Q I want to ask whether you believe you recall who Benjamin March was. Are you sure you remember Benjamin March?
A Yes sir.

Q You said this morning that March claimed that he brought this cuttlefish from the Koreans. Is that true?

A To the Commandant that is what he said. He told me the truth first but later he said he bought from the Koreans.

Q Then you said, "I don't believe it"?
A That is right.

Q Was this in the presence of the Commandant?
A No sir, it was on the way to the Commandant's office.

Q When did he change his story to say he bought from Ono, the Japanese guard?
A While we were on the way to the Commandant's office.

Q Was Ono a regular guard?
A Yes. A civilian guard.

Q When was Ono there.
A I think he joined us at Kashi at the end of 1943 sir. I think it was December, 1943 sir.

Q What was his first name?
A I don't know sir.

Q What was his rank?
A He has no rank.

Q Could his first name have been Kyuno?
A No sir. There were two Onos. One was a corporal.

Q When did the Ono you are speaking of leave the camp?
A He was at the number one camp at the end of the war.

Q You said you had two Onos at the end of the war?
A Yes.

Q I ask you if this is the Ono you are speaking about?
A No sir, not this.

Q This is a roster of the guards and personnel in Fukuoka Camp No. 1. Will you look through this list and tell me if you see another Ono listed.
A One time -

Q Just follow my instructions. Read through and see if you see Ono listed.
A Before I see this may I say something.

PRESIDENT: No. How long is the list?!

PROSECUTION: There are only about 25 names there.

A No sir.

Q Is that the only Ono?
A No sir. There was another one.

LAW MEMBER: If you want to add what you were going to add before you may do so.

WITNESS: Captain Sakamoto at one time showed me this list and there are many guards' names missing from that list.

Q Will you read the information concerning Ono as it is on this sheet.
A This is a corporal, sir.

Q Read it.
A "Ono, J, Corporal, March 1945, September 1945".

Q Was Ryuzo Ono there at that time from March 1945 to September 1945?
A Yes sir. Corporal.

Q When did this incident occur in which Marsh told you that Ono sold him the cuttle-fish?
A I think it was March.

Q What year?
A 1945 sir.

Q Now, will you tell the court about this other Ono.
A The other Ono is a civilian guard. He joined us.

Q What year?
A 1943.

Q What month?
A December or 1944 January. He had been in Kashi camp and he was at the Mushiroda Camp and at the Hakozaki Camp and he was there at the end of the war.

Q Both Onos were there?
A Yes sir.

Q Now, how did the prisoners of war talk to you? Did they talk very much?
A Some of them.

Q Did they trust you?
A Yes sir.

Q Why did one of them say you had the disposition of a rattlesnake?
A I don't know sir.

Q Was it because he trusted you?
A Maybe he didn't trust me.

Q Didn't Marsh come up to you and say "didn't I see you before in America?"
A Yes sir.

Q Did he ask you what part of America?
A No sir.

Q Who was the man who told you terrible things concerning Marsh?
A They were men who were working in the mechanic party.

Q What was his name?
A Lou Unger.

Q Spell the last name.
A A-n-g-e-r. I don't know. Maybe U-n-g-e-r - or Anger sir.

Q Do you remember this fellow, Unger?

A I don't know whether it was one man or two; and a man from Texas, an Indian, a great big man; we used to call him "Texas".

Q What sort of privileges was March selling? This morning you said you heard the rumor March was selling privileges.
A Something given men to rest in the camp. That is when he was in No. 18 before he came into our camp.

Q Now, they had the right to rest in camp?
A Yes sir, listed as a sick man or something like that.

Q Are you sure he was a medical orderly?
A Yes sir. He was a medical orderly for a little while.

Q Did they have a dispensary at Camp 18B? You just told me he was a medical orderly at Camp 18B. Did they have a doctor at 18B?
A I don't know nothing about 18B. But March was at No. 1.

Q You said he was selling privileges.
A I heard. That is what I heard.

Q You say he was allowing someone to rest. What was the basis of his authority for allowing them to rest?
A I don't know sir.

PRESIDENT: This is off the record.

(Discussion off the record)

PRESIDENT: The court will take a recess.

The Commission then took a recess until 1445 hours at which time the personnel of the Commission, prosecution and defence, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

PROSECUTION: The accused is still on the stand. I remind the witness he is still under oath.

WITNESS: Yes sir.

PROSECUTION: This morning you said that Marsh was selling privileges and was selling food. What kind of food?
A I don't think I said he was selling food.

Q Yes. You did. Why did you say it this morning?
A I didn't hear he was selling food.

Q You said that this morning. I didn't put the question to you. You said that in response to a question by Mr. O'Brien.

DEFENSE: There is some honest dispute. I think we ought to consult the record and find out.

LAW MEMBER: I cannot remember. Let the record be read.

PROSECUTION: Please sir, Mr. Appleton has been taking it down.

LAW MEMBER: Let the reporter read the record.

DEFENSE: It might take some time to get the question out. I will withdraw the question.

You said you saw Marsh talking in corners. I could not quite understand what you meant by that. What did you mean when you said "I saw Marsh talking in corners?" Who was he talking to?
A Japanese guards.

Q Could Marsh speak Japanese?
A Yes sir.

Q Are you sure?
A Yes sir.

Q Where did he learn to speak Japanese?
A I don't know sir.

Q When was this that you saw Marsh talking in corners? What year?
A I saw in Mashiroda camp.

Q What year was that?
A Summer of 1944.

Q Now, when you told Marsh he was lying, was that all you did? You didn't beat him?
A No sir.

Q That was all you did?
A Yes sir.

Q Now, this morning you said Marsh was called by the camp commander?
A Yes sir.

Q And you brought Marsh to the camp commander?
A That is right, sir.

Q. Marsh said he bought the food from the Koreans?
A. The cuttlefish, sir.

Q. And you said you didn't believe it?
A. That was on the way to the commander.

Q. And then you said he admitted he bought it from Ono?
A. Yes.

Q. And the camp commander hit him with the fencing stick two or three times?
A. Yes.

Q. Did the camp commander hit him for not telling the truth?
A. No. For buying it from the Koreans.

Q. Who did he buy it from?
A. From Ono.

Q. Was Ono a Japanese or Korean?
A. A Jap.

Q. You say there were two boys kept for the door of the warehouse where the Red Cross supplies were kept. How many locks were there?
A. Yes. Two locks.

Q. What kind of locks?
A. Japanese locks.

Q. Now, you recall the trial of Yuhichi Sakamoto?
A. Yes sir.

Q. During that trial was there ever any mention made of two locks to the warehouse?
A. I don't think s , sir.

Q. Have you conferred with Yuhichi Sakamoto since the trial?
A. No sir.

Q. Have you exchanged notes since the trial?
A. No sir.

Q. Have you exchanged notes with Meda?
A. No.

Q. Positive?
A. Yes sir.

Q. Now you said you were talking about Sousse, a native of Guam. Can you describe Sousse?
A. Yes sir.

Q. How many carpenters did you have in the camp?
A. Not on regular work in the camp; for repairing or whenever they needed carpenters we kept about four or five carpenters, sir.

Q. What was Sousse? Was he a soldier?
A. No sir, a civilian from Wake Island.

PRESIDENT: What is the material point of Sousse?

PROSECUTION: Sousse was pushed off the guard tower.

PRESIDENT: This accused is not charged with that. Is he?

PROSECUTION: Yes sir. Under specification 14.

PRESIDENT: I see.

PROSECUTION: I will attempt to be as brief as possible. I am skipping quite a bit.

PRESIDENT: No, no, no. I just could not understand where he got into the picture. I don't want to hurry you.

PROSECUTION: How much time did you spend on this guard tower?
A From about half past seven or eight o'clock to five o'clock in the afternoon, sir.

Q Did you ever talk to the men from the guard tower?
A Yes sir.

Q How far away were the men working from the guard tower?
A About fifty yards both ways. Some men were working about 100 yards. They were scattered around all over the airport.

Q Did you use field glasses when you were in the guard tower?
A Yes sir.

Q Now, you said this morning, that Ronald Barrett was one of your best friends?
A Yes sir.

Q There are affidavits which say that you beat Barratt over the head with a bamboo stick knocking him down to the ground until he became unconscious. What do you say to that?

A No sir. I didn't do it.

Q Do you think you could scare a soldier and a man who was supposed to be one of your best friends by beating a wooden stanchion or beating a bed?

A He was not my best friend at that time. I did not know him very well though I did know him. At that time he was working around the cookhouse.

Q If I hit this table with a bamboo stick would I scare you?

Now, let the record indicate no answer to the last question.

DEFENSE: Do you want an answer?

PROSECUTION: He has not answered. It is immaterial.

Were you allowed to go into the hutsr at any time, that is the prisoner of war huts?

A Yes, sir.

Q Were you allowed to go into the prisoner of war huts at midnight or after midnight?

A If I got permission from guard sir; but I have to tell them why I have to go there, sir.

Q Now, why would you go into a prisoner of war hut at night when you were not on duty?

A It never happened at Mushiroda Camp. I did not go to the huts during the night.

Q I am not asking you about Mushiroda. I am asking you about going into prisoner of war huts at night on duty hours at any time at Fukuoka Camp No. 1.

A When commandant tells me to go to one party commanders and tell them

what to do about next day.

Q Well, you were not on duty that night. Didn't you say that?

A I was not on duty as guard but commandant, every day before he went home he called me and told me what to do or to tell commander. May be change the party. Some of them one day out to rotate staff. Some of them go to another working party; something like that.

Q Didn't you do that during duty hours?

A Could not do that during duty hours.

Q Why couldn't you?

A Because I come back from the camp with working party half past five or six o'clock. I have my supper. Something like that. It is usually seven or eight o'clock.

Q Where did you live?

A With the camp itself, sir.

Q In the camp enclosure?

A Yes sir.

Q When did you ever eat any of the bully beef?

A Yes sir.

Q Where did you get the bully beef from?

A It was given to me sir.

Q Did you ever have the prisoners of war cook the bully beef for you?

A Nobody cook it for me.

Q Did you eat it raw?

A Yes sir.

Q Didn't you say some of the men got diarrhoea from eating the bully beef raw?

A Yes sir.

Q Weren't you afraid of getting diarrhoea from eating bully beef raw?

A Yes.

Q This morning you said that the camp commander ordered all the bully beef to be picked up. Is that so?

A That is right, sir.

Q Now, you say one of the prisoners of war did not turn in his bully beef?

A Yes sir.

Q You have heard the affidavit which said this prisoner of war was in the hospital?

A Yes sir.

Q This morning you heard it said this prisoner was in the hut?

A He was not in the hospital.

Q Now, Chilton, when you said took this can of bully beef out of the haversack says that the prisoner was in the hospital. Do you expect the Commission to believe you or Chilton?
A This thing did not happen in the hospital.

Q Chilton stated it did happen in the hospital?
A I cannot help that, sir.

Q Where was the prisoner at the time you hit him?
A In the hut.

Q Was he in bed?
A Yes sir.

Q In his bed?
A Yes sir.

Q What time of day was it?
A I don't remember, sir.

Q Was it during the daytime?
A Yes.

Q Was it in the morning?
A I don't remember, sir.

Q Was he in his hut during the day time?
A That day was, I think, a rest day. Everybody was in huts.

Q Yasumi day?
A Yes sir.

[illegible]: I didn't get the question.

PROSECUTION: Yasumi day - rest day.

Q Were the other men there?
A Yes. We had inspection.

Q What makes you remember you had inspection?
A After the inspection the commandant ordered to collect the can of beef, sir.

Q Did these prisoners give up their bully beef willingly?
A Yes sir.

Q Were they well fed?
A Sometimes they were well fed and sometimes, on account of shortage of food I don't think there was enough to eat.

Q Would you say the prisoners were never hungry?
A I think they were hungry, sir.

Q How often were they hungry?
A Every now and then food was less than at other times, although they were issued the same amount as we were issued.

Q Did they agree to give up this bully beef or were they ordered to give it?
A Commandant ordered and nobody resisted.

Q Was it a matter of agreement? Did they have to agree in order to give up the bully beef? Did the camp commandant consult them before ordering them to give up the bully beef?
A I think the camp commandant talked that with Lt. Colonel Saunders.

Q What year was this?
A 1943, sir.

Q When did Lt. Colonel Saunders come to the camp?
A December, 1942, sir.

Q Was Colonel Saunders an American?
A British.

Q Why, you have read all the affidavits in this case. Haven't you?
A Yes sir.

Q There were two interpreters who were questioned on this witness stand?
A Yes sir.

Q Is that true? Why is it that there is no complaint of mistreatment from either of these two interpreters?
A These two interpreters had no direct contact with the men, sir. They sit in their office all day long inspecting and censoring letters. If there is letter they were reading, newspapers, doing anything - they did not do anything for the men. Prisoners of war, were they starving or are beaten or whatever happened to them, this interpreter did nothing, sir.

Q Did they accompany the camp commander when he made an inspection?
A During their stay in camp when they were at camp, sir.

Q Why is it that they never laid a hand on prisoners of war during inspection?
A Because they were civilian and were not ordered to do something.

Q Couldn't the commander order them to do anything?
A Oh yes. But because they were civilians -

Q Weren't they under his orders?
A Yes sir.

Q This afternoon you said they called Sakamoto to "go to hell; "Baka ie." That was the first nickname you gave.
A I translated "Baka ie." "Go to hell!"

Q Is that a mistranslation? What does "Baka" mean?
A "Fool", sir,- commander.

Q Answer the question. Does it mean "Go to hell" or "Fool".
A Fool, sir.

Q By any stretch of the imagination can you say "Baka" means "Go to hell."
A They used to say, the commandant told them "Baka ie". That is why the called commander "Baka ie". And "Baka ie" means "Go to hell."

Q May I ask the interpreter to tell me?

PRESIDENT: Put the interpreter on the stand.

PROSECUTION: For an interpretation of the word?

DEFENSE: I think it is highly irregular. It is a highly irregular procedure.

INTERPRETER: I am under oath.

PRESIDENT: Do you want to call the interpreter as a witness? If you want to you may do so, Mr. Deitch?

PROSECUTION: Did you ever try to get away from camp No. 1?
A Yes sir.

Q When did you try to get away?
A Not directly telling the commander but I was wishing to go away from Camp No. 1.

Q Did you ever ask anyone?
A I was talking to sergeant major. A told him under this commandant it was difficult, so I wanted to go to my regiment to enter Army.

Q Who did you talk to, sergeant or sergeant major?
A Sergeant and sergeant major Kakayama.

Q Where was your regiment?
A Kumamoto.

Q What was the number of your regiment?
A Sixth.

Q Infantry?
A No sir, transport.

Q Now you say that your relations in camp were not too good because you were pro-American.
A That is what they say.

Q Who says?
A The camp staff; the guards.

Q Were you pro-British?
A I am not against any nationality, sir; no nation, sir.

Q I want to know why you beat Chiltern; why you beat Newman and the British prisoners of war. Was it because you did not particularly agree for them?
A No sir, because Newman was ordered by commandant sir.

Q Did you hear the testimony of Tomita Minsaku?
A Yes sir.

Q Was he ever ordered to beat prisoners by Captain Sakamoto.
A No sir. I don't think so, sir.

Q You were the only one that was ordered?
A As far as I know.

Q Was Meda ever ordered?
A I don't think so.

Q Why were you singled out by Sakamoto to beat prisoners.
A I don't know, sir.

Q In the United States Army?
A No sir. I did not know.

Q Colonel North said you slapped on a couple of occasions quite freely. Would you say Colonel North was not telling the truth?
A I say some mistake. I do not like to call anybody liar.

Q Did you say you know Souese?
A I think his real name was - Gorsea.

Q How do you spell it? Is that his last name?
A I don't know.

Q Might his last name have been "Garcia"?
A That is right.

Q Did you know a man by the name of Dick Elliot?
A No sir.

Q Quite a tall man; stood about six feet one?
A I know some man - Elliot!

Q Did you know him?
A Yes. A big man, sir.

Q What was his job?
A Mechanic, sir.

Q Now, at the trial of Yukichi Sakamoto, this question was asked of Yukichi Sakamoto:

> 'Didn't you on one occasion notice a prisoner who was not working properly and order Sato to take a bamboo pole and strike this prisoner.'

The answer was, 'No sir.'

Was Sakamoto's answer the truth?

A No sir. Not true, sir.

Q You also said that during your stay in camp for three years you never touched a prisoner of war unless it was under the orders of Sakamoto?

A Direct or indirect orders.

Q Now about these numerous occasions mentioned in the affidavits which you have not contradicted and where Sakamoto was not present, where you beat prisoners of war. How do you account for these instances.

A Because these men, whenever they were slapped by me, they were most of the time warned by me, sir. I warned them many times and they do not listen and these men cause trouble most of the time for the rest of the camp. So, I tried to stop causing that trouble for everybody in the camp, sir. When anybody was caught doing something wrong by guard they usually take them to the commandant and every time this man did something wrong the commandant scold me as though it was my fault.

Q Did you know of Colonel Harth?

A No sir.

Q A full colonel?

A No sir.

Q. Now, at the trial of Yuhichi Sakamoto, this question was asked of Yuhichi Sakamoto:

> "Didn't you on one occasion notice a prisoner who was not working properly and order Kato to take a bamboo pole and strike this prisoner."

The answer was, "No sir."

Was Sakamoto's answer the truth?
A. No sir. Not true, sir.

Q. You also said that during your stay in camp for three years you never touched a prisoner of war unless it was under the orders of Sakamoto?
A. Direct or indirect orders.

Q. How about those numerous occasions mentioned in the affidavits which you have not contradicted and where Sakamoto was not present, where you beat prisoners of war. How do you account for those instances.
A. Because these men, whenever they were slapped by me, they were most of the time warned by me, sir. I warned them many times and they do not listen and these men cause trouble most of the time for the rest of the camp. So, I tried to stop causing that trouble for everybody in the camp, sir. When anybody was caught doing something wrong by guard they usually take them to the commandant and every time this man did something wrong the commandant scold me as though it was my fault.

Q. Did you know of Colonel North?
A. No sir.

Q. A full colonel?
A. No sir.

Q. In the United States Army?
A. No sir. I did not know.

Q. Colonel North said you slapped him on a couple of occasions quite freely. Would you say Colonel North was not telling the truth?
A. I say some mistake. I do not like to call anybody liar.

Q. Did you say you know Scucco?
A. I think his real name was - Gerson.

Q. How do you spell it? Is that his last name?
A. I don't know.

Q. Might his last name have been "Garcia"?
A. That is right.

Q. Did you know a man by the name of Dick Elliot?
A. No sir.

Q. Quite a tall man; stood about six foot one?
A. I know some man - Elliot!

Q. Did you know him?
A. Yes. A big man, sir.

Q. What was his job?
A. Mechanic, sir.

Q What sort of mechanic?
A Repairing truck or roller.

Q Did you ever have words with him?
A Words?

Q Yes.
A Yes sir.

Q Well, will you tell the Commission what the words were?
A During the commandant's inspection he had a little book and the commandant noticed it was a book and asked him what was written and I said "I cannot read this book. It looks like some kind of code." So commandant tell me to take this book and try to read it. So I took that and asked Sergeant Mundy, warrant officer, first class James and they say they cannot read. So I call Mr. Elliot and ask him and he said it was some kind of a religious book.

Q What happened to Elliot?
A Some kind of secret society in England. I cannot remember the name, sir.

Q Did you beat Elliot?
A No sir.

Q Did you talk to Elliot?
A Yes.

Q Did you ask him what it was?
A Yes sir.

Q What did he say it was?
A He said this book is belong to - I can't remember name, sir. It was a society in England.

Q Was Elliot an Englishman?
A American, sir.

Q Did you have a talk to Elliot about his eating someone else's food?
A No sir.

Q Are you sure?
A Sure, sir. I know now. Free Masons.

Q Are you sure you did not know all along?
A No sir.

Q Where was your last home before you went into Sugamo? Where did you live? What was the address?
A I don't know the address, but hotel in front of Imperial University.

Q Where?
A Fukuoka.

Q City of Fukuoka?
A Hakozaki.

Q How long did you live there?
A About two months, sir.

Q Were you living alone?
A Yes.

Q Did you have any friends living in the hotel?
A No sir.

Q Could the hotel manager know you?
A Yes sir.

Q Is that where you were picked up?
A I was not picked up. I was working for American MP when I saw my name in newspaper.

Q Did you ever take any jewelry or trinkets from prisoners of war?
A Yes.

Q Therein a statement made that you had a couple of West Point rings that you took away from prisoners of war. Do you have American money?
A No sir.

Q None with you at present?
A No sir.

Q Where do you live now?
A I have no home. My home is in Ryuku Island.

Q Give me a better description of your home in Fukuoka City.
A Hotel sir. I live in hotel.

Q Do you have any family there?
A No sir.

Q No father or mother?
A I have not heard from my father or mother since end of 1943, sir.

Q Did you ever look them up?
A No sir. I have not seen.

Q Where do they live?
A Ryuku Island, sir.

Q Do you have any brothers or sisters in Japan?
A Not in this main island, sir.

Q What island?
A I don't have nobody sir.

Q Where do your brothers and sisters live?
A Ryuku Island, sir.

Q Did you have any friends in Fukuoka?
A Yes sir.

Q What was your best friend's name? Or can you remember?
A Michima.

Q Michima?
A Yes.

Q Where did he live?
A Makonaki, sir.

Q What address?
A Makonaki, Yonayama Gao, sir.

Q Give me the full address?
A Maruyama, Number 8.

Q Concerning this statement that you took West Point rings, what do you say concerning these statements?
A I did not have it.

Q You read the affidavits, didn't you?
A Yes.

Q Concerning the party on the night of President Roosevelt's death. Didn't you tell the prisoners to have a party that night?
A Yes sir.

Q You knew of the death at the time you told them they were to have a party?
A I knew, sir.

Q You did know of the death. That was the question.
A I knew sir. Of the President, yes.

Q You did know of the death, and after you knew that you told them you were having a party. Isn't that right?
A Yes sir.

Q You said sergeant Yama-
A No sir.

Q Wait a second. Let me finish my question. You said sergeant Kiyohara wished to show a new guard how the prisoners could entertain them. Is that true?
A Yes sir.

Q The purpose of this party was to entertain this individual guard. Is that a new guard?
A Not a guard, sir. Corporal One who is in the list.

Q Corporal One wanted to see these prisoners of war perform. Is that true?
A That is right, sir.

Q When you ordered them to have this party didn't you know you were doing a wrong thing?
A I was drinking that time. I did not think of this.

Q What time did you order them to have this party? What time of day?
A About six or half past six.

Q At night?
A Evening, Yes.

Q What time did you finish your duties?
A At that time, Mr. Murayama -

Q Was it a rest day?
A I stayed in the camp every day.

Q Were you no duty that day?
A No sir.

Q When did you start drinking?
A Supper time, sir.

Q What time was supper time?
A About half past five, sir.

Q What time did you tell them they were going to have this party?
A Half past six.

Q Supper time was six? Now, between 5:30 and 6:30 how much did you drink?
A May be a bottle of beer or two bottles.

Q Didn't you realize you were doing a wrong thing when you ordered these prisoners to throw a party for the purpose of entertaining the corporal on the day of President Roosevelt's death?
A Sir, I didn't order. It was Kiyohara. He was officer of the day and I told him President Roosevelt died today -

Q Was it Kiyohara's fault?
A Yes sir.

Q Were all these beatings Sakamoto's fault? Did you ever hit a prisoner
A over the head with a hammer?
A No sir.

Q Did you ever have a hammer in your hand?
A No sir.

PROSECUTION: No further questions sir.

REDIRECT EXAMINATION

QUESTION BY DEFENSE:

Q At the time of this altercation when you pushed Streefkerk to the ground was Dr. De Wijn present?
A No sir.

Q Was a Japanese interpreter, Murayama, present?
A No sir.

Q Now, you stated, I believe, on cross examination that March had a back injury?
A Yes.

Q That agrees with Rogers' description when he says -

PROSECUTION: I am objecting to the defense testifying.

DEFENSE: It is in evidence.

LAW MEMBER: I don't think your method is particularly good. It either agrees or it does not.

DEFENSE: Yes. But it was brought up by the prosecution.

LAW MEMBER: The only thing it affects is us.

DEFENSE: Is there any doubt in your mind as to the March war?
A I do not understand.

PROSECUTION: I don't.

DEFENSE: I withdraw the question.

PROSECUTION: No made an answer, sir.

DEFENSE: That is what he did say.
Now, the party that was held on the evening of President Roosevelt's death - did you order that party?
A No sir.

Q Who ordered the party to take place?
A Sergeant Hiyatsura.

Q And he was your superior?
A Yes and officer of the day.

Q Did you remonstrate with him and tell him it was not a good idea?
A At first I told him -

Q What response did he make?
A He said, 'It is alright because they do not know it.'

Q Did he still order the party to go on?
A Yes sir, but for a while I did not go and then he mentioned to me again and that Corporal One to stand up and want out to them if they want a party, a sing song, they can have it.

Q And did you later that evening have a talk with American Officer, Major Kostecki?

PROSECUTION: Objection.

LAW MEMBER: What is the point?

PROSECUTION: Objection to his leading.

DEFENSE: O. K. Do you know Major Kostecki?
A Yes sir.

Q Who was Major Kostecki?
A Medical officer.

Q Was he at Branch Camp No. 1, Fukuoka?
A Yes.

Q When did he come to Fukuoka area?
A December 1943, I think, sir.

Q Was he present at Fukuoka Branch Camp on the night of the report of President Roosevelt's death?
A Yes sir.

Q Did you on that date have a conversation with Major Kostecki?
A Yes sir.

Q What was this conversation about?
A Later they were having the party there. I went to this party and then the party finished and I think he was one of the American officers blew a bugle and this sounded like the bugle they play when they have a funeral or something like that so I thought it was funny.

So this Captain Kostecki told me 'This is terrible' and I said, 'What?' 'Today President died and they have us have aparty.' So I asked him, 'How did he know it.' He said, 'Men brought the news from outside' so I apologized to him.

Later I apologized to him and he took me to Colonel Beecher and I told him I was sorry.

Q Did you go back and report to Kiyohara the substance of your conversation with Kostecki?
A I did not report it to Kiyohara but to One.

Q What did he say?
A He did not say anything.

Q One was one of your superior officers?
A Yes. Beside officer of the day. One did everything in the camp that day.

DEFENSE: That is all on redirect.

PRESIDENT: Recross?

RECROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q Do you know Captain Kostecki?
A Yes.

Q What sort of a man was Kostecki?
A He was a very good man, sir.

Q If Captain Kostecki told Colonel North that Katsura beat an American to death in the camp what would you say concerning that statement?
A I don't think at any time I ever beat anyone so hard as to cause anyone's death.

PRESIDENT: What exhibit are you referring to, Mr. Deitch?

PROSECUTION: William D. North. I think it is Exhibit 19 or 18?

MEMBER: Exhibit 20.

PROSECUTION: No further questions.

PRESIDENT: Redirect?

DEFENSE: No sir.

EXAMINATION BY COMMISSION

QUESTIONS BY MEMBERS:

Q In dealing with that story, witness, about the bully beef being found in the man's bed,- his name is Newman. My recollection is that you said the first time that he was working that day in the hut. Is that what you said?
A It is not Newman, sir.

Q The man we are talking about who had the bully beef he would not give up. Didn't you tell us earlier he was wanting in the head?
A I don't think so, sir.

Q Perhaps counsel was objecting. He was not wanting but was in bad. Was he?
A He was not wanting.

PROSECUTION: I think your recollection was correct, Colonel. I could check it.

MEMBER: Now, you told us another story about an occasion in March, 1943, when you struck the bed or the stanchion with a wooden pole to scare a man. Do you remember that?
A Yes sir.

Q You say you did not hit him?
A No sir.

Q Was there any other person around there who could have hit him?
A No sir.

Q Was there anyone outside?
A The guard was there!

Q Was the camp commandant there?
A The camp commandant was in his office where he could see us.

Q It was he who ordered the parade. Was it not?
A Yes sir.

Q How many guards were outside?
A It was near the side of the guard house so about six of them, sir.

Q How long was it before the men came back to their hut?
A About an hour. They were digging a hole to put garbage in this hole.

Q If this fellow was hit during that hour and you did not hit him, would you say someone else must have hit him? One of the other guards?
A I don't know, sir.

Q You don't claim to have seen anyone hit him?
A No sir.

Q Were you there during the whole hour of the parade?
A I don't think so, sir. But one hour later I went back and this thing was finished.

PROSECUTION: Sir, I think the record will show that he admits hitting that man over the bully beef incident. The record will show that.

MEMBER: I am satisfied.

PROSECUTION: The other incident is the bar incident where he hit the table or the stanchion.

MEMBER: Talking about the officers in the camp, is it correct then that they had no duties outside the actual compound?
A No sir.

Q They were not used to supervise work party?
A First when they came to Kumamoto Camp in 1942, British officer naturally at that time, only about two weeks, they were out but since then no officer went on working party, sir.

Q Do you know anything about the ranks used in the Navy? Do you know what they were?
A No sir.

Q Did you ever hear of an ensign?
A Yes sir.

Q What is your impression of what an ensign is?
A A warrant office , first class; equivalent to warrant officer first class.

Q Do they have them in the Imperial Navy so far as you know?
A I don't know about rank in the Navy.

Q Do they have them in the British Navy?
A I do not know, sir.

Q Do you know where they do have them?
A I do sir.

Q Where?
A I thought they were cadets.

Q In the Navy?
A Yes.

Q In the Navy only?
A Yes.

Q Are cadets the same as warrant officers class one?
A I think in Japan it is warrant officer, first class, and second lieutenant, sir. But in this camp they were listed as sergeant major. That is why they were on working party.

Q Do you agree that a man who is an ensign would be classed as a sergeant major and would be on a working party?
A That's right.

Q And yet there was a Dutchman who was, in fact, an ensign who would be on a working party?
A I don't get it.

Q If any of the Dutch prisoners of war did have the rank of ensign they would still be used on the working party?
A Yes sir.

MEMBERS: Did you have any Dutch prisoners who were ensigns?
A I think there was, maybe, five or six of them sir.

Q Five or six. Was one of them Streefkerk?
A I don't know the name.

Q Do you know Streefkerk?
A I don't remember.

Q Didn't you say this afternoon that you did know him?
A I just read from the affidavit I have that the man who had broken rib was him.

Q This morning you said you did not know Streefkerk when counsel for the defense was asking you questions. This afternoon then defense was asking questions you said you did know him. Now, did you or did you not?
A I did not know him, sir.

Q Did you live in the compound all the time?
A Yes sir.

Q Now, were you a guard?
A No sir, not a regular guard. I did some guard's duty on the working party.

Q Why?
A Entrance commandant told me.

Q How often did you do guard duty?
A I went out with this working party for some period every day, sir.

Q How long a period?
A At Mushiroda Camp from May to December every day, sir.

Q All day. How about Camp No. 1?
A This is Camp No. 1.

Q When you were on the tower were you a guard?
A Not a guard, sir. I have one of guard's job, I think.

Q When you were on the tower were you a guard?
A I think it was guard. I did not have any rifle, sir.

Q Did you have any arms of any sort?
A No sir.

Q Were there other guards besides you?
A Myself, sir.

Q With this working party at the airport were you to only guard?
A No sir.

Q You were the only guard?
A No sir. There were other guards.

Q Were there other guards on the ground?
A Yes sir.

Q This corned beef that was collected, what was done with it after it was collected?
A It was I think gathered and given to them, sir.

Q Don't you know?
A I don't remember, sir.

MEMBER: This Dutch prisoner of war which you testified had broken ribs, which, as I understand your testimony, you apologized for and the matter was settled amicably thereafter at the place where it occurred and before he was sent back to the hospital.

A Yes sir.

Q At that time when Brown sent back to the hospital, was there anything said or any note established, as to what he should say or explain how he had broken himself?

A No sir. I did not tell him what to say, sir. I just apologized to him, sir.

Q Was there any explanation or any story he would give as to the cause of the rib broken?

A No sir and he was not sent to hospital, sir.

Q He reported in to the doctor. Did he not?

A Yes sir. That is what I heard.

Q You don't know whether he -

A At that time I was not in the camp. I was on the working party, sir.

Q You did not order, or did you order, this Dutch prisoner to give an excuse or to explain his broken rib when he got back to camp as having been caused by having been hit by a truck?

A No sir.

Q Do you have any explanation to offer or any reason in your mind as to why Lt. De Wijn, the doctor who treated this Dutch prisoner of war with the broken rib,- as to why this doctor says the Dutch prisoner of war told him that you had ordered him to state that you had broken your rib by being hit with a truck?

A I thought maybe this man that told him was sore.

Q Why would this man make such a statement?

A I don't know, sir.

Q Do you think that if this Dutch prisoner of war had rage ried back to the camp that he had suffered a broken rib as a result of you shoving him to the ground you would have received any admonishment or punishment from the camp commander?

A No sir.

MEMBER: No further questions.

MEMBER: When the man with the broken rib, when he got up off the ground, where did he say it hurt him? Will you show me on your side?

A I think it was on the left side.

Q On the side or in front or in back?

A And I told him to take his shirt open and he opened and I saw it and I felt it.

Q That is sufficient answer. You put your feet behind him when you shoved him?

A Yes.

Q Where did you put your hands?

A On his chest.

Q And what part of his body hit the ground?
A This side sir (indicating).

Q That side hit the ground?
A Yes sir.

Q What sort of ground was it? Rocky, dirt, smooth or what?
A It is not rocky, sir. Mud, but hard.

Q Hard mud. And his left side hit the ground?
A I think so, sir. I am not sure.

PRESIDENT: Any further questions?

MEMBER: Nothing further, sir.

PRESIDENT: Rebuttal? Recross?

PROSECUTION: Yes, sir.

RECROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q You said this morning when you came to the camp commander and he questioned you about this incident and he laughed and said "you can hit the prisoners but don't hurt them." Is that true?
A That is right.

Q And you said you were not punished for this incident. Is that true?
A That is right.

Q Why did you beat Mr. Do Hijn?
A Because when they got into some kind of trouble, I didn't report to commandant. But, when I did this thing they right away reported to commandant. And I knew even if they reported to commandant that commandant would not do anything so I got mad at the deed of Mr. Do Hijn, sir.

PROSECUTION: No further questions.

DEFENSE: Nothing further, sir.

PRESIDENT: Any further questions? There appearing to be none the witness is excused.

DEFENSE: If it please the Commission, I have no further evidence to put in at this time. I understand the prosecution has some rebuttal. I am willing to let the prosecution go ahead with leave to withdraw my rest tomorrow morning and put my witnesses.

PRESIDENT: I think it would be better if you finished your case, Mr. O'Brien.

DEFENSE: Either way is alright.

PRESIDENT: And you will have your witness here in the morning?

DEFENSE: I just have one witness, sir.

PROSECUTION: May I ask Mr. O'Brien if Mr. O'Brien will have Captain Sakamoto tomorrow?

DEFENSE: I put in a buck slip for him.

PRESIDENT: You expect to have him tomorrow morning?

DEFENSE: Yes. Just for a few minutes and then rebuttal and I do not think I will have anything on redirect.

PRESIDENT: The court will adjourn until tomorrow morning at nine o'clock

The Commission then at 1550 hours, on Monday, 17th February, 1947, adjourned to meet at 0900 hours on Tuesday, 18th February, 1947.

[illegible], COLONEL, INF.
President.

Yokohama Court House
Yokohama, Japan
Tuesday, 18 February 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, who were present at the close of the previous session in this case, being present.

The accused, the interpreters and the reporter were also present.

PRESIDENT: The court will come to order.

DEFENSE: Sir, I have called Sakamoto and he will be here presently.

YUKICHI SAKAMOTO

A witness called by the defense was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Defense:
(Questions and answers through interpreters.)

PRESIDENT: He has been tried and convicted?

DEFENSE: Yes.

Q How old are you?
A Forty-one.

Q Were you a member of the Japanese Imperial Army?
A Yes.

Q When did you become a member of the Japanese army?
A January 10, 1928.

Q And did you serve continuously from then until the cessation of hostilities?
A My term expired and I was drafted the very next day so that would be continuous service.

Q What was the highest rank or rating you held in the army?
A Captain in the army.

Q Is it a fact that you have been tried and convicted by a military Commission?
A Yes.

Q And you are now serving a life sentence in Sugamo Prison. Is that correct?
A Yes.

Q During your service in the army did you do a tour of duty at Fukuoka Branch Camp No. 1?
A Yes.

Q When did you arrive at Fukuoka No. 1?
A From January 1, 1945 to May 7, 1945.

Q And in what capacity did you serve at Camp No. 1?
A Prisoner of war Camp Commandant.

Q Were you then the highest ranking Japanese officer at Camp No. 1?
A Yes.

Q While you were Camp Commandant at Branch Camp No. 1, state, if you know, how many shipments of Red Cross packages or bundles were received?
A I don't remember the number of shipments that were received.

Q What plan was put into operation regarding the storage and/or distribution of Red Cross packages?
A There was no plan as such, but these parcels were distributed whenever necessary.

Q Who was the senior prisoner of war officer?
A British Lt. Colonel Saunders.

Q Did Colonel Saunders have anything to do regarding distribution of Red Cross packages?
A Not Lt. Colonel Saunders. There were 24 British officers and these officers did the distribution.

Q Where were the Red Cross packages kept?
A In the warehouse.

Q And was this warehouse locked?
A Yes.

Q What system was in effect regarding the locking of this particular warehouse?
A We used two keys. One the prisoner of war had and the other a camp employee who was connected with the Red Cross supplies.

Q And what is the name of the camp employee you have referred to?
A He was Intendance Officer Tsuita.

Q Do you know Takao Katsura?
A Yes.

Q Did he have a key to this warehouse where the Red Cross supplies were kept?
A No.

Q Did he have access to this warehouse where the Red Cross supplies were kept?
A No.

Q Do you know of your own knowledge and observation whether or not Katsura ever took or embezzled any Red Cross supplies?
A No.

Q Did you ever hear that Katsura had taken or embezzled any Red Cross supplies?
A No, I did not hear.

Q Was a report or complaint ever made to you that Katsura had ever taken Red Cross supplies?
A No.

Q Was a report ever made to you to the effect that Red Cross supplies were shorter than the inventory showed they should have been?

INTERPRETER: The witness wants the question repeated.

(Question repeated)

DEFENSE: You may cross examine.

CROSS EXAMINATION

Questions by Prosecution:

Q Nakamoto, at the time you were tried you were asked this question. -

"Didn't you on one occasion notice a prisoner who was not working properly and order Matsura to take a bamboo pole and strike this prisoner?"

Your answer, "no sir".

DEFENSE: To which the defense respectfully objects as improper cross examination as it is outside the scope of any matter brought out on direct examination.

LAW MEMBER: This is one of the questions you raised before.

PROSECUTION: That has been raised all through this trial. It was raised when the accused took the stand. Here is the man who can give you the answer.

DEFENSE: I submit also, if the prosecution wants to call this man as their witness they can do that.

LAW MEMBER: Is this one of the vertiems of evidence that is included?

DEFENSE: Yes sir.

LAW MEMBER: The time you brought in the testimony before?

PROSECUTION: And now I am asking this question because all through the trial the accused took the stand and testified on this. This is one of the methods I have been using to impeach the accused, to show that the accused has not been telling the truth.

DEFENSE: I state in answer to that, - I renew my objection. It is entirely outside the scope of all matters brought out on direct examination.

LAW MEMBER: I am not unprepared for you to raise this question as being outside the scope and I may have to deal with that. Is this evidence you are now producing of such nature that you can call this witness for rebuttal purposes to ask these questions?

PROSECUTION: Sir, it is my contention that the prosecution is not limited to matters brought out on direct by the defense, nor is the defense limited to matters brought out on the direct by the prosecution. There has been much law written on this subject. I may have a brief in that box on that very point, that neither side is limited.

LAW MEMBER: This case has got this far without having to rule on this point.

PRESIDENT: I would like to say something right here. I think Mr. Reitch will remember in chambers before this Commission met that that question was raised and the policy of the Commission announced at that time that cross examination would be limited to matters brought out on direct examination

except when the accused was on the stand great liberality would be used.

PROSECUTION: All right sir. I will then take Sakamoto as my witness with the understanding that Sakamoto is a hostile witness to the prosecution.

DEFENSE: I think that is a matter for the commission to decide; and whether the prosecution is to be bound by that. It is the prerogative of the Commission.

LAW MEMBER: Were you going to recall this man at the end of the case?

PROSECUTION: I will make him my witness at this point.

DEFENSE: It is highly irregular procedure.

PROSECUTION: I think not.

LAW MEMBER: I don't see how you can do it when he is a defense witness.

PROSECUTION: It has been done very frequently especially when it becomes desirable by either side.

LAW MEMBER: He is still a defense witness. He must be hostile to you.

PROSECUTION: The Commandant has been sworn for the purpose of these questions but will be my witness and I have also asked the Commission to bear in mind that this man is under sentence and, if anything, he will not be friendly towards the prosecution.

DEFENSE: This properly can be struck out. If the defense wants to waive cross examination, I am prepared to rest while the witness is on the stand, and if the prosecution wishes to call him as one of their witnesses that is proper.

PROSECUTION: I claim it is not. Any question he puts on redirect, if it is in answer to matters I have brought up will be cross examination.

LAW MEMBER: This is getting too technical and I don't intend to spend too much time on it. As far as I am concerned this man will be permitted to be questioned on the material you have. He is the best witness.

The technical way of doing it will be more clean-cut if we let you keep cross examination and keep this evidence as it stands and we will permit you to call this man afterwards as your witness.

PRESIDENT: And the objection is sustained.

LAW MEMBER: In a sense it is sustained; but I would not consider it a binding decision on me in the future.

PRESIDENT: The court will go in recess.

The Commission then took a recess until 0945 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will come to order.

LAW MEMBER: Mr. Deitch, you are now having your cross examination of what was brought out in direct.

PROSECUTION: Yes sir.

Q Did you as Camp Commander while at Kobeschi Camp tell the hut commander that Red Cross matter would be issued only to those who worked hard?
A No.

Q Did you ever discuss this matter with Katsura to the effect that Red Cross supplies would be issued only to those men who worked hard?
A No.

PROSECUTION: That is all the questions I have on the matter brought out by the defense.

DEFENSE: No redirect.

EXAMINATION BY COMMISSION

Questions by Members:

Q I have one or two questions.

When you say there were two keys to the warehouse, I want to know whether they were both keys to the same lock or were there two locks?
A There were two locks and these two keys were for the two different locks.

Q Did you as Camp Commander have keys to both locks?
A I did not have the keys.

Q Did anybody in the camp have a series of keys whereby he could open both locks?
A No. It was impossible to open the warehouse with one lock; so whenever the warehouse was opened it was necessary for the prisoner of war and the camp personnel in charge of the warehouse to be present.

MEMBER: That is all.

Q What was the arrangement of locks on the door?
A There was one lock on the door and one on the stationary side and when the door was closed these two locks were used.

Q Were these locks placed on separate staples or hasps?
A On separate.

Q How much distance was there between each one of the locks?
A About this high (indicating), in this manner.

Q Were these two locks engaged in each other?
A They were about that much apart (indicating).

MEMBER: Indicating how much?

PRESIDENT: Let the record show indicating about three inches.

Q Was one lock fastened in the other lock so as to constitute a chain?
A No.

Q What kind of record was set up to account for the Red Cross supplies received and their distribution.
A There was an account book in which the number of parcels received was recorded and also the number of parcels which was distributed were recorded and the senior prisoner of war ranking officer signed this account book and this was opened to the inspection of the main camp commander when an inspection was held.

Q Who kept this account book?
A The one account book was kept by the nco and one was kept by the prisoner of war.

Q How many account books were there?
A One account book.

Q Did I not understand you to testify that one was kept by the nco, presumably the Japanese nco, and the other kept by the prisoner of war?
A The account book that the prisoner of war had was not an official account book. It was just jotted down by the prisoner of war as a memo, so the official account book was kept by the Japanese nco.

Q Did you ever look at the account book?
A Yes.

Q How often?
A I don't recall the number of times but I examined the book to see the number of parcels that were in camp.

Q Did you ever verify the accuracy of this account book with the senior prisoner of war?
A Yes. Many times.

Q Did you ever receive any complaints from the allied prisoner of war that Red Cross parcels were not being distributed to them properly?
A No.

Q Were all the Red Cross parcels received distributed to the allied prisoners of war?
A Yes. All were distributed to the prisoners of war.

Q Were the contents of any of the Red Cross packages ever used or consumed by any Japanese personnel in the camp?
A There was one time when the senior ranking prisoner of war officer told me. On this occasion the ranking officer came to me and asked whether or not I would permit them to distribute these parcels to various Japanese camp personnel.

However, I could not see the Japanese camp personnel use prisoner of war relief goods and I refused this several times. But there were so many requests that I permitted this once. Red Cross parcels were distributed to nine members of the camp. This was either in March or April 1944. Besides this, there was not a single time when a camp personnel used Red Cross supplies. When this distribution was made, it was not made to the entire personnel, but prisoners of war made a list of the persons to whom they wanted to give the parcels and so there were about nine names on the list.

Q Do you know the men who received these parcels?
A Yes.

Q Did interpreter Katsura receive any of them?
A Yes. He was one of them.

Q Do you know why the prisoners of war wanted to give the Japanese personnel these packages?
A There was quite a bit of Red Cross supplies at that time and since the camp personnel was kind to the prisoners they thought they would like to give these parcels to these certain camp personnel. I refused the proposal twice but they insisted on giving these parcels so I gave my permission.

Q Do you know whether the nine men you have stated or a number of men, who were stated, were especially selected to be recipients of these presents?
A I did not ask the reason, but I think that those who had most contact with the prisoners received these items.

MEMBER: No further questions.

PRESIDENT: Any further questions by the court?

PROSECUTION: I have a few, sir.

REGRESS EXAMINATION

Questions by Prosecution:

Q When was this distribution made?
A I am not sure but it was either in March or April 1945.

Q Do you recall Katsura testifying in your trial?
A Yes. In general.

Q Now, Katsura was asked a number of questions and he gave a number of answers. I am going to read the questions and answers to you and ask you if you recall having heard these questions and answers at the time you were tried.

Q Did any prisoner of war keep a record of the Red Cross supplies?
A Yes.

Q Who was this?
A The Dutch doctors.

Q Did this doctor ever discuss a shortage of supplies?
A Yes sir.

Q When was this?
A Shortly after the Commander Sakamoto left the camp.

Q What camp?
A Nakazaki Camp, sir.

Q What year was this?
A 1945.

Q Approximately what month?
A June, sir.

Q How much did this doctor say was out there?
A About 70.

Q. Did this doctor say there had been any shortage of supplies?
A Yes sir.

Q. How much did he say this shortage amounted to?
A About 70 or 75 small cans of butter and about 50 cans of milk."

LAW MEMBER: Before you go on. Be sure you are justified in putting it this way. If this happened before the commander left the camp, presumably it was never drawn to his attention. It is merely that Katsura says. He is not responsible for that.

PROSECUTION: This man has testified that there were no Red Cross supplies missing when he left the camp in May. Katsura said it was about June 1945. The quantity is a very large amount. It could not have been taken one day. It must have been taken gradually. I don't know where it was taken from but it was taken. The supplies were missing and there was a record kept. This is proper cross examination on a matter brought out by the defense.

Q. The only matter brought out was that there were allegedly no shortages.

PROSECUTION: Yes sir.

LAW MEMBER: Any shortages discovered were after this man left. Unless it was brought to his attention -

PROSECUTION: This testimony is part of the record in his trial.

LAW MEMBER: I see what you mean. All right. Carry on.

(Question repeated)

WITNESS: Yes.

Q. Were any Red Cross supplies kept in the medical inspection room?

A. It was when the Red Cross supplies were distributed to all the prisoners of war with the consent of the prisoner of war officer some milk and butter were set aside for use for sick patients and this amount was sent to the dispensary and kept there and the medical officer issued these items whenever he thought it was necessary.

There was no shortage when I was still in the camp.

Q. You just answer the questions. I am not asking you to go beyond my question.

PRESIDENT: Let me interrupt right here. You prefaced the reading of this testimony, then you had the testimony read. The interpreter apparently answers a question at the completion of the reading of the testimony and the witness replied, "Yes".

PROSECUTION: I put the whole question at the beginning. I said, "At the time of your trial Katsura testified to this matter which I read". Then at the beginning I said, "Do you recall having heard this testimony"? And he said, "Yes".

PRESIDENT: All right, proceed. Thank you.

PROSECUTION: I will go on to my own matter.

PRESIDENT: What matter? This witness cannot be questioned by you on direct examination.

PROSECUTION: I have no further questions.

DEFENSE: No further questions.

PRESIDENT: Questions by the court?

Appearing to be none, the witness will be excused.

This is not the time for the court to call witnesses.

DEFENSE: At this time the defense rests.

PROSECUTION: Hold the prisoner there. It is a matter for rebuttal.

PRESIDENT: Do you want to call Sakamoto as a witness.

PROSECUTION: Yes sir.

REBUTTAL

YOSHIKI SAKAMOTO

A witness previously sworn, was recalled by the prosecution and testified as follows:

PROSECUTION: I remind the witness that he is still under oath.

PRESIDENT: I think the court will take a recess until 1020.

The Commission then took a recess until 1020 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The court will come to order.

PROSECUTION: I remind the witness that he is still under oath.

Now I ask you if you were asked the following question and also if you gave the following answer at the time you were tried.

"Q Didn't you on one occasion, notice a prisoner who wasn't working properly and order Katsura to take a bamboo pole and strike this prisoner?
A No."

A. Yes.

Q. Now, I ask you if you were not asked this following question and if you did not give the following answer.

"Q Did you give these guards any instructions as to treatment of prisoners?
A I gave them instructions every time a new batch came in."

A. Yes.

Q. I ask you if you were not asked the following question and if you did not give the following answer.

"Q Did you ever warn them against striking the prisoners?
A I told them that the prisoners of war would not be struck and if the prisoners of war violated orders and neglected their working details they were to be brought before me and I would take the necessary steps."

A Yes. I did.

Q Now, did you ever order Katsura to beat anybody?
A No.

Q Katsura says, in March or April 1945 at Kumamoto the camp commandant ordered him to hit an Englishman called Newman when I hesitated to do so. He ordered again to hit so I slapped in the face once. Then he ordered to hit more and I hit once again."

Did you order Katsura to hit the Englishman, Newman?
A No. I did not.

Q Now, do you recall a Dutchman sustaining a broken rib or ribs at the hands of Katsura?
A I heard this from Katsura.

Q Katsura has said -
A I did not hear that he broke his rib.

Q Katsura has said that he was called before you concerning this incident and that at the time you told him he could hit the prisoners but he would not hurt them, and that time he said you laughed when you said this. Is this true?
A No. This is not true

Q Now, there has been mentioned a party which occurred on the night President Roosevelt of the United States died. Do you know anything concerning this party?
A I do not know anything.

Q Katsura has said that Sergeant Kiyohara ordered this party in order to have the prisoners of war entertain Corporal Ono who was a new guard, and that Katsura was carrying out Sergeant Kiyohara's order. Was Sergeant Kiyohara or Katsura authorized to order such a party?

PRESIDENT: Let me interrupt just a minute Mr. Mitch. I am going to remind you about the type of questions you ask and I want the reporter to read back that question.

PROSECUTION: I do not think it is too complicated.

PRESIDENT: Now that question would be very difficult for an ordinary average American citizen to answer and it is in my opinion a long complicated question.

PROSECUTION: I will break it down for the interpreter.

PRESIDENT: That is not the point. Instructions from SCAP are that you are not to ask such questions. Please break it down into smaller segments so it can be asked through the interpreter.

PROSECUTION: I will withdraw the question.

I will state some testimony which Katsura gave at the trial. Katsura said that he ordered the prisoners of war to entertain at a party on the evening of President Roosevelt's death. Katsura said he ordered this party on the request of Sergeant Kiyohara. Were Katsura or Kiyohara authorized to order prisoners of war to furnish entertainment for the benefit of the prisoner of war guards without your consent?

A No.

Q Katsura has said when he brought the complaints of prisoners of war to you you would tell him to "go to hell" and also to get the men back to work. Is this true?

A There is no such thing. Whenever there was a complaint, I received the complaint.

Q Do you recall the tower on the airport where the guard sat and observed the prisoners working?

A Yes.

Q Did you ever go to that tower while Katsura was on guard and order him to beat any prisoners of war?

DEFENSE: I object to the compound question. The question is did he go to the tower and did he order a beating.

PROSECUTION: Did you ever -

LAW MEMBER: Do you withdraw the question?

PROSECUTION: Withdrawn. Did you ever go to the tower to observe prisoners of war working?

A Yes.

Q Did you ever observe Katsura on guard at the tower?

A Yes.

Q On any of these visits did you ever order Katsura to beat any prisoners of war who were working at the airfield?

A No.

Q Katsura has said that one day while the men were working in the field it began to rain very hard. He said that the Korean workers quit working; that the contractor's men stopped working and that he took the prisoners of war back to camp. He said that when he got back to camp you met him and said, "What happened?" Katsura said, "It is raining very hard and it is very difficult to push the trucks and the contractor's men have gone home". Katsura said that you replied, "This much of rain is nothing". Go back and push those trucks even if you have to swim in the mud." Katsura then replied, "Yes sir", and took the men back to work. He said, "This kind of thing happened several times." Is this true?

A No.

Q Did you ever beat prisoners of war?

A Yes.

Q You did not designate these matters to others did you? When you felt a prisoner needed punishment, did you handle the matter yourself?

A Yes.

Q Why do you think Kotsura has made all these statements concerning you?

DEFENSE: I object to it, sir. It calls for the conclusion of the witness.

LAW MEMBER: Objection sustained.

PROSECUTION: You may question the witness.

CROSS EXAMINATION

Questions by Defense:

Q Do you remember a prisoner by the name of Chilton?
A Yes.

Q You beat Chilton did you not?
A Yes.

Q You knocked him to the ground did you?

PROSECUTION: I object to this question. The defense made the point that I would be limited on anything brought out. Now, I have not discussed Chilton. Chilton does not have anything to do with the case.

DEFENSE: The last question he asked, "Did you beat any of these prisoners", very clearly he left the door wide open.

PROSECUTION: If I mentioned Chilton's name the defense could cross examine.

LAW MEMBER: This is one trial where this Commission - I put it in my own way - is experimenting with this rule. I don't know whether it is a workable rule or not. We will see if it is. Certainly I am going to confine the defense to what has been brought out.

DEFENSE: I am willing to stay in the confines but his question was, "Did you beat prisoners?" I am asking him about that.

LAW MEMBER: We also want to be sure that what is asked is relevant.

DEFENSE: Chilton is named in one of these specifications.

LAW MEMBER: Which one may I ask?

DEFENSE: Specification 14. There is evidence there that Chilton was beaten by the accused.

LAW MEMBER: I would like to confirm that there is evidence that the accused beat Chilton.

PROSECUTION: Sir, I don't believe that he will find that we charged the accused with beating Chilton.

DEFENSE: Sir, I could not find it without going through all the affidavits. I will withdraw the particular question.

LAW MEMBER: All right. Question withdrawn.

DEFENSE: Did you ever see Katsura strike a prisoner of war?

A No.

Q. Did you ever hear that Katsura had ever struck a prisoner of war?
A. No.

Q. Now, when you were Camp Commandant at Fukuoka No. 1, did you live within the confines of the post?
A. I did not live in camp. At times I used to stay in camp for about a week but on the whole I commuted from the outside.

Q. In April of 1945 were you living outside the post?
A. Yes.

Q. What time would you usually leave the camp to go home?
A. About five o'clock.

Q. Who would then be in charge of the camp after you left?
A. There was a weekly duty officer.

Q. Was Kiyohara such a weekly duty officer?
A. There were times when he assumed such duties.

Q. At such times when Kiyohara would assume such duties would Katsura be under him and subordinate to him?
A. I cannot say he was subordinate to him.

Q. Well, when Kiyohara was duty officer, was he the ranking officer in that camp?
A. Yes.

Q. What was Katsura's rank at that time, April 1944?
A. Superior private.

Q. So that if Kiyohara issued an order Katsura would have to obey it, would he not?
A. Yes.

Q. So then, if Kiyohara ordered Katsura to arrange a concert, a party, Katsura would have to follow out that order. Is that correct?
A. No.

Q. If I understand your testimony now, you say Katsura would not have to follow Kiyohara's orders.
A. When it comes to the guard and disciplining, it comes under the duties of weekly duty officer, then he had to obey orders. However, when it comes to parties or such entertainment it was necessary to get the camp commandant's permission. The camp commandant was myself.

Q. Are you trying to infer that Katsura, a private, could question orders of a superior and determine whether he could obey them?

PROSECUTION: Objection to the manner in which the question is put.

LAW MEMBER: The substance of the question is quite in order. Can you try to satisfy Mr. Deitch?

DEFENSE: Is it my duty to satisfy Mr. Deitch or just to prevent questions that may apply?

LAW MEMBER: I think you should say, "do you therefore mean".

DEFENSE: Withdraw the question.

Are you now stating that Katsura had the discretionary powers of determining which of the orders issued by his superior he would follow?

A What do you mean by discretionary powers?

Q Ask him if Katsura could decide for himself which orders he would follow.

A When I was absent from camp it was only right for Katsura to follow the orders of the senior members of the camp.

Q Sir, I move that the last answer be stricken as not responsive and the the question be re-read to the witness.

LAW MEMBER: I do not think it should be stricken. It can be read again.

DEFENSE: Will you read the question to the witness.

LAW MEMBER: And explain the previous one does not appear to be responsive to the question.

(question repeated)

WITNESS: When I was absent it was necessary for him to follow the orders of the weekly duty officer.

Q Were you in Sugamo prison on June 16, 1946?

A Yes.

Q Do you recall on that date being questioned by Mr. Ling, a Chinese investigator?

INTERPRETER: You mean myself?

Concerning what?

DEFENSE: Just have him answer the questions. Does he recall being questioned?

WITNESS: No.

Q Do you recall being questioned by any man regarding your activities as Camp Commandant?

PROSECUTION: Let us fix the date.

DEFENSE: The date is fixed. It is June, 1946.

PROSECUTION: I don't believe the previous question applies to what you are asking now.

LAW MEMBER: Is there an objection?

PROSECUTION: Yes.

LAW MEMBER: You asked him to fix the date. You did not object, Mr. Deitch. There is no objection before the Commission. Proceed.

WITNESS: I believe I was under investigation in June.

DEFENSE: Were you questioned by anyone in Sugamo Prison on or about the 16th day of June 1946?

A. I believe it is a time in June.

Q. In June then, were you questioned regarding Katsura?
A. Concerning Katsura I was questioned by Japanese defense counsel.

Q. And did you at that time state, "Katsura would always obey orders and faithfully carry out his duties"?
A. Yes.

Q. Who had authority to imprison or to incarcerate a prisoner of war in the guardhouse?

PROSECUTION: Objection.

DEFENSE: I withdrew that. While you were Camp Commandant, by whose authority could a prisoner of war be placed in the guardhouse?

PROSECUTION: Objection.

LAW MEMBER: Ground please.

PROSECUTION: On the grounds that he is limited to matters brought out in the direct.

LAW MEMBER: Objection sustained.

DEFENSE: No further cross examination.

RECROSS EXAMINATION

Questions by Prosecution:

Q. Regarding Sergeant Kiyohara, what sort of a man was Kiyohara?
A. Is it Kiyohara or Kurohama?

Q. Kurohama, the man we have been discussing.
A. There is no such a man as Kurohama. It is Kiyohara. While I was the Camp Commandant, it was not very long after he was assigned to the camp. So I did not know him very well. He was serving as a medical orderly in the dispensary.

Q. Was he the sort of man who would order Katsura to order prisoners of war to entertain another man, a Japanese guard.

DEFENSE: Objected to as calling for the conclusion of the witness.

PROSECUTION: No further questions.

Withdrawn.

LAW MEMBER: You withdrew the question?

PROSECUTION: Yes sir.

PRESIDENT: Recress?

DEFENSE: No recress.

PRESIDENT: Questions by the court?

EXAMINATION BY COMMISSION

Questions by Members:

Q Who ordered the confinement of prisoners of war in the doghouse at this camp?

Withdraw the question. Do you know what is meant by the "doghouse" in this camp?

A There is no such thing as a doghouse. There were no dogs in camp.

Q Do you know what I mean when I ask you what is meant by the "black box" in that camp?

A No.

Q Did you confine prisoners of war to any other place in the camp other than the guardhouse?

A No. None beside the guardhouse.

Q Do you remember a prisoner of war by the name of Lt. Colonel Raby?

PROSECUTION: He was major at that time, sir.

WITNESS: No, I do not remember.

Q Do you remember a prisoner of war by the name of Major Raby?

A There were many officers in camp so I do not recall which officer that was.

Q Did any of your subordinates in that camp have authority to confine prisoners of war to the guardhouse?

A No.

Q Then, were prisoners of war who were confined in that camp confined on your authority only?

A Yes.

Q Do you recall whether Katsura every wore rubber sole shoes?

A Do you mean shoes with rubber soles?

Q Yes.

A Yes.

Q Do you recall the occasion when you went through the huts smashing wooden boxes?

A You mean a small box?

Q Yes.

A Yes. When you mean broken boxes, I had someone open the boxes.

Q Do you recall that some of the prisoners of war had boxes made, wooden boxes made, and brought into the huts? Do you recall?

A I have seen that those boxes were in the huts.

Q Now, Katsura has testified that you ordered those boxes smashed. Is that correct?

A Yes. During the inspection I could not inspect the contents of the boxes so I ordered the top of the boxes be broken.

Q Who was with you on that occasion?
A There was a British prisoner of war named Newman. I ordered him to break the bones. Katsura was present.

Q Do you recall ever seeing a roundheaded or ballheaded hammer in the hands of Katsura?
A You mean at that time?

Q At that time.

DEFENSE: No, Katsura did not have the hammer, Newman had this.

Q Do you recall Katsura ever having a hammer with a head weighing about four pounds in his hands?
A I have not seen him holding such a large hammer.

MEMBER: No further questions.

MEMBER: Were prisoners confined in a cell as a punishment?
A Yes.

Q Where was this cell? How many of these cells did you have?
A My prisoner of war camp moved four times and at different camps we had different numbers.

Q What was the nature of these cells?
A The cells were built very similar to the army cells.

Q Were they built separate from the building or were they part of a building?
A These cells were in the same building where the guards lived.

Q Did the cells have any heat?
A There was no heat in the cells.

Q How many blankets were prisoners confined to these cells allotted?
A In summer I recall that the prisoners had two blankets and in winter all the items that were issued them.

Q What items were issued to them in winter?
A In winter every prisoner had five blankets.

Q What food was given to the prisoners confined to these cells?
A Although the prisoners were receiving the same type of food, they received an amount less than those who were engaged in heavy labor.

Q Did the prisoners confined in the cells receive any food at all?
A They were receiving food.

Q Wait a minute. What did he reply?
A Yes.

Q Will you translate what he replied. The witness replied in Japanese "Yes" but the interpreter said, "I think he received food".

INTERPRETER: I thought that would clarify the fact. The answer is, "Yes".

PRESIDENT: You qualify the answer. You give the answer after the witness gives it.

INTERPRETER: I request that all the questions be positive rather than negative.

PRESIDENT: You interpreted the question, "Did any of the prisoners receive food at all"? He replied in Japanese with one word, "Yes".

(Question and answer repeated)

PRESIDENT: He replied, "Yes". I don't want you to put your interpretation on the witness' answer.

INTERPRETER: Sometimes we do.

PRESIDENT: You don't when he says, "Yes".

INTERPRETER: In some cases we do.

PRESIDENT: I noticed all morning Mr. Interpreter, that the witness in replying to questions would say "Yes" and then he would go on and give a long answer in Japanese. Not once have you interpreted that reply "yes". It makes a slight difference.

INTERPRETER: "Yes" in that case meant he understood the question and then he answers the question.

PRESIDENT: Not necessarily Mr. Interpreter. From now on you interpret what the witness says and not what you think.

INTERPRETER: I am sorry, because there are times when "yes", "hai" does not mean "yes". It means he understood the question and he answered the question and I have to interpret his ideas rather than words themselves.

PRESIDENT: When the witness replies with one word?

INTERPRETER: Sir, could I go back and talk with my section chief?

PRESIDENT: No. You cannot go back and talk to your section chief.

INTERPRETER: Well, I thought that would clear up things a little more.

PRESIDENT: Proceed with the examination of the witness. Your last question was did he receive food or not. And the answer was, "They received food".

MEMBER: Did you sometimes deprive prisoners of all food as an additional punishment when they were confined in the cell?

A. No.

Q. Do you speak any English?
A. No.

Q. Do you understand any English?
A. No.

Q. What interpreter did you habitually use to converse with prisoners of war?
A. There were two interpreters and I cannot say that I used one more than the other. I used both of them.

Q Who was the other interpreter?
A Interpreter named Hanayama.

Q What were his duties?
A Interpreting.

Q Where did he spend most of his time in the camp?
A There was a room where the interpreter worked and he had his duties in this room.

Q Did you ever send this interpreter out with the prisoners of war?
A He was not sent out. He was kept mainly in camp.

Q Did you take him with you to interpret when you went on inspection trips throughout the camp?
A Do you mean the time when the bombs were broken?

Q At any time when you went out through the camp inspecting did you take this interpreter with you?
A At first, Katsura was the only interpreter in camp and at that time I used only Katsura on inspection trips. The other interpreter came to the camp about sometime in 1944 and after that there were two interpreters so there were times when I used Katsura and times when I used the other interpreter.

Q Did you use the other interpreter at any times other than for conversing with the prisoners of war in your office or in his office?
A Yes.

Q In what capacity and on what occasions?

INTERPRETER: I am asking him to repeat the answer again.

WITNESS: There were requests from the higher officer at times to make investigations and in carrying out these investigations sometimes it was necessary to question people, and in this case I used the interpreter and in other cases I used the interpreter.

Q Was part of Katsura's duties to go out with the prisoners of war as a supervisor everyday?

A Since there was a request from the company that at the working place and during the working hours it was necessary to speak the language that the prisoners of war spoke in order to carry out the work; and conforming with this request Katsura was sent out because he knew the language, as a supervisor.

Q When Katsura was out with the prisoners of war, did he act as a representative?

A No. I cannot say he was my representative.

Q When you sent the prisoners of war out who did you tell what you wanted the prisoners of war to do?

A There were many different places where the prisoners of war worked and as a basic rule the company was supposed to supervise their work. However, there were times when the company supervisor could not make the prisoners of war understand, or did not know the capacity of the prisoners of war and in fear that they may overwork the prisoners of war I sent some camp employee with the various employees as a supervisor and among these, since Katsura knew the language well, I sent him to the

Q Who was the other interpreter?
A Interpreter named Hasegawa.

Q What were his duties?
A Interpreting.

Q Where did he spend most of his time in the camp?
A There was a room where the interpreter worked and he had his duties in this room.

Q Did you ever send this interpreter out with the prisoners of war?
A He was not sent out. He was kept mainly in camp.

Q Did you take him with you to interpret when you went on inspection trips throughout the camp?
A Do you mean the time when the bombs were broken?

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place where the most number of prisoners were working. And I made inspection tours of these various places.

Q When you sent Katsura out with the working parties of prisoners of war did you as a general rule tell him what you wanted done.
A There were times when I did.

Q Did you hold Katsura responsible for carrying out your instructions?
A Yes.

Q Did you ever upbraid him for failure to carry out your instructions?

INTERPRETER: What do you mean, "upbraid"?

Q Censor or criticize or reprimand him. Use the word "reprimand".
A No. He obeyed my instructions very well.

WITNESS: No further questions.

PRESIDENT: Any further questions by the court?

Redirect?

Recross?

DEFENSE: I have one question, sir.

RECROSS EXAMINATION

Questions by Defense:

Q Did you ever see Katsura wearing tabe shoes?
A He was wearing shoes most of the time but I do not recall very well.

PRESIDENT: Any further questions?

Appearing none, the witness is excused.

PROSECUTION: May it please the Commission, at this time the prosecution wishes to offer in evidence as Exhibit 32 an affidavit made by Yahee Katsura at Sugamo Prison on the 20th January 1946.

PRESIDENT: Isn't that already in evidence?

PROSECUTION: No. This is the one the court told us we could put in during rebuttal.

PRESIDENT: There is Exhibit 32 before the court.

PROSECUTION: I am sorry. Then this will be Exhibit 33.

DEFENSE: To which, sir, there is no objection.

PROSECUTION: I may state for the record that this statement, the original, is in Katsura's own handwriting and he states he made it voluntarily. Therefore, it is in the nature of a self-serving declaration. However, he makes certain admissions, but in order to get the entire picture before the court the prosecution offers it in rebuttal.

LAW MEMBER: There being no objections the document is accepted as Exhibit 35.

(Document referred to was produced and marked Prosecution Exhibit 35 for identification and was received in evidence.)

(Prosecution Exhibit No. 35 was read by the prosecution.)

PROSECUTION: The prosecution has nothing further in rebuttal.

PRESIDENT: Does the prosecution rest?

PROSECUTION: Yes.

DEFENSE: The defense likewise rests.

PRESIDENT: Will you be prepared to argue the case this afternoon?

DEFENSE: Yes sir.

PRESIDENT: The Commission will adjourn to meet at 1:30.

The Commission then took a recess until 1330 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The court will come to order.

You may proceed with your argument Mr. Deitch.

PROSECUTION: I believe the defense will make the opening statement and I will close if that is satisfactory.

PRESIDENT: I don't mind how you do it. You have nothing to say at this time?

PROSECUTION: No sir.

DEFENSE: May it please the Commission, the Japanese co-counsel in this case has expressed a desire to speak to the Commission on the behalf of the accused. Since he is defense counsel and I am here in an advisory capacity I am willing to accede to his request. His name is Mr. Tsuchiya Chunosuke.

(Arguments on behalf of the defense and the prosecution follow here but are not made part of the record.)

PRESIDENT: The court will retire until nine o'clock a.m. Thursday morning.

The Commission then at 1845 hours on 18 February 1947 adjourned to meet at 0900 hours on 20 February 1947.

NORMAN P. GROFF, COLONEL, INF.
President.

Yokohama Court House
Yokohama, Japan
Thursday, February 20, 1947

The Commission met, pursuant to adjournment, at 0930 hours, all the personnel of the Commission, prosecution and defense, who were present at the close of the previous session in this case, being present.

The accused, the interpreters and the reporter were also present.

PRESIDENT: The court will come to order.

Have the accused take the stand, please.

Takao Katsura:

The Commission, by secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

Of Specification No. 1, Guilty
Specification No. 2, Guilty
Specification No. 3, Guilty
Specification No. 4, Guilty
Specification No. 5, Guilty
Specification No. 6, Guilty
Specification No. 7, Guilty
Specification No. 8, Guilty, except the words "and confining him without proper protection from the cold"; of the excepted words "Not Guilty";
Specification No. 9, Guilty, except the words "and thereby breaking his ear drum"; of the excepted words "Not Guilty";
Specification No. 10, Not Guilty
Specification No. 11, Guilty
Specification No. 12, Guilty
Specification No. 13, Guilty
Specification No. 14, Guilty, except the words "thereby contributing to the death of a number of them"; of the excepted words "Not Guilty".

Of the Charge, Guilty;

And the Commission, by secret written ballot, two-thirds of the members present at the time the vote was taken concurring, sentences you to be confined at hard labor at such place as the reviewing authority may direct for forty (40) years."

PRESIDENT: Has the prosecution anything further?

PROSECUTION: No sir.

PRESIDENT: The court is adjourned.

The Commission then adjourned at 0945 hours *sine die*.

NORMAN P. SCOTT, COLONEL, INF.
President.

Yokohama Court House
Yokohama, Japan
Thursday, February 20, 1947

The Commission met, pursuant to adjournment, at 0930 hours, all the personnel of the Commission, prosecution and defense, who were present at the close of the previous session in this case, being present.

The accused, the interpreters and the reporter were also present.

PRESIDENT: The court will come to order.

Have the accused take the stand, please.

Tokuo Katsura:

The Commission, by secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you:

Of Specification No. 1, Guilty
Specification No. 2, Guilty
Specification No. 3, Guilty
Specification No. 4, Guilty
Specification No. 5, Guilty
Specification No. 6, Guilty
Specification No. 7, Guilty
Specification No. 8, Guilty, except the words "and confining him without proper protection from the cold"; of the excepted words "Not Guilty";
Specification No. 9, Guilty, except the words "and thereby breaking his ear drum"; of the excepted words "Not Guilty";
Specification No. 10, Not Guilty
Specification No. 11, Guilty
Specification No. 12, Guilty
Specification No. 13, Guilty
Specification No. 14, Guilty, except the words "thereby contributing to the death of a number of them"; of the excepted words "Not Guilty".

Of the Charge, Guilty;

And the Commission, by secret written ballot, twoothirds of the members present at the time the vote was taken concurring, sentences you to be confined at hard labor at such place as the reviewing authority may direct for forty (40) years."

PRESIDENT: Has the prosecution anything further?

PROSECUTION: No sir.

PRESIDENT: The court is adjourned.

The Commission then adjourned at 0945 hours sine die.

NORMAN P. [redacted], [redacted], USN.
President.

AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution's Exhibits No 1 through No. 33, and Defense Exhibits A and B, referred to, and identified therein, except such portions of the exhibits as have been lined out, deleted, and initialled, constitute the complete record of trial in this case.

NORMAN P. DROWN
Colonel, Inf.
President.

JESSE DEITCH
Chief Prosecutor

I examined the record before it was authenticated, and Prosecution's Exhibits No. 1 through No. 33, and Defense Exhibits A and B, referred to, and identified therein, are a part of the record except such portions of the exhibits as have been lined out, deleted, and initialed.

RICHARD E. O'BRIEN
Defense Counsel

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NORMAN P. DROFF
Colonel, Inf.
President.

JESSE DEITCH
Chief Prosecutor

I examined the record before it was authenticated, and Prosecution's Exhibits No. 1 through No. 33, and Defense Exhibits A and B, referred to, and identified therein, are a part of the record except such portions of the exhibits as have been lined out, deleted, and initialed.

RICHARD E. O'BRIEN
Defense Counsel

VOLUME II

E X H I B I T S

in the case of

UNITED STATES

v.

TAKIO [illegible]

Case Docket No. 59

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama, Japan
February 12th - 20th, 1947

CONFIDENTIAL
RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War— By /s/ T.R.C. King, Major, Inf.

AFFIDAVIT OF DONALD JACKSON SCOTT, SGT., U.S. MARINE CORPS

STATE OF CALIFORNIA:
SS.
County of Alameda :

Donald Jackson SCOTT, being duly sworn, deposes and says:

My permanent home address is DeBeque, Colorado. I was born 13 February 1918 at DeBeque, Colorado, had 12 years schooling, enlisted in the Marine Corps 1 December 1938, was assigned to the 1st Separate Marine Battalion at Cavite Navy Yard, P.I., 10 May 1940, was transferred to Bataan 23 December 1941 and was taken prisoner of war by the Japanese Army 8 April 1942 at Kilometer Post 76, Bataan, P.I.

I was held prisoner with a work group by Japanese Army Engineers and worked on various military installations from then until 25 July 1942 when I was imprisoned at Camp #1, Cabanatuan, P.I. I was held prisoner at Camp #1 from 25 July 1942 to 15 July 1944, when I was transferred by cargo ship to Japan and was held prisoner at Camp #10, Futase, Kyushu Island, Japan from 4 August 1944 to 4 December 1944, and at Camp #1, Fukuoka, Kyushu Island Japan, from 4 December 1944 to 14 September 1945.

One of the guards at Fukuoka Camp #1 was known to the prisoners as "The Bull." He acted as a guard at the camp in the months of January and February 1945. He was a Private Superior attached to the 72nd Regiment of the Japanese Army, and his identity would be well known to the camp interpreter, name who KATSURE (phonetic spelling). KATSURE lived near the camp, which was located across the river from the Kashi station. KATSURE's identity is well known to Lee WILCOX and Walter HOLKSON, both of whom were prisoners in our camp and who had previously been civilian workers on Wake Island.

In February 1945 Corporal IVERSON, 4th Marines, U.S.M.C. and Corporal Roy H. HEATH, Quartermaster Department, U.S.A. (of Oakland, California telephone, Fruitvale 6555-J) were caught smoking three minutes after the breakfast smoking period. They were taken out in back of our barracks and forced to assume a "push-up" position and were beaten by "The Bull" with a bamboo pole about 4' long and 2" in diameter. This beating continued off and on from 0715 to 0830, and they were beaten continuously for the first half hour of this time. As a result of the beating HEATH was in the hospital for at least two months. IVERSON, although he was very much weakened by the beating refused to go to the hospital and continued to work around the camp. He died a week and a half after the beating and, in my opinion, as a result of the beating.

KATSURE, the interpreter at the camp, frequently subjected the prisoners to indignities such as flicking the end of their noses and in general subjecting them to ridicule. In addition to this he stole considerable quantities of our Red Cross Supplies, and complete details as to what was stolen and when it was stolen are known by Lee WILCOX, the above-mentioned prisoner of war.

22 October 1945 /s/ Donald Jackson Scott

Subscribed and sworn to before me this 22nd day of October 1945 at Oakland, California, U.S.A.

/s/ not legible
Lieutenant, U.S.N.R.

A CERTIFIED TRUE COPY:
Theodore R.C. King
THEODORE R.C. KING
Major, Inf.

PROSECUTION EXHIBIT /

CONFIDENTIAL
RESTRICTED /s/ T.R.C.K.

CONFIDENTIAL
RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War By /s/ T.R.C.King, Major, Inf.

State of Washington)
)
County of Pierce)

I, Malcolm T. Bull of lawful age, being duly sworn, on oath depose and say:

I am Sergeant Malcolm T. Bull, ASF 38012687. My permanent home address is 5625½ Olive Ave., Long Beach, California. I am 27 years of age and I graduated from college with B.S. degree in Biology. I was inducted in the army April 4, 1941 and went overseas the 29th of August 1941 and returned from overseas on 10 October 1941. I was captured at Corregidor on May 6, 1942 and my first camp was at Bilibid and then to camp 1, Cabanatuan and was then transferred to camp 23, Fukuoka, Japan arriving there August 4, 1944 and remained until December 3, 1944 and then was transferred to camp 1, Fukuoka where I remained until liberated.

Lt. Soka Mato (phonetic) was camp commander of camp 1, Fukuoka from December 1944 until about March 1945. During the time he was in charge of the camp it was a common occurrence for prisoners of war to be beaten severely for the slightest excuse. During the period he was in charge of the camp there were at least 50 cases of severe beatings. One of these cases was a U. S. marine named Iverson who lived near Seattle, Washington.

RDB

RDB

/s/ R E C

CONFIDENTIAL
RESTRICTED /s/ T.R.C.K.

PROSECUTION EXHIBIT 2

In about February, 1945 Iversen was severely beaten because the Japs caught him smoking in the barracks at a time when it was against the rules for him to smoke in the barracks. The Japs made him assume a horizontal position in which only his fingers and toes were touching the ground and while he was in this position they beat him around the thighs and on the muscles in the back of his legs with two by two boards. After this beating Iversen was not able to walk and in a few days he took pneumonia and died. The American medical officers stated that this beating contributed to the cause of his death. A Japanese civilian guard called "Buck tooth" and named Hondo did the actual beating. An American-born Jap named Katsura, who was an interpreter, was the commanding officers "stooge" and he encouraged the guards to be brutual to the prisoners and slapped prisoners around himself.

~~Major Kostecki, an American medical officer, will have full knowledge of the above incidents.~~

~~The above statement contains all the information I have in regard to this incident.~~

/s/ James R. Owen
Witness

/s/ Sgt. Malcolm T. Bull 38012687

Subscribed and sworn to before me this 13th day of October 1945, at Fort Lewis, Washington.

/s/ Arthur G. Bouley
ARTHUR G. BOULEY
CWO, U S A
Asst Adjutant General
ASFTC Fort Lewis, Wash.

A CERTIFIED TRUE COPY:
Theodore R. C. King
THEODORE R. C. KING
Major, Inf.

Joseph D. Silar Pfc USMC ASN Unknown
(Name) (Rank)
after being duly sworn at 29th Replacement Depot, Luzon, P.I.
on 14 September, 1945, testified as follows:

Q. How old are you?

A. 26

Q. Were you captured by the Japanese and made a prisoner of war? If so, when and where?

A. Corregidor 6 May 1942

Q. At the time of your capture of what unit were you a member?

A. 4th Marine F Co 2nd Bn

Q. By what Japanese unit were you captured?

A. Emperors Own Rgt

Q. Do you expect to be repatriated, and if so, to what country?

A. Yes, United States

Q. What will your complete address be after your repatriation?

A. Cranby, Mo.

Q. Will you state the names and locations of the camps at which you were held as a prisoner of war and the dates you were confined at each camp?

	Compound or Camp	Location	Dates
A.	Bilibid	Manila	May 42
	Cabanatan		May 42- Oct 42
	Ft. McKinley		Oct 42- Feb 43
	Bilibid Hosp		Feb 43- May 44
	Camp No. 10		July 44-Dec 44
	Camp No. 1		Dec 44-Sept 45

Q. Do you know, or have you reason to believe, that the Imperial Japanese Forces failed to treat prisoners of war with humanity or otherwise committed atrocities and war crimes against them?

A. Yes

PROSECUTION EXHIBIT 3

Q. Will you state all facts in detail pertaining to atrocities, war crimes, violations of Rules of Land Warfare and human decency at Camp No. 1 Fukuoku, Kyushu, the dates thereof, the perpetrators, giving their names, ranks, units and other identifying information;

A. 1. I was a prisoner at Camp No.1 Fukuoku, Kyushu, from 3 December 1944 until 7 September 45. We lived in tents into 50 ~~cm to the tent there were holes in~~ the wall and snow drifted in on us. We had no heat at all and were given no gloves or socks and were made to work. I worked in a supply yard and my hands and feet became so sore and swollen I could hardly work. We had to send out and unload building supplies, steel, cement and dynamite. When an air raid was going on we may be working on a car of dynamite and we were given no protection at all. There were about 400 of us at this camp. There were about 200 English, 100 Dutch and 100 Americans. Lt Sachamoto was in charge of the camp. When he wanted to punish any one he would punish the whole camp. I had seven beatings with a pole in the five months I was there. About two thirds of the camp had dysentery and diarrhea. We had only one tub of water for 400 men to wash in.

2. The night President Roosevelt's death was announced we were brought in to give a concert, sing and tell stories as entertainment for the Japanese party, which was a drunken party.

3. They had a Japanese interpreter named Katsuri there who would do the dirty work for the camp commander, this man lived in San Francisco for 15 years.

4. There were three doctors at the camp, 2 Dutch and an American captain. The names were Captain Divine, Dutch; Captain Enysin Dutch; and Captain Constriky, American. The Japs would take the Red Cross medicine and give us Jap quack medicine.

5. Katsuri and Yamuna a civilian guard beat us and allowed other guards to beat us. They would have Jap civilians come out to the job to see how tough the guards were when they beat us.

6. The latrine was in the middle of the compound and was open, there was always flies and lice and fleas over everything.

7. Sometimes the guards would line up 50 to 75 men on the job and slap all of them and nobody knew why. One time some Red Cross supplies were short, they stood us all out in the cold and kept us there half the night.

8. There were some American civilians at this camp. I only remember the names of two now, who could give you more information they were Jack Wolfe about 38 years old and Lee Wilcox about 60 years old who were taken from Wake Island.

9. The Red Cross packages were always short, the Japs took the milk and cigarettes out of them they gave us 1 can of milk to 4 men.

10. Many men died of pneumonia and sub nutrition.

11. Katsuri was about 46 years old, short about 5 feet tall, weighed about 160 pounds did'nt wear glasses, was smooth shaven, was a 3 star private and made his living in Japan by doing card tricks and was on the stage doing tricks he learned in the states. He traveled all over the West Coast of the States.

12. Major Hagan an army doctor who was at Camp No. 26 knows the Japanese doctor who was stationed at Camp No. 1 Fukuoku Kyushu when I was there because he was later transferred to camp No. 27.

/s/ Joseph D. Silar

Subscribed and sworn to before me this 14 day of September 1945.
/s/ Josiah B. Gothright, 1st Lt Inf. Investigating Officer
War Crimes Branch

A CERTIFIED TRUE COPY:

THEODORE R. C. KING
Major, Inf.

(Affidavit of Kenneth R. WHEELER, Lieut, (SC), USN)

State of California)
) SS:
County of Los Angeles)

I, Kenneth R. WHEELER, 211 W, Maple Avenue, Fullerton, California, age 27, being duly sworn, upon my oath depose and state that:

I was a member of the U. S. Naval Forces that surrendered to the Japanese Imperial Army in May 1942. After being taken a prisoner of war at Corregidor, I was moved to Cabanatuan Camp No. 2 where I remained until November 1942, after which I was moved to Davao Camp No. 1 where I remained until July 1944, after which I was moved to Cabanatuan Camp No. 2 until November 1944, after which I was moved to Bilibid until December 1944, after which I was moved to Fukuoka Camp No. 1, Kyushu, Japan, until April 1945, after which I was moved to Jinsen Camp No. 1, Korea, where I remained until liberated on 7 September 1945. I returned to the United States on 1 October 1945. ROB

~~While at Camp No. 1 near Fukuoka, Kyushu, Japan, during the period February through April 1945 punishments were readily meted out to prisoners for minor infractions of rules. The Commandant, Lieut. SAKAMOTO, often denied the prisoners use of fires during the bitter cold months of winter and passed rules which required windows and doors of the drafty huts to be open from early morning until night. Not even the huts containing the pneumonia patients escaped this rule. Humiliating tasks were assigned to senior American officers at this camp, such as cleaning and [illegible] latrines, etc. Those unable to work were given less food than the others. Although few food parcels were ever distributed to the prisoners themselves at this camp, I have personally seen dozens of empty cans bearing American labels of the same brand names and dates of those of the American Red Cross prisoner of war food parcels in the refuse piles coming from Japanese Officers' and staff barracks and mess buildings. During the time the draft to which I was assigned was at this camp each American prisoner was issued one-third of the so-called weekly food parcels.~~ ROB

Mr. KATSURA, the camp interpreter, usually carried out the actual punishing of prisoners. Punishments included standing at attention for long periods of time in the bitter weather and the placing of prisoners in a "dog box". The box was made from slats with wide cracks between and so constructed that it was impossible to stand inside. The prisoner consigned to the "dog box" was allowed one blanket in the bitter cold and no shoes whatsoever. Major ROBY, VC, USA, was consigned to the "dog box" in March 1945 for a minor infraction of a camp rule. Major ROBY was first severely beaten by Mr. KATSURA. He remained in the "dog box" for several days and during this time suffered frost bite of both feet and very severe exposure. Previously an American prisoner had been assigned to the "dog box" for tearing a Japanese blanket. As a result of this exposure the prisoner died. ROB

~~Lieut. SAKAMOTO is described as follows: age, about 45; height, about [illegible] eyes dark; does not wear glasses; habitually keeps hands under blouse. No distinguishing marks.~~ Mr. KATSURA is described as follows: age, about 40; height, about 5'3" or 5'4"; weight about 130; eyes dark; hair dark; speaks English with American slang; has a large scar on abdomen. ROB

To the best of my knowledge, the testimony I have given herein covers all pertinent details of this incident.

/s/ Kenneth R. Wheeler,
Kenneth R. WHEELER,
Lieutenant (SC)
Serial No. 82872

PROSECUTION EXHIBIT 4

Subscribed and sworn to before me this 26th day of November 1945 at San Pedro, California.

/s/ Frank J. McCann
Frank J. McCANN,
Lieutenant, USNR.

- - - - - -

C E R T I F I C A T E

State of California)
) SS:
County of Los Angeles)

I, Charles F. CALDWELL, certify that Kenneth R. WHEELER personally appeared before me on the 26th day of November 1945, at San Pedro, California, and made the foregoing statement concerning war crimes.

/s/ Chas. F. Caldwell
Charles F. CALDWELL,
Chief Boatswain, USNR.

A CERTIFIED TRUE COPY:

Everett Checket

EVERETT CHECKET
MAJ. INF.

JACK MORSE [illegible] (Civ) _____, a Male - White
(Male, female)
_____ citizen, after being duly sworn at 29th Replacement Depot, APO 238 S. Francisco on 16 September, 1945, testified as follows:

Q. How old are you?

A. 34 years

Q. Were you interned by the Japanese or made a prisoner of war, and if so, when and where?

A. 23 Dec. 1941 - Wake Island, T. H. - (Yes)

Q. Where did you reside at the time of your capture?

A. Wake Island, T.H.

Q. By what Japanese unit were you captured?

A. Japanese Navy - Tigoons

Q. Do you expect to be repatriated, and if so, to what country?

A. U.S.A.

Q. What will your complete address be after your repatriation?

A. 3006 California Street, Omaha, Nebraska (parents)

Q. Will you state the names ans locations of the camps at which you were held as a prisoner of war and the dates you were confined at each camp?

A.

Compound or Camp	Location	Dates
Wake Island	Military Island	23 Dec 1941 to Sept 30,1942
Sesabo	Japan	13 Oct 1942 to 17 Jan 1944
Fukuoka No #1	Japan	17 Jan 1944 to 5 Sept 1945

Q. Do you know or have you reason to believe that the Imperial Japanese Navy-Army failed to treat prisoners of war with humanity or otherwise committed atrocities or war crimes against them?

A. Yes

PROSECUTION EXHIBIT 5

Q. Will you state all facts in detail pertaining to atrocities, war crimes, violations of Rules of Land Warfare and human decency at Camp #1 Fukuoka, Japan, the dates thereof, the perpetrators, giving their names, ranks, units and other identifying information.
(camp or other place)

A. Arrived there Jan 17, 1944. - Compound BKs #5. I was hut commander. The following men committed the atrocities attached:

~~Dr. Sacamoto - camp commander.; he pemitted the guards to have their own way. He often beat the prisoners to force them to work harder at the airport. He struck them with anything nearby (wood, bamboo, picks etc). - - He was the worst of any.- I saw these beatings with my own eyes. - I cannot recall the names of any victims.~~

Mr. Katsura - interpreter in camp #1. His address is Kobi or Kagashima. His first name "Takeo" - He beat many boys. I saw him beat an American soldier named, pvt. Chumey, of Oklahoma. - He asked the soldier how the shovel handle was broken near a railroad. He did not know anything about it. - He struck him with a ~~shovel~~ shovel, handle and with his fists, kicked him and jui - jitsued him until exhausted. This occurred about October 1945 - was 15 yrs in U.S. -

~~Pvt. Okie ("Jetchay") - 3 star private - He came from camp #18 to camp #1. He generally got drunk, and just mean. He would hit the men with anything. Studied to be an actor, and knows some English. He struck me; Ike Wardel; James Stone; Dave Tallman for no reason. He called us damn fools in Japanese "Nipinia"~~

/s/ J. M. W.

Subscribed and sworn to before me this _____ day of _____, 1945.

_____

Pvt. Hata (Joto[illegible] 3 star private like [illegible]

Received prescriptions from the Jap doctor p medicine. [illegible] had charge of the pharmacy.- He would tear up the prescription, and, then beat the sick man unmercifully, and never issue the medicine.- Many men had died.-

Dr. Kontecki.. Capt (MC), U.S.A.- can relate all about this Japanese soldier. He was left there, when I left for ~~the~~ another place. (b) After returning from work at the end of the day, everyone was forced to exercise in the evening. This included the sick men.- If anyone could not carry on for the 30 minutes, Hata would be walking around with a large stick and beat them, until black and blue. I cannot recall the names of the victims because there were so many of them.- Many sick men died, due to these cruel punishments.- He would make some men stand in the sun holding a bucket of water over their head with their arms extended for hours.

(Sy

Sgt. ~~Onda~~ Hoseman ("gunso") - (3 star and bar)+ Nicknamed "the Bull".- 5 ft 10 in ta 170 lbs; large features; complexion brown yellow, not too dark, heavy low voice, thick eyebrows; speaks English slightly; was a jiu-jitsui expert. He used to practice jui-jitsu on all the men, if you resisted ~~this~~ his ju-juitsu ~~they~~ he would strike you, or, injure the Kidneys.- At present he ~~was~~ is teaching school, the art of ju-jitsu, in Kumamoto, Japan.

About Jan.1944 - in Bks. #7 he beat up very badly William [illegible]. Hansen, Dallas, Wisconsin.- He was sick in bed, had his arm in a sling, and it was infected.- He was slow ~~as a result~~ in coming to attention.- He went over to him, and, started to beat him using jiu-jitsu; we all thought that he'd kill him — then he made him stand there, and, not allow him to lie in bed.-

~~He struck me several times for practice.~~

/s/ Jack M. Wolf

Samual Rowe
Capt. QMC
Investigator
Crime Investigation Branch.

A CERTIFIED TRUE COPY
Theodore R. C. King
THEODORE R. C. KING
Major, Infantry

RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of W
By T.R.C.King, Maj., Inf/J.O.

AFFIDAVIT

STATE OF CALIFORNIA }
} SS
COUNTY OF LOS ANGELES }

In the matter of the severe beating of John La Poy administered by Takeo Kotsura at Camp #1, Fukuoka, Japan, in 1944.

I, JAMES OTTO WILLIAMSON, 11527 Chandler Boulevard, North Hollywood, California, age 42, being first duly sworn upon my oath, depose and state:

I am an American citizen and was employed on Wake Island as a powerhouse foreman by the Pacific Naval Air Base Contractors at the time I was captured by the Japanese, which was on 23 December 1941. I was held as a prisoner on Wake Island until 30 September 1942 at which time I was taken to Japan on a collier and tanker #265. I arrived in Japan on 11 October 1942 at Yokohama and was held at Camp #18, Fukuoka District for 18 months, and then on 7 April 1944 I was taken to Camp #1, Fukuoka, and held there until I was liberated on 17 September 1945.

While I was held as a prisoner of the Japanese at Camp #1, Fukuoka, Japan, a Japanese interpreter by the name of Takeo Kotsura administered many beatings to Allied prisoners of war, some of which resulted in death. One beating which I observed was that in which Kotsura unmercifully beat an American civilian by the name of John La Poy. This beating occurred late in the summer of 1944. We were all in our barracks for evening roll call when a Japanese non-commissioned officer, a Japanese soldier, and Kotsura lined us up and called off our names. We were supposed to answer roll call in a very loud voice. One prisoner, John La Poy, answered when his name was called, but did not holler loud enough to satisfy the Japanese so Kotsura jerked him out of line, hit him several times with his fists, knocked him down and kicked him. La Poy was so seriously injured as a result of this beating that he was unable to work for three days.

The victim, John La Poy, was a mechanic employed by the Pacific Naval Air Base Contractors at Wake Island until his capture by the Japanese on 23 December 1941. His home was in Spokane, Washington.

Takeo Kotsura was a Japanese interpreter for the camp and was a first class private in the Japanese Army. His home address was Asani Oshima-Gun, Kagoshima-Kem, Japan. Kotsura was about 30 years of age, 5' 6" in height, had a husky, heavy build, had light and dark blotchy skin on his body, heavy beard for a Japanese, very thick legs, a swaggering walk, harsh voice and spoke good English. His nickname was "Catsy". He told us that he had gone to school in Houston, Texas,

/s/ T.R.C.K.

/s/ J.O.F.

RESTRICTED

and had spent sixteen years in various places in the United States. Kotsura was one of the most vicious of the Japanese personnel at the camp. I heard from other prisoners of war that beatings administered by his resulted in the death of an unknown half-caste Dutch-Indonesian, an English barber, name unknown, and an American soldier, name unknown.

The Japanese Commanding Officer of the prison camp at the time of this incident was a Captain in the regular Japanese Army. I do not know his name but we called his "Commander Baka", for he called everyone "Baka" (crazy). He was about 45 years of age, tall for a Japanese, being about 5' 7", slender build, thin face, sharp features, prominent gold teeth, and had a dark complexion for a Japanese. He bragged about his previous Army service in the China campaign, where he had won his rank of Captain for some brave military maneuver. He was relieved of his command at this prisoner of war camp about three months before the Japanese surrendered, and it was rumored about the camp that he killed himself. I do not know where his home was in Japan.

I believe Mr. Lyle Graham, 405 North Date Street, Toppenish, Washington, was present at the time John La Pey was beaten, and could corroborate this testimony. I think that Major Kostaki, the American senior medical officer at this camp, whose home was in Boston, Massachusetts, also observed this beating and could corroborate this testimony.

The above facts constitute all of the details of the above incident insofar as I can now recollect.

/s/ James Otto Williamson
JAMES OTTO WILLIAMSON

Subscribed and sworn to before me this 8th day of March 1946, at LOS ANGELES, CALIFORNIA

/s/ Philippe de C. Garnier
PHILIPPE de C. GARNIER
Captain MI
SUMMARY COURT

PROSECUTION EXHIBIT 6

CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS

I, Herman L. Schultz, Jr., Agent, SIC, 9SC, certify that JAMES OTTO WILLIAMSON personally appeared before me on the 8th day of March 1946, at LOS ANGELES, CALIFORNIA and made the foregoing statement concerning war crimes.

/s/ Herman L. Schultz, Jr.
Herman L. Schultz, Jr.

A CERTIFIED TRUE COPY:

THEODORE R. C. KING
Major, Inf.

CONFIDENTIAL

RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War By /s/ T.R.C.King, Major, Inf.

AFFIDAVIT

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

In the matter of the mistreatment of American Prisoners of War at Fukuoka Camp #1 at Kyushu, Japan, between 27 January 1945 and 20 April 1945.

I, CURTIS T. BEECHER, Colonel, USMC, Serial No. 065, being first duly sworn upon oath, depose and state that:

I am presently residing at P. O. Box #180, Route #1, Fillmore, California. I was captured on Corregidor on 6 May 1942. From that date until 18 October 1944 I was confined at either Cabanatuan #1 or Cabanautan #3. On the latter date I was transferred to Bilibid Prison Camp where I was held prisoner until 13 December 1944, when I was one of a large shipment of prisoners sent by ship to Japan. We were enroute to Japan until 27 January 1945, during which period two of our transporting ships were sunk with heavy loss of life. On the latter date we were moved to Camp #1, Fukuoka area, Kyushu, Japan, where I remained until 20 April 1945, when I was sent to Korea. We were liberated on 7 September 1945 and on the 26th day of that same month I was returned to the United States.

~~I am not an eyewitness to the beating and other mistreatment of~~ Corporal William C. Ivarson by a Japanese civilian guard, Eajime Honda, which maltreatment resulted in the death of Ivarson on 8 February 1945. In addition, I do not recall this incident, althought I would point out that it apparently happened only a few days after we arrived at Camp #1, Fukuoka, and during a period when most of the members of the camp were extremely sick and before any routine had set in. I believe, however, that Lt. Colonel Martin D. S. Saunders, Royal Artillery, British Army, who may be reached c/o Westminster Bank, London, England, may be able to give complete details on the incident inasmuch as he was Commanding Officer of the prisoners at this time.

After the survivors of the two sinkings had arrived in Japan from the Philippines, we were divided into four groups and sent to various camps. My group consisted of 193 officers and enlisted men, the latter being all medical corpsmen. Our destination was Camp #1, Fukuoka area, Kyushu,

PROSECUTION EXHIBIT 7

RESTRICTED /s/T.R.C.K.
/s/CTB

~~Japan. At the time we arrived at Fukuoka #1, all of us were in terrible~~ physical condition as a result of overexposure and lack of food and medical attention. Between Formosa and Japan we had lost over 500 men, so it was evident that those of us who survived were in not too good condition. We arrived at Fukuoka #1 in the dead winter and were immediately quartered in what, for the Japanese, were fairly good buildings. Although we were issued seven blankets a piece, there was no adequate heating system in the buildings. A small five gallon can heated with wood chips and other material, hardly provided enough heat for the sixty men who were assigned to each of the barracks.

Our daily rations consisted of red millet with no salt added to give it any flavor. Once in a great while a small quantity of wheat was mixed in, but this was a rarity. Shortly after we arrived, a small issue of one-third of a box of Red Cross supplies per man was issued us, but this hardly sufficed to satisfy our hunger. We asked for additional Red Cross supplies and for a week we were issued two ounces of either powdered milk, cheese, or butter, but this ration soon stopped. We discovered that the Japanese medics at the camp were using our Red Cross supplies for their personal pleasure, but despite this we could not get any more of those supplies.

/s/C.T.B.

Our medical supplies were short and most difficult to get. The American doctors at the camp informed me that medicine was available in the sick bay, but they were unalbe to get it except in small quantities. Betwen 27 January 1945 and 20 April 1945, forty-three men out of the original 193 died at Fukuoka Camp #1. In my opinion these deaths were primarily due to the failure of the Japanese to provide sulfa drugs to us to control diarrhea and dysentery.

Beatings were numerous at this camp and it was my opinion, although I did not see written orders to that effect, that it was the policy of the Japanese Commanding Officer, to dole out such punishment. On several occasions I have personally seen him beat one or another of the prisoners and on numerous other occasions I have observed him apparently in accord with the beatings given by the guards. ~~On one occasion I was beaten by~~

one of the guards with the flat end of the board because I had failed to respond to an air raid alarm, although in fact it was impossible for me to hear it. Beatings were given for even the slightest infraction of rules. On several occasions these beatings were protested to the Japanese Commanding Officer, but no change in policy was ever put into effect, resulting in/s/CT.B.

I do not personally know of any severe beatings/or deaths to any prisoners of war. However, it was common knowledge in the camp that a man named Marsh, a civilian captured at Wake Island, and a Major Robie, a Veterinarian Corps officer, were severely beaten. Major Robie was put in the "doghouse" for five or six days on half rations. The Japanese Commanding Officer at this time was a First Lieutenant in the Japanese Army, but I am unable to recall his name. He had formerly been a [illegible] and according to the stories, had sever bravely in combat. He was approximately forty-forty-five years of age, 5'6" in height, 140 pounds in weight, rugged build, close cropped hair and had no physical disabilities evident. It was reported to me that he had established the #1 Fukuoka Camp and had instituted the various policies in practice there. As I recall, he had quarters in the compound but lived outside.

The interpreter at Fukuoka Camp #1 during this period was a superior private in the Japanese Army named Katskura. He actually ran the camp and was reported to have given many of the beatings inflicted on the prisoners, although I myself never saw him strike anyone. He was approximately 5'5" tall, 145 pounds in weight, rugged build, twenty-seven to twenty-eight years old, wearing closed cropped hair. Katskura spoke fluent English with a slight accent and he told us that he had at one time lived in the United States. Katskura pocketed a little side money by running a black market in the camp. During the period in which I was a prisoner at Fukuoka Camp #1, Lt. Colonel Martin D. S. Saunders, mentioned previously, was the Commanding Officer of the prisoners, however, I was told that I was responsible for the American prisoners in the camp.

The above details constitute all of the facts which I am now able to recall.

/s/ Curtis T. Beecher
CURTIS T. BEECHER, Colonel
USMC

Subscribed and sworn to before me this 18 day of March 1946

at LOS ANGELES, CALIFORNIA

/s/ Philippe de C Garnier
PHILIPPE de C. GARNIER
Captain MI
SECRETARY COURT

CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, Norman J. Wiener, Special Agent, SIC, 9SC, certify that CURTIS T. BEECHER Colonel, USMC, personally appeared before me on the 15th day of March 1946 at Los Angeles, California, and made the foregoing statement concerning war crimes.

/s/ Norman J. Wiener
Norman J. Wiener, Spec Agent

A CERTIFIED TRUE COPY

/s/ Theodore R. C. King
THEODORE R. C. KING
Major, Inf.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

IN THE MATTER OF [illegible] CRIMES COMMITTED BY JAPANESE [illegible] AND IN THE MATTER OF THE ILL[illegible] TREATMENT OF PRISONERS OF WAR AND CIVILIAN INTERNEES AT NUMBER 1 CAMP, FUKUOKA, PRISONER OF WAR CAMP.

George WARWICK, number 1497138, Gunner, 79th, L.A.A.
21st, Regiment, R[illegible]yal Artillery.

States:

I reside at 63 Humberville Road, Immingham.

About April, 1943 I was a prisoner of war in the hands of the Japanese and was moved from Kashie prisoner of war camp to Number 1 camp, Fukuoka, ~~we were marched there on foot taking about five hours for the journey of about five miles and~~ took up occupation in huts, we were the first to use them, there were about 280 of us, all British soldiers, we had been there for three or four days when about 400 American civilians arrived and occupied other huts on the camp, their ages ranged from 19 years to 65 years, these Americans appeared to settle down for about one month, we were employed digging a big canal or drain, our food consisted of rice, stew and fish in small quantities.

During my stay in this camp none of the British appeared to be ill-treated except Gunner Kevin Marshall of the 79th, L.A.A. who died later in another camp at Ube. I did not witness the assault, but saw him when he was taken from the cells he was very thin and emaciated, but after treatment he pulled round again and went to work with us.

There were about 400 American civilians in the camp and they told me they came from the Pan-American Aerodrome on Wake Island. All went well for about a month, then, because they could not march the Japanese Guards commenced to beat them with trenching shovels, and this happened almost everyday, some of the were beaten to the ground. I did not see the Commandant at any time whilst they were being beaten.

Two of the guards I know as UNDERSAM, aged about 30 to 40 years, stout build, clean shaven, hair cut very short, also another guard who was nick-named "George Formby" by everybody of the camp, aged about 30 to 40 years, slim build, black hair, both were about 5' 2" to 3", and were civilian guards, I saw both those men beating the Americans up. Those civilian guards did not live on the camp, but came for duty. The Americans were in a bad way and quite unfit for work.

After about three months about 200 Dutchmen arrived at the camp and were set to work, and after a short time there was talk amongst fellow prisoners of war that the camp interpreter a Japanese, had struck one of the Dutchmen and broken three ribs, this man then reported the assault to the Camp Commandant.

Captain Whiteman and Colonel Saunders of the first, Regt L.A.A. will know more about this as I heard that they were also beaten up by this same interpretor.

As far as I can recollect, no one at this camp died from injuries received at the hands of the guards.

The Commandant was SAKAMOTO CHUEE, age about 40 years, 6', clean shaven, medium build, he was previously Commandant at Kashie and Fukuoka Quemoto.

The interpreter was in charge of the camp when the Commandant was away, and it was during this time the Commondent was away that most ofthe beatings took place.

Signed /s/ by Warwick

TAKEN ON OATH BEFORE ME THIS 6 TH MARCH, 1946.

/s/ G. W. Bacon
JUSTICE of the PEACE, for the Parts of LINDSEY, LINCOLNSHIRE.

A CERTIFIED TRUE COPY:

THEODORE R.C. KING
Major, Inf.

PROSECUTION EXHIBIT 8

MD/JAG/PS/JC/229

IN THE MATTER OF JAPANESE WAR CRIM
AND IN THE MATTER OF NO. 1 SUB CAM
FUKUOKA AREA.

A F F I D A V I T

I, No. 14721 Lt.Col. Martin Dunstan Sedgwick SAUNDERS, Royal Artillery, with address c/o School of Anti-Aircraft Artillery, Manorpier, nr. Tenby make oath and say as follows:-

1. I was taken prisoner by the Japanese in March 1942, and after spending some time in JAVA I was put on board a ship with other PsW to go to JAPAN. We broke our journey at SINGAPORE where we moved to another ship the Dai Nichi Maru. There were altogether 1300 PsW on board and the voyage was very uncomfortable. We arrived in JAPAN on the 26 November 1942.

2. We arrived at MOJI where we were all split up and I was sent with 23 other officers and 242 Other Ranks to KUMAMOTA. Practically every man was suffering from scurvy, pellagra and general exhaustion. The day after our arrival at camp the weather turned to snow. Men were in possessi of only tropical clothing. The Japanese supplied no warm clothing until March 1943, when the winter was nearly over, with the exception of old Japanese Army greatcoats. By the end of March 31 men had died, and this total was increased to 35 by the 1st May. These deaths were practically al. due to poor food, lack of warm clothes, totally inadequate medical supplies and, in some cases, to brutal maltreatment on the part of the Japanese authorities.

3. During our whole period of captivity in JAPAN right up to 25th April 1945, we were under the command of the same Commandant, a Lt. SAKAMOT This officer was an uneducated man of a brutal and callous temperament, and was in no wise fitted for the position of Commandant. He had as his milita Interpreter during the whole period, a three star soldier - TAKEO KATSURA. This man not only acted as Interpreter, but was the undisputed power behind the throne, who influenced the life of the camp to an overwhelming extent. These two men are, in my opinion, entirely responsible for the cruel suffe ing and indignities to which the men in their camps were subjected.

4. The camp at KUMAMOTO was known as No. 1 Sub Camp, FUKUOKA Area, and wherever we went after we left KUMAMOTO the camp itself was always called No. 1 Sub Camp, FUKUOKA Area.

5. While we were at KUMAMOTO we were employed in digging trenches round an aerodrome and making a road. We were not unreasonably hard worked. Our food consisted of rice three times a day. Later in the summer of 1943 we were given potatoes and bread for about six weeks and nearly had enough to eat.

[redacted]

/7. While

PROSECUTION EXHIBIT 9

While we were at KUMAMOTO 35 men died. Another man who was too sick to work was deliberately forced to go out to work all of one day in bitterly cold weather. He had previously been refused admission to the hospital and as a result of his having to go out to work he died. The Japanese method of deciding who was sick enough to remain in barracks for the day was as follows:- Everybody was forced to parade in the early morning, however sick they might be. They also had to leave the barracks on their way to work. However, once outside the gate, should any man collapse he was permitted to return. It must be emphasised, that however ill a person was and whatever his temperature might be he was forced to go on parade and march as far at least as just outside the main gates before he could possibly return to bed in the barracks. This treatment resulted in several men's death. One of the men who died was called Gnr. RUSHTON of the 79th LAA Bty.

10. Accomodation was very poor. The huts, made of thin wood, had leaky roofs and walls patched with newspaper. The damp mud floors were subject to flooding, and fires for drying purposes were only permitted on very rare occasions. The windows consisted of wooden shutters which were opened in all weathers at 0600 hrs daily.

11. No special treatment was afforded to the officers, though, after the first month, they were moved to a separate hut, and when spring came were given a garden in which to work. During the summer months there was some slight relaxation of prison discipline, and health improved although some 25% of the camp was suffering from sepsis. All through captivity the Japanese made stringent efforts to forbid any communication between officers and men. These efforts completely failed.

12. I frequently made complaints about the way we were treated, but was explained to me that officers and men should be treated exactly alike. Not only were we treated exactly like the men but all of us were treated like the lowest Japanese Private. On one occasion I was able to complain to the Colonel Commandant, FUKUOKA Area, which did result in a slight improvement.

13. On the 20 November 1943 we moved to KASHII. In this camp accommodation was adequate. All personnel, officers, men, and the hospital were in one large warehouse. This warehouse consisted of concrete walls and floor, with a tin roof, and was, in consequence, very cold, noisy, but dry. While here we were joined by 40 Dutch, 30 British, 1 American Doctor, and 3 American enlisted men. At this camp, being near headquarters, discipline was very much tightened up. There were many instances of beating and brutalities by the Commandant, KATSURA, and a Sgt. HORZUME. This Sgt. HORZUME was additional staff and had joined us just before we left KUMAMOTO. He was brutal, sadistic, and bad-tempered and enjoyed beating people up. The following are examples of the treatment we received while we were at KASHII from Sgt. HORZUME and others:-

Two officers were beaten up by Sgt. HORZUME for no reason. The Cook-Sgt, aged 48, was beaten up, his mouth was split open and teeth knocked out, by Sgt. HORZUME for no reason.

One bombardier was knocked senseless by the Commandant and the bombardier's face ground into the earth by the Commandant's boot. One man was made to run stark naked round the compound in the depths of a winter night.

In addition, there were numerous instances of single and mass beatings, with the men forced to kneel for long periods with bamboo sticks behind their knees, while Japanese personnel, notably Sgt. HORZUME and KATSURA beat them savagely with bamboo rods. All officers, who were not in hospital, oblivious of rank, were compelled to work hard over broken clay soil for seven hours every day for the first three months of winter [illegible]

12. In April 1944 we moved to MISHERODA. This camp was the worst of all our camps for accommodation. The huts were made of wooden frames and the supporting walls were made of tree bark. Roofing was of inadequate and thin thatch, which leaked continuously like a sieve, after one real downpour. Drainage was non-existent, and after the rains the huts and camp generally were quagmires. The Commandant apologised for the camp, and said that it was merely to be occupied for the summer. In point of fact we did not move until half way through January 1945.

13. Here we were joined by 198 American Civilian Internees from WAKE ISLAND, and 165 Dutch soldiers, mostly natives. Beatings up and brutal treatment were worse than ever. Special ill-treatment was meted out to the Americans, many of whom were old men. Four officers, in particular, were brutally beaten up. This number included two Dutch doctors. The beatings-up were carried out by blows with wooden slippers across the face, and bamboo canes on the upper and lower legs. Two of these beatings were known and approved by the Commandant, and were carried out by the Interpreter, KATSURA. The Dutch doctor, who was one of the victims and was particularly brutally beaten-up, was interviewed by the Commandant. [redacted] is what happens when you interfere with the Japanese". [redacted] tortured in the Japanese barrack rooms by the Japanese guard. [redacted] was reached when one man was bound by ropes to a telegraph pole [redacted] left [redacted] 8 hours to stand in the sun, by personal order of the Commandant. [redacted] man [redacted] undoubtedly, committed an offence, but not one that merited [redacted] brutal [redacted]. This man was Gnr. Marshall of the 7[redacted] LAA Bty. [redacted] men died in [redacted] camp, 24 of them between the 26.11.44 [redacted] 16.1.45.

[redacted]. This [redacted] was supposed to be a light-work camp for the summer [redacted]nths. On 1.12.44 [redacted] hospital cases and men [redacted] physically, from [redacted] camps in the neighbourhood were moved to our camp to recuperate, while [redacted] of our own fit men took [redacted] places. The presence of these weak and [redacted] men explains the heavy death roll in the two months mentioned above. [redacted]sponsibility for these deaths [redacted] lie with the higher authorities who [redacted]dered the move, but the callous [redacted] attitude adopted by our [redacted]mmandant, Lt. SAKAMOTO, materially [redacted]ributed to these deaths. As a [redacted] case, one physically weak Dutchman [redacted] on working-party was beaten [redacted] the guard so severely that he [redacted] two [redacted] later.

[redacted]. On 18 Jan 1945 [redacted] moved to NAZIMA, [redacted] miles away. The [redacted] to this camp took place in a heavy and continuous blizzard [redacted] snow. All men who though sick were able to stand, were refused conveyance, and forced to make the march on foot. Several were eventually carried into the new camp by their comrades. Within a week of arrival at the new camp, six men had died. Of all our camps in JAPAN, this was by far the best for accommodation and lay-out, but it was largely uncompleted on our arrival. Here, at the end of January, we were joined by 1[redacted] American officers and enlisted men direct from the PHILLIPINE ISLANDS. They were literally walking skeletons, and 53 died between 31.1.45 and 25.4.[redacted] In addition, between 22.1.45 and 13.4.45, there were 22 deaths amongst [redacted] original camp personnel. Many of these deaths were due to lack of medical attention and supplies. In some cases, prescriptions made out by the Japanese doctor were deliberately held back by the Japanese medical orderl[redacted]

16. The following are the descritpions of Lt. SAKAMOTO, Interpreter KATSURA and Sgt. HORZUME, whom I consider responsible for the mal-treatment which we suffered while PsW.

[redacted] Chinese [redacted] many Chinese [redacted]

/KATSURA

KATSUMA was revoltingly fat; he weighed about 12 st; 5'6" or 5'7" in height; clean-shaven; spoke fluent American; he had been to America for about 15 years before the war. Riddled with VD. His Addresses were either; (a) Imperial Hotel, KOBE, or (b) 23, Asa-Acani, Mikata-Sen, Gahima-Gun, Kagoshima-Ken, Japan.

[redacted] about 12 st. in weight. Reputed to be a fine wrestler and Judo expert. Looked cunning, and had particularly narrow slit-eyes, even for a Japanese.

[redacted] With regard to Red Cross supplies, these on arrival in any of our camps were, with one exception, kept back for several days by our Commandant. He steadfastly refused to permit me any latitude in their distribution. Boots and clothing were kept in the Japanese stores. Large numbers of these were never issued, even when some men were entirely without boots or adequate clothing. Red Cross medical supplies were only issued in minute quantities. At KAZIMA camp, with the particularly sick American from the PHILLIPINE ISLANDS, 10 cases of medical supplies which reached the camp a few days before their arrival, were never issued. The Commandant refused all applications to do so. At the main Red Cross Store in FUKUOKA, there were literally hundreds of cases of medical stores which were never issued to PW camps (of which there were 23 in the FUKUOKA area). This can be testified to by the American doctor, Capt. W. KOSTECKI; by some of my own officers; and by a party of five men whose permanent daily work was the care and packing of all Red Cross Stores in the main warehouse. Finally, despite numerous requests and protests by me, no Dental treatment was permitted by the Commandant from the time of our arrival in JAPAN, until MAZIMA camp - over two years.

[redacted] With regard to mail, the censoring and distribution of letters was organised at PW HQ in FUKUOKA. The number of letters censored daily and distributed, depended entirely on the whim of the Japanese civilian censors. Several of our own officers worked for many months in the HQ offices, sorting thousands of letters for the 23 camps in the area. There were four civilian censors, and on many days their combined output of work amounted to some 5[illegible] letters. This indifference by the Japanese censors caused great mental strain to everyone, and, in addition to the Main Camp Commandant at FUKUOKA who must take the responsibility, the main culprit was the Chief Censor, Mr. WATANABE, who was quite unspeakably idle and lazy.

[redacted] On 26 April 1945 I and 9 other British officers together with [illegible] Americans all surivers from the PHILLIPINE ISLANDS were moved to [redacted]

SWORN BY the above-named)
Martin Dunstan Sedgwick SAUNDERS)/s/ M.D.S. Saunders
at 6, Spring Gardens in the city of Westminster) Lieut. Colonel R.A.
this 13th day of March 1946.)(signed) M.D.S. SAUNDERS

BEFORE ME

/s/ A. M. Schmedonald.
(signed) Major.

Legal Staff,
Judge Advocate General's Office,
LONDON.

A CERTIFIED TRUE COPY:

THEODORE R.C. KING
Major, Inf.

In the matter of War Crimes committed by Japanese Nationals and in the matter of the ill treatment of Prisoners of War at Fukuoka Sub-Camp No. 1 Prisoner of War Camp.

I, Arthur Edward CHALKLEY, of 1, Hangleton Gardens, in the Borough of Hove, make Oathe and say as follows,

"I am a Wood Machinist by trade and at present live with my parents at 1, Hangleton Gardens, Hove, Sussex. I am a single man.

On the 12th June, 1941, I joined the 48th Light Anti-Aircraft Regiment at Deepdut, my Regimental Number was 1801570.

In December, 1941, I went with my Regiment to Java and served there until I was captured by the Japanese on the 8th March, 1942. The whole of my Regiment was captured at Garoot. The whole Regiment remained at the side of the road under Japanese Guards for three weeks, after which about 2,500 officers and men including myself, were removed to Gladock Gaol in Batavia. We remained at the Gaol for five months and the conditions and food were fair. At the end of this period, I was transferred with about 260 other officers and men by ship to Japan. The treatment on the ship, which was named Doi Ichy Moru, was fair, and after five weeks journey it landed at Maji and we were then all transferred to Fukuoka Sub-Camp No. 1, Kumamoto. The Camp consisted of wooden huts, each hut accommodating about 80 men. The officers were in separate quarters in the same Camp. The Senior Officer of the British men was Colonel Saunders of the 21st Light Anti-Aircraft Regiment. Other officers were Captain Whiteman, Major Steel, Major Beatty, Major Boxton and Lieutenant Pritchard, all of the same Regiment with the exception of Major Boxton, who was attached to the 6th Heavy Anti-Aircraft Regiment.

We actually arrived in the Camp in November, 1942. The Commandant of the Camp was a Lieutenant SAKAMOTO and there were about 22 Japanese Guards under his command.

After we had been at this Camp about 6 weeks, a Gunner James KEENAN of the 48th Light Anti-Aircraft Royal Artillery, who had been ill for some time and was suspected by his colleagues to have Pneumonia, was in the same Hut as myself. Despite his

/s/ A

PROSECUTION EXHIBIT 10

~~condition he was made to work with others in building an Aerodrome in the same district. On one of these days KEENAN was obviously very ill and in a collapsed condition. In my presence and hearing, a complaint was made by KEENAN and others that he was too sick to continue his work, this complaint was made to Lieutenant NAKAMOTO, who in my presence and hearing instructed the Guards to stand over him and make him work, I cannot remember the name of the Guards, but there were about three of them and when KEENAN showed signs of being unable to continue the work, the Guards punched and kicked him every time he stopped work or was slow. This treatment of KEENAN went on for several days, until one morning he was too weak to move from his bed and our party went to work without him. When we arrived back at the Hut at the end of the day, we were told he had died and his body had been removed from the Hut. I saw him removed in a wooden box the following day by some Japanese Guards and some of our own men who attended the Funeral in a Cemetery about four miles away. In my opinion KEENAN died from neglected and brutal treatment.~~ Rob Rob

About a month after the death of KEENAN, which would probably be about March, 1943, I was with a party of our men in the Camp and in my Hut. Also in the Hut was Gunner Percy BARRATT of the 21st Light Anti-Aircraft Royal Artillery, who was suffering from some ailment in the stomach. It was a wet day and we had not been out to work as usual. About 4.30 p.m. a Private CASSURA of the Japanese Army, who acted as an interpretor, was outside the Hut and shouted for those inside the Hut to come outside. The men filed out into theopen and Gunner BARRATT, who was ill, was the last to go out. He was obviously not in a fit condition to leave his bed and this was the cause of his being slow in obeying the order. When he arrived outside the Hut CASSURA hit him over the head with a Bamboo stick, he continued this treatment for some minutes and BARRATT collapsed unconscious on the ground. CASSURA waited for BARRATT to recover and then ordered him to do some digging in the Camp enclosure. I understand that CASSURA had lived in America for 15 years and was employed in a Hotel.

/s/ A

About April the same year, a Gunner Sidney HOYE of the 48th Light Anti-Aircraft Royal Artillery, also a member of my Hut, was lying in bed suffering from Beri Beri. About 7 p.m. that day, the Interpreter CASSURA came into the Hut and ordered all men who were complaining of being ill to report outside the Hut. HOYE with about six other men, whose names I cannot remember, struggled outside as instructed. They were lined up by CASSURA, who said to them, 'When I call you out you must get out quicker than that'. He then went along the line of men and deliberately hit each man over the head with a steel hammer and one or two of the men including HOYE collapsed unconscious on the ground. CASSURA then walked away and left those men who had collapsed lying on the ground. I, together with others, assisted the injured men back into the Hut and I noticed that HOYE had a large bruise on top of his head.

~~In about September, 1943, I was working with a party of men on the Air Field at Kumomoto and we were resting during the lunch hour, which was between half past eleven and half past twelve. About ten past twelve, two of the Japanese Guards, who were nicknamed Buckteeth and Freckles, shouted out for the men to start work. As this was before time, Gunner James MONK of the 21st Light Anti-Aircraft Royal Artillery and who was about the smallest man in the party, shouted out that they hadn't completed their dinner hour. The two Guards then ordered MONK to go to them and they both beat him with their fists about the head and body and threw him over their shoulders in Ju Jitsu fashion. They continued this treatment for about 45 minutes until Regimental Sergeant Major James JAMES of the 21st Light Anti Aircraft Royal Artillery, who was one of our party, intervened and was able to stop this treatment of MONK. MONK was in a pretty bad state after the Guards had finished with him but they made him continue to work. MONK'S face was badly cut and swollen as a result of this treatment. All these brutalities which occurred at the Camp were condoned by the Camp Commandant SAKAMOTO. The feeding at this Camp was very bad and a number of men died of starvation. The only food we got was Rice Gruel and~~

/s/ A

[illegible] of Greece. Very occasionally we had British Red Cross [illegible] parcels.

In November, 1943, out of the 265 men that had arrived at the Camp in November, 1942, only 227 men were alive, the others having died from ill treatment or starvation. The whole of the number, together with the Guards and Commandant, were moved to another Camp site at Fukuoka, the Camp was given the same name, namely Fukuoka Sub-Camp No. 12. The conditions at this Camp were more or less the same as the previous Camp.

About September, 1944, a quantity of Red Cross parcels arrived at the Camp and these were commandeered by the Japanese Guards. As a result Gunner Gavin MARSHALL of the 21st Light Anti Aircraft Royal Artillery, knowing this, broke into the store where he knew the Japanese Guards had hidden the Red Cross parcels. The Guards subsequently discovered this, searched the men's Hut and discovered MARSHALL in possession of some of the property. As a result the Camp Commandant SAKUMOTO instructed the Guards to tie MARSHALL to a telegraph post and beat him with Bamboo sticks. Eight or nine Guards beat MARSHALL while he was tied to the post. The Guards who I remember by name, who were concerned were Bucktooth Freckles and Unda. This treatment continued in the presence of the Commandant for two or three hours and I witnessed it. During this Treatment the Commandant took several running kicks at MARSHALL, who before they had finished collapsed. They then removed him from the post and placed him in the cells for about ten days after which they brought him back to our Hut, he was then in a very bad physical condition and MARSHALL died a month or two later at Camp UBE undoubtedly as a result of this brutal treatment. Colonel SAUNDERS made a protest to the Commandant of MARSHALL'S treatment.

In December, 1944, the Camp was split up and about 32 of my party went to Camp Ube which was about 80 miles from Fukumoto. The treatment at this Camp was fair and we were released from captivity by the American Army in September, 1945.

/s/ A

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/s/ A

Sworn by the above named Deponent at the Town Hall in the Borough of Hove, on the Sixth day of March, 1946, before me

/s/ Arthur Cally

Justice of the Peace
for the Borough aforesaid.

/s/ A E Chalkley

A CERTIFIED TRUE COPY:

THEODORE R.C.KING
Major, Infantry

STATEMENT

I, Samuel P. SWIFT, a citizen of the United States, was captured on Wake Island where I was a civilian employee of the Pacidic Naval Air Bases, on 23 December 1941. From that date until the close of hostilities, I was held a prisoner of war by Japan. I wish to make the following statement concerining the handling of Red Cross supplies by the Japanese and concerning certain Japanese officials at the various camps where I was held.

While a prisoner, I was held in the following camps for periods between the given dates: 1) Camp 18, Sasebo, 13 October 1942 to 17 April 1944; 2) Camp 1, Fukuoka, 18 April 1944 to 3 December 1944; 3) Camp 2, Nagasaki, 4 December 1944 to 20 June 1945; and 4) Camp 9, Orio, 20 June 1945 until release.

During the first year of our internment at Camp 18, we were under the administration of the Japanese Navy. During this time we did not receive or know of the receipt of any Red Cross Supplies. After the Army took over in October 1943, the bakers saw some Red Cross sugar come in. This was mixed with rice and given to us. Grover C. Brooks, a civilian prisoner from Wake can give a more complete statement concerning this. During this period, we also received a shipment of cocoa.

At Camp 18, we received portions of three shipments. Of the first shipment, from the British Red Cross, only one individual package was given out for all of the 253 men. Of the second shipment, from Canada, one individual package was given to each squad. A squad varied between 18 and 22 men. Of this third shipment, from the American Red Cross, we received one individual package for each three men. There was much evidence that the Japanese took the other portions of these shipments.

/s/ Samuel P. Swift

/s/ REC

PROSECUTION EXHIBIT 11

their own use. The Japanese supply sergeant whom we know merely /s/ S.P.S. as "Pretty Boy"* took sixteen cases s/s/ V.V.h. cans from one shipment for himself, according to a report of one of the other prisoners. I saw empty meat cans of the type used in the shipments thrown on the garbage pile outside. I know that we did not receive all of that meat. The Japanese never took everything, but they did cut us down. In addition to the shipment of food, we received a shipment of American shoes, blankets and overcoats. Two pair of the shoes were given to each squad. These went to the men working on the rock crusher. Two of the blankets went to the hospital. We saw nothing of the remainder of the shoes, blankets, and overcoats which the men who carried the boxes in know to be in the shipment. We never saw the Japanese wearing the clothes, however. We did see the Japanese staff giving Red Cross supplies to visiting Japanese officers. This seemed to be a common practice. When the commandant of the camp, Lt. /s/ S.P.S. Gen. IKEGAMI left after the camp was closed up, one of the prisoners saw him pack three individual Red Cross packages in his luggage.

At Camp 1, Fukuoka, we received either two or three shipments. I do not remember exactly. These were distributed at a ration of never more than one to six men. Here again, we saw the supply sergeant, named Oki, take some of the supplies as he was giving them out to us. These shipments were either Canadian or American. I do not remember. Cooks at this camp saw Japanese civilian guards pocket cans of meat. All Red Cross meat was handled through the kitchen.

At Camp 2, a Canadian shipment was distributed at the ratio of one individual parcel to six men on Christmas 1944. An American shipment was distributed at the ratio of one parcel per man on 28 December.

*"Pretty Boy's" name was TANAKA S.P.S. /s/ Samuel P. Swift

/s/

On 28 January, another shipment was received. Only perishables were distributed from [illegible] At this camp, after each Red Cross shipment was received, the men marching back from work could look into the non-commissioned officer's mess and see the NCOs dividing Red Cross supplies. We saw the guards passing out American cigarettes to each other in the guard house. For more details of conditions at this camp, see the statements of Major Harrigan, USA, the senior officer of the camp, and Captain Farley, USA, a dentist at the camp.

At Camp 9, the garbage piles were filled with empty butter, jam, and meat cans from Red Cross shipments. The remainder of these shipments we got after the war was over. The Officers and non-commissioned officers at this camp made no attempt to hide the fact that they were using Red Cross Supplies.

The statement of Logan KAY, a civilian prisoner, was read to me concerning the deaths of Lester MEYER and E. H. KNOX. I corroborate this statement. I attended the trial of KNOX before Col. IKEGAMI, the commandant of the camp. IKEGAMI asked KNOX what he would do if he were placed in jail for thirty days. KNOX replied, "I'd die." IKEGAMI shouted back in Japanese, "If you die, o.k."

The statement of Nelson L. JOHNSON, a civilian prisoner, was read to me concerning KATSURA. To this I can add that KATSURA formerly lived in Waco, Texas, that the name of the Dutch doctor was LEVINE, DeWynn / S.P.S/ and that KATSURA also beat up an American doctor named COSTAKI* several times. I have seen KATSURA hit fellows over the head for not working faster when they were working as hard as they possibly could. [illegible] Medical privileges were further abused at this [illegible] [illegible]

* Dr. Walter A. Kostecki, M.D. 78-A Hudson St., S. Hanson, Mass. U.S.A.

CONTD.

Signed Samuel P. Swift /s/
Samuel P. Swift

Subscribed and sworn to before me this 23rd day of October 1945 on board the U.S.S. Tryon en route from Pearl Harbor, T. H. to San Francisco, California.

D. D. NEWSOM
Lieut., USNR

I have read the above statement of Samuel P. SWIFT. I was a fellow prisoner with SWIFT and can testify to the truth and accurateness of his statement. I also have had the statements of Logan KAY and Nelson L. JOHNSON read to me and corroborate their information.

Signed Vinson V. Williams /s/
Vinson V. WILLIAMS

Subscribed and sworn to before me this 23rd day of October 1945 on board the U.S.S. Tryon en route from Pearl Harbor, T. H. to San Francisco, California.

Signed D. D. Newsom /s/
D. D. NEWSOM
Lieut., U.S.N.R.

CERTIFIED TRUE COPY

/s/ Albert A. Lee
ALBERT A. LEE
Capt., Signal Corps

I have read the above statement of Samuel P. SWIFT. I was a fellow prisoner with SWIFT and can testify to the truth and accurateness of his statement. I also have has the statements of Logan KAY and Nelson L. JOHNSON read to me and corroborate their information.

Signed Arthur W. Yeamans
Arthur W. YEAMANS

Subscribed and sworn to before me this 23rd day of October 1945 on board the U.S.S. Tryon en route from Pearl Harbor, T.H. to San Francisco, California

D.D. Nowacki /s/
Lieut. USNR

CERTIFIED TRUE COPY

/s/ Albert A. Lee
ALBERT A. LEE
Capt., Signal Corps

A CERTIFIED TRUE COPY:
Theodore R.C. King
THEODORE R.C. KING,
Major, Inf.

STATEMENT

I, Nelson L. JOHNSON, a citizen of the United States, was captured on Wake Island where I was a civilian employee of the Pacific Naval Air Bases, on 23 December 1941. From that date until the close of hostilities I was held a prisoner of war by Japan. I wish to make the following statement concerning conditions in various prisoner of war camps in Japan.

While in Camp 18, Sasebo, from October 1942 until April 1944, one of the prisoners, George DILLON, turned on his Japanese overseer and struck him. This resulted in a mass beating of all prisoners. I do not remember the exact date. As a result of the beating, DILLON was sent to prison for two years. It was understood that he died in the prison.

At Camp No. 2, Nagasaki, in the Spring of 1945, one of the civilian prisoners, Harry Reed, was beaten at the dock and thrown into jail. For three days he was given no food. A prisoner of war doctor called to examin him told the Japanese authorities that it was necessary that he have food. Food was given him, but it was too late. He died two days later. The man responsible for this was the third in command of the camp, a Japanese who went by the name of "Bokigo". I do not know his correct name. He dealt more misery to the prisoners there than all the rest of the authorities put together.

At Camp No. 1, Fukuoka, where we were kept between April and December 1944, an interpreter named KATSURA was responsible for the beating of a Dutch doctor. This interpreter, who accompanied the prisoners to their work in the field, is reported to have lived in the United States for about 15 years and to have been employed as a chauffeur. One day in the field, he beat up a Dutch soldier. The soldier complained to the Dutch doctor who, in turn, complained to the camp authorities. KATSURA, learning of this, accosted the doctor and beat him up, breaking two of his ribs.

Signed Nelson L. Johnson
Nelson L. JOHNSON

Subscribed and sworn to before me this 23rd day of October 1945 on board the U.S.S. Tryon, en route from Pearl Harbor, T.H., to San Francisco, California.

/s/ W. K. Taylor
Lt., USNR

A TRUE COPY:
/s/ Albert A Lee
ALBERT A. LEE
Captain, Signal Corps

/s/ R.E.C.

A CERTIFIED TRUE COPY:
Theodore R.C. King
THEODORE R.C. KING

PROSECUTION EXHIBIT 12

OVER

DETAILS OF ATROCITIES

KIND OF CRIME	WHERE IT HAPPENED	WHO WAS THE VICTIM (include name, nationality & whether military personnel or not).	STATE IF YOU SAW IT YOURSELF. IF YOU DID NOT SEE IT, WHO TOLD YOU ABOUT IT.
1. [illegible]	[illegible]	F. Hession	I was the victim for smoking after rest period and also because I was an American Civilian.
2. Imprisment.	Camp #18.	Elbert Knox	Put in jail in Winter only food was salty rice ball no blanketts ans left until died - Feb. 1944.
3. Building Airports on Wake Island and also Japan - also Pill boxes on Wake. Transportation from Wake to Japan Sept. 31 - Oct. 10, 1942. Collective Punishment because one man Geo. Dillion hit a Jap with a shovel every one was beat - Camp #18.			
4. Ketsura, 1st class Private 24th Redg. took Red Cross food and Prisoners' rations out of Cook house and sold to some prisoners for money, cigarrettes, and jewlery denieing it to other prisoners.			
5.			

HAVE YOU PREVIOUSLY BEEN QUESTIONED BY ANY MILITARY OR NAVAL AUTHORITIES ABOUT ATROCITIES OR MISTREATMENT, No (yes or no). IF YES, BY WHOM, WHERE, WHEN

DID YOU MAKE A SIGNED STATEMENT, No (yes or no).

/s/ F. I. Hession
Sign your name here.

A CERTIFIED TRUE COPY:

THEODORE R.C. KING
Major, Infantry

PROSECUTION EXHIBIT 13

OVER

WAR CRIMES OFFICE

When completed this document must be classified as RESTRICTED

DATE: 9/16 1945

1. YOUR NAME: [illegible] Francis J.
Last First Middle

2. RANK: Civilian SERIAL NO. _____
(If civilian, write in word "Civilian")(Armes Forces personnel only)

3. PERMANENT HOME ADDRESS 1[illegible]th W. 30th Los Angeles Calif.
Street No. City State

4. AT WHAT ENEMY CAMPS AND HOSPITALS WERE YOU CONFINED AND WHEN WERE YOU AT EACH, (If never a prisoner of war or internee, then state principal places you have been from time to time while overseas.)

Wake Island 12 / [illegible] / 41 - 9/31/42

Camp #18 - Japan 10/12/42 - 4/17/44

Camp #1 - Japan- 4/17/44 - 8/15/45

5. DO YOU HAVE ANY INFORMATION ABOUT ANY ATROCITIES AGAINST, OR MISTREATMEN OF AMERICANS, PRISONERS OF WAR, CIVILIAN INTERNEES, OF THE CIVILIAN POPULATION FOR WHICH YOU THINK THE PERPETRATORS SHOULD BE PUNISHED, (Answer by stating YES or NO in the spaces provided below.)

(a) Killings or executions ---------- No
yes or no

(b) Torture, beatings or other cruelties ---------- Yes
yes or no

(c) Imprisonment under improper conditions ---------- Yes
yes or no

(d) Massacres, wholesale looting or burning of towns ---------- No
yes or no

(e) Use of prisoners of war in enemy military works or operations ---------- Yes
yes or no

(f) Exposure of prisoners of war to danger of gunfire, bombing, torpedoing, or other hazards of war ---------- No
yes or no

(g) Transportation of prisoners of war under improper conditions ---------- Yes
yes or no

(h) Public exibition or exposure to ridicule of prisoners of war ---------- No
yes or no

(i) Failure to provide prisoners of war with proper medical care, food or quarters ---------- Yes
yes or no

(j) Collective punishment of a group for offense of others ---------- Yes
yes or no

(k) Any other atrocities not specifically mentioned above for which you think the guilty persons should be punished ---------- Yes
yes or no

IF ANY QUESTION IS ANSWERED YES, THEN STATE THE FACTS BRIEFLY ON REVERSE SIDE OF THIS SHEET

Incl #3 (2pages)

OVER

WAR CRIMES OFFICE

When completed this document must be classified as SECRET

DATE: 2 SEPT. 1945

1. YOUR NAME: ENSING HANS
Last First Middle

2. RANK: CAPTAIN M.O. SERIAL NO.
(If civilian write in word "Civilian") (Armed Forces Personal only)

3. PERMANENT HOME ADDRESS GOENTOERNEG 19 MALANG DUTCH EAST INDIES
Street No. City State

4. AT WHAT ENEMY CAMPS AND HOSPITALS WERE YOU CONFINED AND WHEN WERE YOU AT EACH? (If never a prisoner of war or internee then state principal places you have been from time to time while overseas).

JAVA.

1942. 1 3/4 - F/g MALANG - EMA SCHOOL F/g - 2/2 '43 MALANG CAMP BAT. X

1943. 2/2 - 31/3 BATAVIA - CAMP BAT. X 31/3 - 9/4 GLODOK - PRISON BATAVIA

9/4 - 17/7 BATAVIA CAMP BAT. X 17/7 - 31/8 TJIMAHI CAMP BAT IX

JAPAN 1/10 - 4/6 '44 KUMAMATSU 4/6 - 18/1 '45 FUKUOKA CAMP I (NEAR MILITARY AERODROME)
18/1 - 14/9 '45 " " " (Near FUKUOKA)

5. DO YOU HAVE ANY INFORMATION ABOUT ANY ATROCITIES AGAINST OR MISTREATMENT OF AMERICANS, PRISONERS OF WAR, CIVILIAN INTERNEES, OR THE CIVILIAN POPULATION FOR WHICH YOU THINK THE PERPETRATORS SHOULD BE PUNISHED? (Answer by statin YES or NO in the spaces provided below)

(a) Killings or executions NO
yes or no

(b) Torture, beatings or other cruelties YES
yes or no

(c) Imprisonment under improper conditions NO YES.
yes or no

(d) Massacres, wholesale looting or burning of towns NO
yes or no

(e) Use of prisoners of war on enemy military works or operations YES
yes or no

(f) Exposure of prisoners of war to danger of gunfire bombing, torpedoing, or other hazars of war YES
yes or no

(g) Transportaion of prisoners of war under improper conditions NO
yes or no

(h) Public exhibition or exposure to ridicule of prisoners of war YES
yes or no

(i) Failure to provide prisoners of war with proper medical care, food or quarters YES
yes or no

(j) Collective punishment of a group for offense of others YES
yes or no

(k) Any other atrocites no specifically mentioned above for which you think the guilty persons should be punished
yes or no

If any question is answered YES, then state the facts briefly on reverse side of this sheet.

PROSECUTION EXHIBIT 14

DETAILS OF ATROCITIES

KIND OF CRIME	WHERE IT HAPPENED	WHO WAS THE VICTIM? (include name, nationality & whether military personnel or not)	STATE IF YOU SAW IT YOURSELF, IF YOU DI NOT SEE IT, WHO TOI YOU ABOUT IT?

1. [illegible] AND C.

SEVERE BEATING - BATAVIA CAMP BAT. X - VICTIMS : 7

DOCTORS, INCLUDING MYSELF, [illegible] DISPENSER, ALL DUTCH

MIL. PERSONEL - 10th OF APRIL 1943 BY LT SONAI

2. JAP. CAMP COMMANDER.

SUB e FUKUOKA CAMP I. OUR MEN WERE

PUT TO WORK ON A MILITARY AERODROME NEAR

FUKUOKA. f. During transport from Singapore to Nippon

our ship was in a convoy with 2 tankers and

3. was not marked as a P.O.W. ship - Fukuoka

Camp I was near Military Aerodrome, our men were

working on that aerodrome.

C/ Hospital Camp I Fukuoka: Conditions were pretty bad
on small charcoal fire for the whole room. during
winter '44 - '45. Many men died from pneunionia -

4. quite a few got frozen feet & the feet of a Dutch

boy had to be amputated afterwards.

Insufficient blankets - Red Cross blankets were

only partly issued.

h. In Malang Camps Dutch officers were often
menial

5. put to work on purpose, for for instance pulling of grass

in the streets. - In Fukuoka Camp I doctors were

often ordered (by Jap. Med. orderly Hata) to sweep

the floor in the M. T. rooms, wash the windows, and so on

i. See extensive report by Dutch M.O. De Wijn

j. This was common practice in the camps on Java, less in Nippon.

Have you previously been questioned by any military or naval authorities about atrocities or mistreatment? Yes
yes or no

If YES, by WHOM, WHERE, WHEN.

Maj. Boot, Dutch A.F. at Nagasaki on 14th of Sept. 1945

Did you make a signed statement? Yes
yes or no

/s/ H. Ensing
Sign your name here.

On the 15th August, 1944, Dutch Ensign Streefkerk, J.J. was beaten up severely by the Japanese interpreter, Katsura, out on working party. He was knocked on the ground about 20 times in succession, and afterwards it became clear that his 5th right rib was broken in two places, doubtless the direct or indirect result of the beating.

The next morning a report about this incident was made to the Japanese M.O. in charge by the Dutch M.O., Lieut. F.J. de Wijn, and de W. insisted on having it reported to the Japanese Camp Commandant. The interpreter K. was very much upset about this report and that same night he came to the officers' barracks and beat up Dr. de Wijn in a terrible way for about 10 minutes. Dr. de W. was bleeding in the face and he was walking around for several days afterwards with a discoloured and swollen face. The Camp Commandant saw him the next day and heard about the ill-treatment. It was not reported officially to him, but all he said about it was that doctors had to attend to their own medical business and not bother about other things, and that Dr. de Wijn had experienced the bad consequences because he did not stick to his own business. Dr. W. could not imagine how lazy prisoners were on working party, he said, and it was quite necessary to punish them severely if they did not obey orders. As far as we know the interpreter was not punished for having beaten the Dutch doctor.

/s/ H. Ensing.
H. Ensing,
Capt. M.O.
Commanding Fukuoka No. 1 Allied Camp.

Witnesses:

Capt. W. P. Wallace, R.A.M.C.

Capt. W.A. Kostocki, U.S.M.C.

P.S. Exactly one year after this incident, on the 18th August, 1945, (the day of surrender) apologies were made spontaneously by K. to de W.

On the 14th January 1945 the Dutch Sergeant of Marines, Gerema, P., on outside working party was beaten by the Japanese guard Tanaka, of the 4th Regiment, on the back part of his legs (especially the right one) with a big club. He was in "on the hands down" position, resting on his hands and toes. He was beaten severely. This happened at about 09.30 hrs. After the punishment G. managed to work again, although his right leg was very painful. At three o'clock in the afternoon the owrking parties went back to camp. After G. had walked about 2 miles, his right leg suddenly gave way under him and he fell down on the ground. He could not move his leg and thought the bone was broken. He had to be carried to the camp and was examined by me in the M.I. Room. The back-side of the right leg was very much swollen. The skin showed a bluish colour in a large area, and a superficial wound of about 2-3 cm. In the middle part a large muscle hernia protruded. A bone fracture could not be found but in touching and passively moving it, the leg was very painful. The same diagnosis was made by the Japanese doctor Kanda next morning. A report was made about the beating and the patient was admitted to the camp hospital.

On the 16th the patient appeared to have his right leg completely fractured about in the middle of the femur. This was reported to the Japanese doctor and he ordered a wooden splint to be applied. On the 18th the whole camp was moving to our new camp nearer Fukuoka. It was very cold during the transportation and G. got a bad diarrhoea. Nursing was difficult, although conditions in our new camp hospital were somewhat better than in the old one (temperature often below zero, not sufficient blankets, only one small charcoal fire for the whole hut).

On the 21st the patient was in a pretty bad condition. The leg was enormously swollen and the splint had to be taken off. There was much discharge from the wound at the back of the leg. Possibly the patient had an osteomyelitis -- temperature was very high (40° C.) Dr. Kanda saw him next morning and ordered that the patient should be sent to another hospital. On the 23rd G. was moved to the Military Hospital in Fukuoka. He died early next morning.

/s/ H. Ensing.
H. Ensing,
Capt. M.O.
Commanding Fukuoka No. 1 Allied Camp

Witnesses :

Capt. W. A. Kosteski, U.S.M.C.

Medical Orderlies : Wiersema, G.E.
Timmer ten Woldo, J.

[illegible] I was asking for sulfadiazine powders for a Dutch Pneumonia patient who was admitted to hospital that morning and was [illegible]ly ill. The Japanese doctor Kanda ordered to be issued an initial dose of [illegible] g and three doses of 1 gm, every 6 hours. Possibly through misunderstanding (?) the Japanese orderly Hata was issuing only one powder of 2 gms. (He was in charge of the medical stores). I told the Japanese doctor and he ordered the Japanese orderly Hashimoto to issue the other three powders immediately. As Hashimoto had no authority to do anything without Hata knowing about it, he told the latter about the order. At 3 o/c in the afternoon the medicine was still not given out, and I asked Hata about it, but he refused to issue the powders, and told me to wait until next morning. At [illegible] I reported to the Japanese doctor. He became very angry with Hata, and apparently he was giving this orderly a piece of his mind for not obeying his officers. Hata became very resentful. Hashimoto came over to the Officer's Barracks and ordered me to come to the M.O. Room immediately after dinner. There was no officer in the camp at that moment. Without giving any explanation Hata started beating me and when he got tired Hashimoto took it over and so on. I was beaten horribly on by back, buttocks and legs. At last I declared that I could stand it no longer, but still they were going on. My muscles were all bruised and the skin was discoloured on buttocks and legs. I fainted during roll-call parade that night and for days I was walking with the utmost difficulty. Hashimoto threatened me in case I should report about this to the Japanese doctor. I reported to Lieut. Col. Saunders, the senior British officer, but for obvious reasons no report was made to the Nipponese authorities. The Japanese soldier interpreter, Ooki, who was present during the punishment, but took no active part in it, told me that I had been very wrong in informing the Japanese doctor of this medicine affair because the doctor had been very angry with Hata.

/s/ H. Ensing,
H. Ensing,
Capt. M.O.

Commanding Fukuoka No. 1 Allied Camp.

Witnesses :

Capt. W. A. Kostecki, U.S.M.C.

Dutch Medical Orderly, Wiersema, C.E.

A CERTIFIED TRUE COPY,
Theodore R. C. King
THEODORE R. C. KING,
Major, Inf.

Form B.—No. 10.

ROXBURGHSHIRE CONSTABULARY

CONSTABULARY STATION,

HAWICK, 21ST. May, 1946.

POLICE REPORT.

Deposition of Captain William Proudfoot Wallace.

With reference to telephone message received at Police Station, Hawick, at 9.45 p.m. on Monday, 20th May, 1946, from Detective Wadey, Gateshead Borough Police, regarding information required for the British Minor War Crimes Commission, Tokyo, from Captain William Proudfoot Wallace of Viewfield House, Wrekenton, Gateshead, presently residing at Skelfhill Cottage, Hawick, Roxburghshire, Scotland, I beg to report that on forenoon of Tuesday, 21st May, 1946, I interviewed Captain Wallace at Skelfhill Cottage aforesaid, and there took from him the following deposition.

/s/ William Wood.

Sergeant.

178000 Captain WILLIAM PROUDFOOT WALLACE, aged 42 years, M.B., Ch.B.(Edin.), presently residing at Skelfhill Cottage, Hawick, Roxburghshire, Scotland,

states:-

Prior to the outbreak of war in 1939 I was in practice at Wrekenton, Gateshead, 9.

On 7th March, 1941, I joined the Royal Army Medical Corps and was posted to 21st Light Anti-Aircraft Regiment, Royal Artillery, at Bowdon, Cheshire. I left this country with the Regiment on 8th November, 1941, and went to Java, arriving there on 5th February, 1942. After arriving in Java we were under Dutch command.

On 8th March, 1942, the Dutch capitulated and I was captured by the Japs. I was interned with about one thousand prisoners of other regiments in Glodok Prison, Batavia. We ran this camp ourselves under Jap supervision and conditions were reasonable. We left Glodok Prison in October, 1942, and arrived in Japan on 27th November, 1942. During the sea voyage we were confined to the holds of a tramp steamer named "Itchi Maru" and conditions were terrible. We slept practically on top of each other on the ballast, which was iron ore. Food was scanty - two poor meals a day. The meals consisted of a small quantity of boiled rice and very thin soup. Drinking water was scarce. There was no water for washing purposes. Many men had dysentery and died for want of proper medical treatment and proper food. Previous to embarking on this ship our Colonel, Colonel Saunders, protested to the Captain of the ship about the conditions but we were forced into the holds.

On arrival in Japan we were interned in Fukuoka Camp, No. 1 Prisoner of War Camp. This camp consisted of wooden sheds filled with double shelves on which we slept. There was no heating in the huts and clothing consisted of tropical kit. We had five thin felt Japanese blankets. The cold was intense and the men suffered from acute enteritis. During the first winter fifty men out of two hundred died.

In/

PROSECUTION EXHIBIT 15

In Fukuoka Camp there was an interpreter named Takeo Katsura. He frequently beat the men with a bamboo pole and on one occasion broke several ribs of a Dutch prisoner. I do not know the name of this prisoner but a Dutch Medical Officer, de Wyn, will know who this prisoner is. I personally saw that he had three ribs broken. As interpreter, Katsura would not convey our messages to the Camp Commandant, and if he did so, he would twist them round to our disadvantage. Often he got rations witheld or reduced and unfair punishments imposed. One punishment consisted of being put in the "dog box" for from three to seven days on starvation diet, which meant no food. This box was a wooden compartment too small to stand up in and usually two or three men at a time were put in it. They were frequently taken out and beaten by the guards amongst whom was hajime Honde, who was always prominent and exceptionally brutal.

[redacted] prescriptions advised by the P.o.W. Medical Officer, although the drugs were there under his care. By his refusal to issue the drugs he was directly responsible for the deaths of many men. On one occasion he forced six hospital patients to do stremuous physical exercises, with the result that at least, as far as I remember, three of them died. He was always aggressive to the sick men and beat them with a bamboo pole on many occasions. Lieutenant de Wyn, Medical Officer in the Dutch Army, also witnessed the above described incidents. Captain Kostecki, Medical Officer in the American Army, also witnessed the above incidents.

On 13th September, 1945, I was released from the Camp and sailed from Nagasaki on an American destroyer, arriving home at Southampton on 5th November, 1945.

I am at present on repatriation leave and posted to the supernumary strength of the Depot, Royal Army Medical Corp, Boyce Barracks, Crookham, Hants.

This deposition was made by me to Sergeant Wood, Roxburghshire Constabulary, Newick, and is true.

.....(s/) W. Wallace, Capt. R.A.M.C.
Skelfhill Cottage, HAWICK,
Roxburghshire, Scotland.

A CERTIFIED TRUE COPY:

THEODORE H. C. KING
Major, Inf.

MD/JAG/FS/J /32(1k)

RSM/DH.

IN THE MATTER OF JAPANESE WAR CRIMES AND
IN THE MATTER OF THE ILL-TREATMENT
PRISONERS OF WAR AT FUKUOKA CAMP.

AFFIDAVIT

I, Fredrick CHILTON, formerly Lance-Bombardier in the Royal Artillery, with permanent home address at 15D, Manor Street Estate, Chelsea Manor Street, S.W.3., make oath and say as follows:-

1. I was captured at Timor on 23 February 1942.

2. I arrived at FUKUOKA Camp area on 29 November 1942 and I remained in that ar until liberated.

3. In this camp area there was a Japanese interpreter, a 1st Class Soldier, nam TAKEO KATSURA. This man had lived in America for about 12 years and was a very clever and shrewd man.

4. Whenever the prisoners misbehaved in any way, the Japanese Commandant who we a Captain named SAKEMOTO, used to send for KATSURA and blame him for not keeping order. This used to infuriate KATSURA and he used to take it out of the prisone by beatings.

5. I remember one occasion when I saw KATSURA beat a sick man who was lying in in hospital. The name of this man was Gunner Albert Cleeves. I was on the hospi prison staff at the time. KATSURA beat Cleeves because Cleeves had told him a lie about some corned-beef. The prisoners had had an issue of corned-beef and their stomachs not being accustomed to such food, many of them had gone sick after eati it. As a result the Camp Commandant, SAKEMOTO, ordered all the corned-beef to be withdrawn and KATSURA came around the quarters collecting it. Each man had to put any corned-beef he had in his possession, at the end of his bed. When KATSURA arrived at the bed in the hospital in which Cleeves was lying, Cleeves told KATSU that he had no corned-beef in his possession. KATSURA asked him several times whether he was sure he had none and then asked me to open Cleeves' haversack. I opened the haversack and found a tin of corned-beef. KATSURA then completely lost his temper and beat Cleeves violently with a bamboo pole for about five minutes.

/S/FC

6. On several occasions another prisoner, Gunner Albert Henry Newman, was also beaten by KATSURA who invariably used a piece of wood or a metal headed hammer for all beatings that he administered. KATSURA used to go completely crazy with rage when-ever he had been told off by the Commandant. I was never beaten by him myself.

/S/FC

7. I remember another occasion when two Dutchmen reported sick after a working party. They came to the hospital and I saw them there. One of them had broken ribs and the other a dislocated jaw. These Dutchmen said that they had been beate up by KATSURA for a very slight technical offence. The Dutch doctor, who was a prisoner, named Lieutenant F. De Wyn decided to report the matter to SAKEMOTO. He did this and SAKEMOTO told him that the doctors business was that of a doctor and had no right to interfere with the discipline of the camp. SAKEMOTO must have given KATSURA a free hand to beat up the doctor because I saw the doctor after he had been beaten by KATSURA and he was in a very bad state. His face was dis- colcured for at least ten days after the beating. We all knew that KATSURA had beaten him and many of the prisoners had actually witnessed the beating.

8. In the ~~camp also was a Japanese medical orderly called MASATA HATA. This ma was fairly descent towards the prisoners to begin with but later on he began to be-~~

/ very.....

PROSECUTION EXHIBIT 16

many hostile demands them. He frequently used to tear up medical prescriptions given to him by the four allied camp doctors, although the drugs were available and I consider that he was directly responsible for the deaths of many men through these actions. The camp doctors were Captain De Wyn whom I have already mentioned, Captain Wallaced British doctor, Major Kostecki and American, and Captain Ensing a Dutchman. On another occasion I remember MASATA MATA ordering sick men from the hospital to take part in physical exercises ordered for the rest of the camp. The exercises were quite strenuous and some of the hospital patients were old men between 50 and 60, some of them with Hernias.

/S/FC
/S/FC

9. Also in the camp was a Japanese civilian guard called HAJIME HONDE. He had very strong sadistic tendencies and I think he was a little unbalanced. He was very fond of beating prisoners and would do it on the slightest pretext. He invariably used the butt of his rifle or a bamboo pole for these beatings. I myself was several times beaten by him though not very badly but I know that he administered several severe beatings to other prisoners. His favourite trick was to come through the hut and if a prisoner did not spring to attention, he used to bang them on the head with the butt of his rifle. I have seen him do this many time.

SWORN by the said Frederick CHILTON,)
at 6, Spring Gardens in the city of Westminster,) /S/ FChilton
this twenty-third day of May 1946.) (Signed) F. CHILTON.

BEFORE ME,

/S/ RMarshall
(Signed) R.S. MARSHALL,
Captain Legal Staff,
Military Department,
Office of the Judge Advocate General.

A CERTIFIED TRUE COPY
Theodore H. C. King
THEODORE H. C. KING
Maj., Inf.

MD/JAG/PS/J/32

CVD/TH

IN THE MATTER OF JAPANESE WAR CRIMES
AND IN THE MATTER OF THE ILL-TREATMENT
OF PRISONERS OF WAR AT KUMAMOTO CAMP
AND FUKUOKA CAMP, JAPAN.

A F F I D A V I T.

I, ALBERT HENRY JESS NEWMAN, late Gunner Royal Artillery, with permanent home address at 239 Lower Mortlake Road, Richmond, in the County of Surrey, make oath and say as follows:-

/S/ AHJN

1. I was captured on 23 February 1942 at TIMOR.

/S/ AHJN

2. On 23 November 1942 I was taken to KUMAMOTO Camp in Japan. From this time onwards I was employed as a carpenter.

3. During either January or February 1943 the Japanese authorities ordered that we prisoners of war should return the tins of Bully Beef, which had been issued to us just before the visit of representatives of the Red Cross. On the same day I was working in the Dysentery Ward of the Camp Hospital and TAKIO KATSURA, who was the camp interpreter came in with a guard and searched the hut. He found a tin of Bully Beef under the blankets of a Gunner who was seriously ill with dysentery. KATSURA said to this Gunner, whose name I do not know, "What are you doing with this?" The gunner answered "I am hungry", KATSURA replied "You know you had to give it in". KATSURA then pulled the gunner out of bed and beat him about twelve times across the back and shoulders with a bamboo about three-quarters of an inch thick. The blows were struck viciously, KATSURA raised his hand above his shoulder before striking the gunner who lay on the ground. The gunner was wearing tropic battledress. About ten days afterwards this gunner died.

4. SAKAMOTO was Commandant of all the camps in which I was imprisoned. Sometime in the middle of 1943 while at KUMAMOTO he and TAKIO KATSURA discovered that the man had boxes for which I had supplied the wood. They called me into the hut where these boxes where discovered and SAKAMOTO struck me in the face with his fist which knocked me towards KATSURA; KATSURA thereupon struck me in the face with his fist and knocked me back again towards SAKAMOTO four or five times I was punched to and fro in this manner. I then followed SAKAMOTO and KATSURA as they went through the huts smashing the boxes with a hammer. Finally in the officers' hut KATSURA said to me "You have had a fine time haven't you" and struck me on the head with the four pound balàheaded hammer. Later that evening I was present when SAKAMOTO called one of the guards and said something to him in Japanese as a result of which the guard took me away and put me in a cell where there was insufficient room to stand or lie down. For four hours I was made to sit on my heels with my arms stretched above my head.

5. About November 1943 I was taken to FUKUOKA in Japan where I stayed until 15 September 1945. My carpenter's bench was in view of the cook-house. Very frequently KATSURA would come to the cook-house and ask for tea with sugar. As the cook had only three-quarters of a pail of sugar to last a month for about seven hundred men he often was unable to give any to KATSURA. When this occurred KATSURA would line up the cooks, that is Serjeant Regan, Lance-bombardier Scott and five others, and go down the line hitting their faces with the flat of his hand or on some occasions with a paddle which is a flat piece of wood for taking the rice from the boilers.

6. On one occasion eight or nine prisoners of war who were sick were late getting out on parade after lunch. KATSURA took a one and a half pound hammer from me

/and.....

PROSECUTION EXHIBIT 17

and I saw him strike these men with it. One of them he struck on the head, the others on the side or arms.

7. Throughout my time as a prisoner of war SAKAMOTO was accustomed to giving beatings about twice a week. I remember one occasion when I had made a cabinet for him SAKAMOTO was in a rage because the joints were not made in the way he wanted. He kicked the cabinet and struck me with the flat of his hand several times. The next day he came into the hut where I was working and struck me on the head with a piece of two inch by two inch timber.

8. In about June 1945 I was present when Lance-bombardier CHILTERN, who was in charge of a working party was brought before SAKAMOTO by a Japanese foreman or onoho. the onoho spoke to SAKAMOTO who turned to Lance-bombardier Chiltern and slapped his face then struck him in the face with his fist. He then pushed him in the chest so that Lance-bombardier Chiltern fell to the ground thereupon SAKAMOTO kicked him in the side, jumped on to his chest and then jumped on to his face thus smashing his spectacles. SAKAMOTO was wearing heavy rubber riding boots.

9. With me in all the camps in which I have been imprisoned was a civilian guard called HAJIME HONDE who beat prisoners on the slightest provocation. About June 1945 HONDE asked me to make him a pair of clogs. I told him I was not allowed to do it. He took me to the guardroom where he struck me across my back about six times with a stick about half an inch thick.

10. At about the same time as the above incident I went out to a working party where I saw HONDE standing over an American prisoner who was in a position known physical training as "on the hands down". Every time the American's body sagged HONDE struck him across the back with a bamboo.

SWORN by the said ALBERT HENRY JESSE NEWMAN)
at.6Spring.Garden.Cockspur.St..London.....) /S/ A H J Newman
this 24th day of May 1946.) (Signed) A.H.J. NEWMAN.

BEFORE ME.

/S/ Albert Walters
Capt.
Legal Staff

A CERTIFIED TRUE COPY

THEODORE R. C. KING
Maj., Inf.

CONFIDENTIAL

M.I. 9/JAP/ No. 46746 . D

WRITE IN BLOCK CAPITAL LETTERS IN PENCIL

No. 1543359 Rank SGT Surname REGAN

Christian Names BENJAMIN Decorations —

Ship (R.N., U.S.N. or Merchant Navy) Unit & Div. (Army) 21st LAA REG. RA

Squadron and Command (R.A.F., A.A.F.)

Date of Birth 29./3./1905 Date of Enlistment 15/11/39

Private Address and Telephone No. 49. COLEBORNE RD. LPOOL. 11

Place and Date of Original Capture JAVA 8/3/42
(Aircrew R.A.F. to give place and date of a/c crash).

WAR CRIMES

1. At what enemy camps and hospitals were you confined and when were you at each?

KUMAMOTO. DEC. 1942. DEC. 1943 KASHI 1943 - 44

FUKUOKA. 1944 - 1945

2. Do you have any information about any atrocities against or mistreatment of ALLIED Prisoners of War, Civilian Internees, or the Civilian population for which you think the perpetrators should be punished? (Answer by stating YES or NO in the spaces provided below).

(a) Killings or executions ... NO (Yes or No)

(b) Torture, beating or other cruelties ... YES (Yes or No)

(c) Imprisonment under improper conditions ... YES (Yes or No)

(d) Massacres, wholesale looting or burning of towns ... NO (Yes or No)

(e) Use of prisoners of war on enemy military works or operations ... YES (Yes or No)

(f) Exposure of prisoners of war to danger of gunfire, bombing, torpedoing, or other hazards of war ... NO (Yes or No)

(g) Transportation of prisoners of war under improper conditions ... YES (Yes or No)

(h) Public exhibition or exposure to ridicule of prisoners of war ... NO (Yes or No)

(i) Failure to provide prisoners of war with proper medical care, food or quarters ... YES (Yes or No)

(j) Collective punishment of a group for offence of others ... YES (Yes or No)

(k) Any other atrocities not specifically mentioned above for which you think the guilty persons should be punished ... YES (Yes or No)

IF ANY QUESTION IS ANSWERED YES THEN STATE THE FACTS BRIEFLY ON REVERSE SIDE OF THIS SHEET.

P.T.O.

PROSECUTION EXHIBIT 18

3. Details of atrocities :

(a) Kind of crime ...BEATINGS,.....

.....

(b) Where it happened ...AT..ALL..CAMPS.MENTIONED.....

...OVERLEAF.....

(c) Who was the victim ? (Give complete description including name and whether military or civilian personnel)

FRANCIS.HESSION..AMERICAN.CIVILIAN.....

.....

.....

(d) Who was the perpetrator ? (i) Name..KATSURA... (ii) Rank...PTE.....

(iii) Position held..INTERPRETER..(iv) Branch of Service...ARMY.....

(v) Height...5!.6?.....(vi) Weight.....(vii) Age ..35.....

(viii) Colour of Eyes .....(ix) Glasses?...NO.(x) Colour of Hair (or Bald)..BLACK...(xi) Home Town .KAGASHIMA....(xii) Any noticable features, scars, missing limbs, tooth fillings, etc...KNIFE.SCARS.ON.STOMACH.....

(e) State if you saw it yourself..If you did not see it, who told you about :

.....SELF.....

(Giving Number, Rank, Name and Unit if possible).....

(f) Give brief story of crime.....KATSURA:.BEAT.UP.ONE.OR.....

MORE.PO.W.S..EVERY..DAY...ALSO.STOLE.....

.RED.CROSS.FOOD.AND.SUPPLIES.....

.....

THE.BEATING.MENTIONED.ABOVE.WAS.PARTICULARLY.....

BRUTAL..INASMUCH.AS.VICTIM.WAS.INCAPACITATED..... .....

FOR.A.WEEK.AFTER.....

.....

POW:LABOUR.USED.IN.BUILDING.OF.AIR.FIELDS..... .....

AND.IF.ONE.MAN.TRANSGRESSED.THE.RULES.EIGHT.OR.....

TEN.MEN.WERE.PUNISHED.....

.....

.....

(g) Give Number, Rank, Name Unit, etc., and Private Address, if known, of any other Witnesses .BSM:..JAMES:.W:..21st..L.A.A:.RA.....

.....

18

PROSECUTION EXHIBIT

.....20/10/45.....
Date

A CERTIFIED TRUE COPY:

THEODORE R. C. KING
Major, Infantry.

To the best of my belief the above particulars are correct.

....BRegan.....
(Signature)

.....
Unit at which interrogation was mad

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War by /s/ James A. Mashidlausky 6a-WC-3006 Capt MAC

CONFIDENTIAL

AFFIDAVIT

Perpetuation of the Testimony of LYLE GRAHAM, 11142 Ventura Boulevard, North Hollywood, California.

In the matter of the beating of John La Paz by Takeo Katsura, at Fukuoka Prisoner of War Camp No. 1, Japan.

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, LYLE GRAHAM, being first duly sworn upon my oath, depose and state that:

My full name is LYLE EDWARD GRAHAM, and my present home address is 11142 Ventura Boulevard, North Hollywood, California. I am 36 years of age. In December of 1941, I was employed by the Morrison-Knudsen Company on Wake Island. I was captured there by the Japanese Imperial Forces on 23 December 1941, and was held there approximately nine months. I left Wake Island on 30 September 1942, and landed at Yokohama on 11 October 1942. I was then sent to the Sesabo (phonetic) prisoner of war camp, which was run by the Japanese Navy. The Japanese Army took this camp over in November of 1943. I left Sesabo in April 1944, and was sent to the Fukuoka Camp No. 1. I was liberated from there by American Forces on 18 October 1945, and arrived in San Francisco, California on 28 October 1945.

The Japanese Camp Commandant of the Fukuoka Camp was a Captain in the Imperial Japanese Army. He stood about 5'7" in height, weighed about 160 pounds, and was approximately 50 years of age. He was clean-shaven, didn't wear glasses, and was very military in appearance. I cannot recall his name. There was another commissioned officer attached to this staff, named Tomito (phonetic), and the interpreter, Takeo Katsura. They are the only ones of the Camp staff whose names I can recall.

Katsura was the military interpreter for the Camp, spoke very excellent English inasmuch as he had spent approximately fifteen years in the United States. Katsura was about 5'6" in height, and was very heavy set weighing probably 160 pounds. This man was mean, sadistic, cruel and surly at all times, and had a disposition like a

WAR CRIMES OFFICE
Washington 25, D. C.

CONFIDENTIAL /s/C.M.

PROSECUTION EXHIBIT 19

rattlesnake. He was continually beating prisoners; in fact hardly a day would pass without Katsura beating someone up.

Circumstances surrounding the incident of the beating of John La Paz are as follows: This incident took place sometime in June of 1944. I don't remember exactly what led up to the beating of La Paz, except that I know it was some infraction of the regulations which the Japanese thought La Paz was guilty of. There were so many beatings that I can't remember the causes of all of them. Katsura beat La Paz with his fists and feet for about ten minutes, in the compound outside our barracks. La Paz was not particularly marked up about the face, but he was very badly hurt internally from the kicking he received from Katsura. La Paz remained in bed for two or three days after that in great agony, and was not given any medical treatment during this time. As far as I know, La Paz lived somewhere in Spokan, Washington. That is about all the information I can give you concerning this incident.

/s/ Lyle Edward Graham
LYLE GRAHAM

Subscribed and sworn to before me this 13 day of July 1946 at Los Angeles, California.

/s/ Philippe de Carnier
PHILIPPE de C. CARNIER
Captain, I
SUMMARY COURT

CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, Ralph E. Boyd, Special Agent, CIC, certify that LYLE GRAHAM personally appeared before me on the 8th day of July at Los Angeles, California, and made the foregoing statement concerning war crimes.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

/s/ Ralph E. Boyd
RALPH E. BOYD, S/AGENT, CIC
WAR CRIMES OFFICE
Washington 25, D. C.

For the WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

In the matter of atrocities committed against American military personnel, prisoners of war, FUKUOKA, Kyushu, Japan between January 30, 1945 and April 25, 1945.	Perpetuation of Testimony of William D. North, Colonel, 017345.

Taken at: 139 Greenville Street, Newnan, Georgia.

Date: 28 June 1946.

In the Presence of: Jacques M. P. Wilson, Special Agent, 111th Counter Intelligence Corps Detachment, Hq. 7th Army, Atlanta, Ga.

Reporter: Allene J. Sanders, Stenographer, Area Intelligence Division, Hq. 7th Army.

Questioned by: Jacques M. P. Wilson.

Q. State your name, rank, serial number and permanent home address?

A. Colonel William D. North, 017345, 139 Greenville Street, Newnan, Georgia.

Q. Have you recently been returned to the United States from overseas?

A. Yes, I returned to the United States in October 1945.

Q. Were you a prisoner of war?

A. Yes, I was a prisoner of the Japanese Imperial Army.

Q. At what place were you held and state the approximate dates?

A. I was taken prisoner on 9 April 1942, while part of General Hospital #2, Bataan. We departed this area 26 May 1942, and left for Cabanatuan via Bilibid, arriving in Cabanatuan on 1 June 1942. We remained there until 21 October 1944, when we embarked for Japan. We left Cabanatuan Camp on 21 October 1944, for Manila and Japan, and were in Bilibid prison part of the time. Our group departed for Japan on 13 December 1944. We were interned at FUKUOKA, Kyushu, from 30 January 1945 to 25 April 1945. Part of our contigent was transferred to Jinsen, Korea. We were in Jinsen from 27 April 1945 until 7 September 1945.

Q. Did you witness or have you been told of any mistreatment of American citizens at any time while in FUKUOKA, Japan?

A. When we arrived at FUKUOKA we were placed in unheated barracks. Against the walls, to keep out the cold, dirt had been banked. The barracks were of weeds and mud plaster with a tar paper roof. No one was able to walk to the latrines in the freezing weather so buckets were placed in the aisles. Many caught pneumonia. The Japs released medicine inadequately so we lost 54 cases the first month. We were fed three times a day but the food was a very poor quality. My condition was so bad at the time that I had to remain in bed, and only moved around when absolutely necessary.

Q. Were your barracks ever heated during the bitter cold weather?

A. No, our barracks were not heated.

PROSECUTION EXHIBIT 20

Q. ~~Were medicines made available for the treatment of the sick cases other than~~ pneumonia?

A. Practically no medicine was made available and never in sufficient amount. When the Japanese medical officer would prescribe medicine, the Japanese medical orderly, MATO, would delay filling the prescription and issuing the medicine.

Q. Were any Red Cross medicines or supplies made available to the prisoners?

A. The Japanese doctor at the camp did have considerable stores of Red Cross medical supplies, clothing and food yet he refused to issue it in quantities which could do the men any good at all.

Q. Were the medicines issued fresh and usable?

A. The medicines and supplies issued at this camp as well as the other camps where I was interned were medicines which had been sent as relief supplies by the United States to Japan after an earthquake or typhoon I believe in 1923. I saw several crates of these supplies with their original packing and shipping instructions. Some of these supplies were crated in 1918 and had been given to the Japs after the first World War. For the most part the medicines were stale and unusable.

Q. Did you come in contact with a Japanese at this camp named HONDA?

A. ~~I have had no contact with HONDA.~~

Q. Were any extreme disciplinary measures ever taken against any of your officers?

A. One of the Japanese at this camp KATSURA took exceptional pleasure in beating the men and then placing them in confinement in the "black box" without proper clothing and shoes. Lt. Col. Albert ROBY, Veterinary Corps was placed in the "black box" and left there until his feet froze.

Q. What is a "black box"?

A. A "black box" is a stall like an outdoor privy. It has no windows. The floors are made of rough planks. The rain seeps in from the top and the cold wind through the bottom in between the planks.

Q. ~~Do you know the circumstances surrounding~~ the death of Cpl. William IVARSON at your camp?

A. My memory is extremely hazy on this point. Not wishing to give you inaccurate information I suggest that you contact Captain Walter A. KOSTECKI, MC. He ~~formerly~~ resided in Boston, Mass. I believe that he can be contacted there now.

Q. Were you ever beaten by KATSURA or any of the guards and/or officers at this camp?

A. Yes, on two occasions, KATSURA slapped me without provocation, and quite severely. Captain KOSTECKI reported to me that Katsura beat an American to death in the camp. Captain Kostecki was the representative or liaison officer between the Americans and the Japanese medical officers. Captain Kostecki was in closer contact with Katsura than any other American at the camp.

Q. What do you know about Katsura's background?

A. Katsura lived in the United States for about 20 years in Galvaston, Texas, I believe. He was well educated and spoke perfect English.

Q. Were you ever beaten by any other Japanese at this camp?

A. ~~One morning at roll call, I do not recall the date, without provocation, I was selected out of about 800 men and called in front to a platform and given a good slapping by a Japanese medical orderly named HOTA, on duty at Dispensary~~ FUKUOKA.

Robb ~~Q. What were the names of the Japanese officers responsible for this condition at this camp which you have mentioned so far in this testimony?~~

~~A. The Commanding Officer was Lt. [illegible]. There were two medical officers whose names I do not recall and there was a medical soldier named HATO.~~ Robb

/s/ William D North
WILLIAM D. NORTH

State of Georgia)
)
County of Coweta)

I, William D. North, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ William D North
WILLIAM D. NORTH

Subscribed and sworn to before me, this 5th day of July 1946.

Louise T. Downs
N. P. Coweta Co. Ga.
Com. expires 12/15/46
5 July 1946
(SEAL)
LOUISE T. DOWNS
NOTARY PUBLIC
COWETA COUNTY, GA.

CERTIFICATE

I, Jacques M. P. Wilson, Special Agent, 111th Counter Intelligence Corps Detachment, Hq. Seventh Army, Atlanta, Ga., certify that William D. North, Newnan, Georgia, personally appeared before me on 28 June 1946, and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

/s/ Jacques MP Wilson
JACQUES M. P. WILSON
Special Agent, 111th CIC.

A CERTIFIED TRUE COPY:

THEODORE R. C. KING
Major Infantry

PROSECUTION EXHIBIT

MR. CAMP.

334/43

When COMPLETED this document must be classified as SECRET
List No. 20/2606.

AUSTRALIAN WAR CRIMES COMMISSION.

QUESTIONNAIRE.

Notes:—

(a) This questionnaire should be completed by:—
  (i) All repatriated Australian prisoners of war (A.I.F., R.A.A.F. and R.A.N.)
  (ii) All repatriated Australian civil internees.
  (iii) All repatriated British civil internees in the Pacific Area (excluding Malaya and China)
  (iv) All members and ex-members of the Allied forces who have actu knowledge of war crimes committed by the enemy.

(b) It will be completed in the presence of an officer who will countersig the signature of the person making the statement.

(c) It is important that a full statement on page 3 (carried on to page 4 if necessary) be furnished as well as the answer to 8 (f).

1. Army number..1456030.....2. Rank..STAFF.SERGEANT.....

2. Full name (in BLOCK letters).....LUCAS.....HARRY.....

3. Unit at time of capture and/or place of capture...21.ST...14.4.REGT.....

.....TIMOR.....
(State here unit in which soldier was serving at time of capture, e.g. 2/X Fd, Regt. or H.Q. 6 Aust. Div., &c.)

5. Home address ...153..ST.MARGARETS.AVE..RUSHDEN.NORTHANTS.ENG.....

6. At what enemy camps and hospitals were you confined and when were you at each?..
26.9.42.TO.23RD.9.42.TIMOR..1-10-42.TO..22-10-42.MAKASURA.JAVA..26-11-42.TO
14.9.45..FUKOKA.CAMP.....

7. Do you have any information about any atrocities against, or mistreatment of, Allied soldiers, prisoners of war, civilian internees or the civilian populat on for which you think the perpetrators should be punished? (Answer by statin YES or NO in the spaces provided below)—

(a) Killings or executions .. ..NO.....
YES or NO

(b) Rape, torture, beatings or other cruelties .. ....YES.....
YES or NO

(c) Imprisonment under improper conditions .. ....YES.....
YES or NO

(d) Massacres wholesale looting, pillage, or burning of t towns or villages ....NO.....
YES or NO

(e) Use of prisoners of war or civilians on enemy military works or operations .. ..YES.....
YES or NO

(f) Exposure of prisoners of war under improper conditions or as other hazards of war .. ..YES.....
YES or NO

(g) Transportation of prisoners of war under improper conditons or deportation of civilians .. ..YES.....
YES or NO

(h) Public exhibition or exposure to ridicule of prisoners of war ...YES.....
YES or NO

(i) Failure to provide prisoners of war or internees with proper medical care, food or quarters .. .. .. YES or NO

(j) Collective punishment of a group for offence of others ...YES.....
YES or NO

(k) Breached of rules relating to the Red Cross .. ....YES.....
YES or NO

(l) Cannibalism.. .. ..NO.....
YES or NO

PROSECUTION EXHIBIT 2/

(m) Mutilation of the dead .. ..
YES or NO

(n) Any other war crimes not specifically mentioned above for which you think the guilty persons should be punished.. .. ..
YES or NO

If any question is answered YES then state the facts in 8(f) and on pages 3 and 4.

8. Details of Atrocities.—

(a) Kind of crime....BEATINGS AND TORTURES.....

(b) When and where it happened.....
.....DAILY OCCURENCES.....

(c) Who was the victim? (Give as complete description and whether military or civilian personnel).....
.....TOO NUMEROUS.....

(d) Who was the perpetrator? (Give as complete description and as much information as possible)..GUARDS CAMP STAFF WITH THE KNOWLEDGE OF THE CAMP.. COMMANDANT..SAKAMOTO.....
.....

(e) State if you saw it yourself: If you did not see it, who told you about it? (Give names and addresses of other witnesses.....YES.....
.....
.....

(f) Give brief story of crime. Full statement required on pages 3 and 4.
I SAW MY BROTHER BEATEN WITH A POLE AND HE WAS BLACK AND BLUE DOWN HIS LEGS AND BACK.....
.....
.....
.....

To the best of my belief the above particulars are correc

Russell u/e RAF...
(Signature of Interrogating Officer.)

/s/ H. LUCAS.....
(Signature)

....23-9-45.....
(Date)

N'SUS Replacement Depot.....
(Place and/or Unit at which interrogati was made.)

Comment by Interrogating Officer.....
.....
.....
.....

*Other war crimes not specifically mentioned include:—

(i) Usurpation of sovereignty during military occupation.
(ii) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
(iii) Attempts to denationalise the inhabitants of occupied territory.
(iv) Confiscation of property.
(v) Exaction of illegitimate or of exorbitant contributions and requisitions.
(vi) Debasement of the currency and issue of spurious currency.
(vii) Deliberate bombardment of undefended places.
(viii) Wanton destruction of religious, charitable, educational and historical buildings and monuments.
(ix) Use of explosive or expanding bullets and other inhuman appliances.
(x) Directions to give no quarter and refusal of quarter.
(xi) Misuse of flags of truce.

FULL STATEMENT OF ATROCITY OR CRIME.

This MUST be signed by the person making the statement and countersigned by the interrogating officer at the end of the statement.

ROB ~~Use of British & Australian too unload military stores at Kochang TIMOR. While~~ subject to ~~allied bombings~~. Left TIMOR 23rd Sept 1942 on the ~~IGHT MARU~~, a terrible ship packed to suffocation, ~~and bad sanitation shortage~~ of water, and men were dying by the score of dysentery ~~the actual total that died~~ of these conditions were 100. On arrival in ~~Japan. AT~~ FUKOKA CAMP I saw my Brother beaten ~~by a Japanese named~~ ~~[illegible] for giving him a dirty look.~~

ROB

AT OUR camp we had no med supplies only a few aspirins, and a few rags for Bandages. AT ALL Camps for small errors like smoking or not saluting a private soldier we suffered terrible Beatings those responsible for these conditions were the camp. Comm - named SAKAMOTO and Katsura interpreter.

ROB ~~AT FUKUOKA CAMP. Red Cross food was stolen by a Jap Med-Orderly named Harta~~ ROB

/s/ H. Lucas
Sept

A CERTIFIED TRUE COPY:

THEODORE R. C. KING
Major, Inf.

I, J.S.Sinninghe Damsté, LL.M., Lt.Col. R.N.I.A.,

make oath and state that the attached English version

of the statement by Captain J.G.Benders, R.N.A., concerning

the affidavit of J.F.de Wijn, M.O., R.N.I.A.,

is a true and correct translation from the attached

statement by same in the Dutch language.

Tokyo, August 5th 1946.

/s/

J.S.Sinninghe Damsté.

PROSECUTION EXHIBIT 22

Affidavit

Today, Friday, 5th July 1946, appeared before myself, Joseph Godfried Benders, Captain for Special Services, as well as honorary Government police officer, appointed by deed dated 25th June 1946 by the Minister of Justice,

at.....Vossenlaan 22, Zeist (Holland, Tn) .....

a person, who on enquiry declares himself to be:

Name:.....Jan Frederik de Wijn.....

Rank:.....Reserve Medical Officer Class II, K.N.I.L.....

Serial Number:.....

Section of Army:..Medical Service.....

Civilian Occupation:.....Doctor.....

Residence or temporary address:.....Vossenlaan 22, "Bosch en Duin; Zeist...

Future Address:.....

Born at:.....Ridderkerk, on 26th March 1912.....

The witness is informed of the subject under enquiry, being the giving of information andtestimony concerning the commission of war crimes.

Whereupon the witness is sworn in accordance with his religious convictions to tell the whole truth and nothing but the truth, and after having declared that he would comply with the above requirements, answered the questions put to him as follows :

1. Were you captured as a P.O.W. or placed in an internment camp for civilians? - Captured as a P.O.W.

2. By whom were you captured as a Prisoner of War or interned ? - The Japanese.

3. When and where did this happen? - At Malang (Java, Tn) on 17th March 1942

4. At which P.O.W.- or internment-camps have you been, for how long and during which periods ?

- Malang, 17th March 1942 - 1st February 1943;

Batavia (Java, Tn) Xth Battalion, February 1943 - July 1943;
Tjimahi (Java, Tn), IVth Battalion, July 1943 - 31st August 1943;

On transportation to Japan:

Kudamatsu, 18th October 1943 - June 1944;

Fukuoka, - June 1944 until the capitulation.

5. Can you give any information of acts of violence committed against yourself or others, which you have witnessed ?

- See Enclosure.

Affidavit of Mr. Jan Frederik de Wijn dated 5th July 1946.

Answer to Question 5.

From Java we arrived in Japan by S.S. "Usuri Maru" via Singapore with a total of 500 P.O.W.'s, of whom 150 were Dutch and the rest English and Australian. This was on 18th October 1943 and we were placed in the Kudamatsu camp. Our only complaint about this camp is that part of our Red Cross parcels were stolen. However, we certainly received the greater part. Only the Dutch arrived in Kudamatsu. On 4th July 1944 the Dutch were transferred to Fukuoka. This camp was already occupied by 660 Dutch, English, Australian and American civil internees.

Rob ~~The Commandant of this camp was a Japanese Officer,~~ who was promoted from 2nd to 1st Lieutenant during our time there. For the moment his name has escaped me. He was an exceedingly bad character; but did not personally participate in any ill-treatment. He must be deemed responsible for everything that took place in that camp. There were many beatings, especially by the guards, amongst whom was Honda, who was mentally deranged. The hospital orderly, Hata, behaved inhumanly towards the sick. To cite an example: if seven sick men turned up for examination by the Japanese doctor, he would consider that too many, and would beat or kick three or four of them back to work.

Moreover, he stole considerable quantities of Red Cross articles intended for us, which were in his charge. When we took over charge of this ourselves, for example it appeared that from the 112 tins of milk, only 57 remained, etc. etc.. The same thing happened to tins of cheese and butter. I have with my own eyes seen him consuming these articles.

The treatment of the sick in the hospital was very bad. When he was in the right mood, he would enter the hospital armed with a cudgel, hitting at random with it. He was feared throughout the camp. Often he forced the sick of the camp to take part in the morning gymnastics, although they were obviously not in a fit state to do so. However none of these things caused any deaths.

Supplies of medicines were insufficient. After the Japanese doctor had at his consultation prescribed certain medicines, owing to this same Hata, it generally took two or three days before those were obtained. Whenever as doctors, I and my colleague Ensing complained about this state of affairs, sometimes Ensing would get a thrashing for it.

Although the doctor was fairly reasonable, he held aloof Rob from everything else.

~~The following concerns Handa: he was one of the guards,~~ who were recruited from those disabled by the war. As already mentioned, he lacked all vestige of control.

He has maltreated many in the camp, especially with his gun. When, for example, someone failed to salute sufficiently well to satisfy him, he would ram wildly with it. As far as I know his acts of maltreatment have left no lasting injuries, although those ill-treated had to be admitted to the hospital for treatment. After repeated complaints he was dismissed from the guards by the Japanese. He set about his acts of maltreatment arbitrarily and often without there being any cause therefor according to our notions.

In addition, I forgot to mention about Hata that although I was a doctor, he charged me with the nursing of two patients, and for three weeks I had to do all sorts of corvées, such as cleaning W.C.'s, washing up, etc., even though there were sufficient male nurses in the camp at the time. This was ~~nursing in the military hospital at Fukuoka.~~

About Katsura I can say that he was the interpreter in the camp. This man acted as supervisor of the "working party". On such an occasion it happened that he found cause to punish Ensign Streefkerk, who in his opinion had not worked hard enough. Katsura was then obviously under the influence of drink.

Streefkerk was dashed on the ground, stood up again, dashed down again, and so forth.

According to Streefkerk this went on for twenty minutes. The immediate consequence of this was that he returned to the camp with two broken ribs. When he reported himself sick, I as the doctor treating him brought him before the Japanese doctor. This doctor asked about the cause of the broken ribs. I told him the true particulars, and insisted that the doctor should bring this to the attention of the Japanese commandant. The doctor ultimately did this, after he had warned me against Katsura.

The male nurse Hata had already warned Katsura through others before the complaint reached the Commandant.

Katsura had let it be known that he would speak to me further about the matter that evening.

In the evening he appeared in the Officer's Mess and asked to speak to me. This was in the middle of August 1944. I had to tell him why I had reported this. He was wild with rage, and with wooden shoes and with his fists he beat me, beating me to the ground, making me stand up again, beating me down again, and so forth. This lasted for longer than fifteen minutes. My face was black and blue, with open wounds and swollen. For fourteen days I was obliged to undergo medical treatment. No lasting injury resulted from this.

On the following day, when in reply to the Commandant's question I had to tell him how I got the injuries on my face, I got the answer "That comes from meddling in things with which you have nothing to do".

Katsura was often guilty of ill-treatment, which finally led to the filing of the complaint.

For the rest, the complaint was entirely ignored in the sense that there was no improvement.

A year later, after the capitulation of Japan, Katsura apologized for this.

~~Kiyohara was sergeant of the medical service at the~~ beginning of 1945. All I can say against him is that he ate food provided by the Red Cross for the sick. Otherwise he had a correct idea of respect for rank and was quite a decent fellow.

There was insufficient food in the camp. Except for a short period the calory value per man per day never exceeded 2200. There was a serious lack of albumen and fat. Often it was less than 2200 calories, whereas the sick only got half rations.

As the result of malnutrition, ten per cent died. I consider the "Headquarters Prisoners of War" as well as the Commandant of the Camp are responsible for this.

I know that a ration of 2200 to 2400 calories had been prescribed; often this was not supplied.

Moreover, it was far too little for the hard labour that the P.O.W.'s had to do, namely shovelling earth, whereas the half rations for the sick were altogether insufficient for recovery.

The Japanese camp doctor repeatedly refused to supply medicines out of Red Cross parcels. We knew they contained these, but only obtained control of these after the capitulation. There appeared to have been an abundance of medicines available. Without any supplementation by the Japanese, we could have given our patients effective treatment with these.

All we received was just one box.

All this happened under the motto that in case of a bombardment there would be medicines.

Male nurses and medical officers were obliged to pay for thermometers out of their own pockets where never these were considered necessary, and in a restricted sense the same applied to medicines and bandages.

It has not yet been mentioned that, after his ill-treatment of Streefkerk, Katsura ordered the latter to explain on his return to the camp that he had collided with a truck.

(A true copy of pages 1 to 3 inclusive.
Signed Capt.J.G.Benders)

Verification by the witness:

I, the undersigned, Jan Frederik de Wijn, abovenamed, do hereby declare that I, having been ushered in, have been questioned on oath by the interrogator, who informed me that the oath taken by me continues to be binding upon me, and after having had my sworn statement read and shown to me in my native language do hereby declare that this is true and accurate.

5th July, 1946.

The abovenamed witness,

(Signed J.F. van Wijn).

6. What was the name or surname of the person who committed the acts of violence mentioned by you and can you still describe him ?

- See question 5.

7. Did other persons witness these acts of violence ?

- See question 5.

8. Have you anything further to state of importance in connection with this enquiry ?

- No.

I, the undersigned witness, do hereby declare that in the presence of the interrogator I have been duly sworn and have affixed my signature to the above affidavit and statements on Friday, 5th July, 1946.

(signed J.F. de Wijn).

The above declarations have been signed in my presence and this affidavit has been drawn up in accordance with what is true, and has been consequently signed by myself, the interrogator.

On 5th July 1946 at Zeist.

The abovenamed interrogator,

J.G. Benders.

Certified a true copy

J.G. Benders

Capt. J.G.Benders.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

RESTRICTED

Intelligence Field Office
Box 951, Portland, Oregon

A F F I D A V I T 5 August 1946

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

I, John Lapay, being of legal age, residing at 221 South West Montgomery Street, Portland, Oregon, being duly sworn upon my oath, deposes and states:

I was employed in a civilian status as a dredge repairman for the Morrison-Knudsen Construction Company Incorporated, Box 1518, Boise, Idaho, under contract for construction of an air base for the United States Navy at Wake Island. I was captured by the Japanese on Wake Island 23 December 1941 and was held prisoner on Wake Island until 1 September 1942 when I was taken to Prisoner of War Camp #18, Sosabo, Japan. I was later, I believe in May 1943, transferred to Fukuoka Prisoner of War Camp #1 located on the outskirts of the city of Fukuoka, Kushu Island, Japan.

While at Fukuoka Prisoner of War Camp we had a Japanese Soldier named Takoo Katsure who supervised our movements and also was our interpreter. Katsure is 5'8" to 5'10" tall, weight, 175 to 185 lbs., black hair, brown eyes, has a very round face and is heavy set. Katsure speaks the English language very well as he ad, prior to the war, lived in the United States six or seven years.

One day, while at Fukuoka Prisoner of War Camp, I believe the date to be sometime in May 1944, another prisoner known to me as Ed Young, another civilian employed with me at Wake Island, and I were taken to a Machine Shop outside the camp to work. We were held at this shop until late evening and upon our return to camp we found we had missed our evening meal. We went to the guard barracks and informed Katsure that we had missed our evening meal and asked him if he could get us something to eat. Katsure took us to the barracks where we usually eat our meals. Upon our arrival there Katsure told us that if we had missed our meal it was our own fault as the other prisoners should have saved something for us. After telling us this he took off his Tabe shoes (tennis shoes,

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PROSECUTION EXHIBIT

Page #1 /s/ J.L. RESTRICTED

rubber soled) and slapped us across the face several times with them and then struck us two or three times in the face with his fists. Katsure then walked off telling us never to bother him again. Other than scars about my face, I received no permanent injuries as a results of this beating.

The above statement constitutes all the details of this incident which I am now able to recall.

/s/ John Lapay
John Lapay

Subscribed and sworn to before me this 5th day of August 1946, at Portland, Oregon.

/s/ William H. Klinger
William H. Klinger, Capt.
Adj., Hq., Oreg. Mil. Dist.

CERTIFICATE

STATE OF OREGON

COUNTY OF MULTNOMAH

I, Keith A. Sorensen, certify that John Lapay, personally appeared before me on the 5th day of August 1946 at Portland, Oregon and made the foregoing statement concerning War Crimes.

/s/ Keith A. Sorenson
Keith A. Sorenson
Special Agent, CIC

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

PROSECUTION EXHIBIT

WAR CRIMES OFFICE

The Judge Advocate General's Department - War Department

United States of America

In the matter of the beating of Cpl. Glen J. Cherne by the Japanese at Fukuoka Prison Camp in December, 1944.	Perpetuation of Testimony of Cpl. Glen J. Cherne, ASN 38012486

Taken at: Fort Monmouth, New Jersey

Date: 13 August 1946

In the Presence of: Joseph S. Smith, 1st Lt., Inf.
0-1329998, 108th C.I.C. Det.
Area Intelligence Division
AC of S, G-2
Headquarters First Army
1270 Avenue of the Americas
New York 20, New York

Reporter: Joseph S. Smith, 1st Lt., Inf.

Questions by: Joseph S. Smith, 1st Lt., Inf.

Q. State your name, rank and serial number.

A. Glen J. Cherne, Corporal, 38012486.

Q. State your permanent home address.

A. 6019 Vincent Avenue South, Minneapolis, Minnesota.

Q. What is your present station?

A. 9400 Technical Service Unit, Company "T", Fort Monmouth, New Jersey.

Q. What is your present occupation?

A. Soldier.

Q. What is your civilian occupation?

A. Carpenter.

Q. State the date and place of your birth.

A. 29 October 1914, Proctor, Minnesota.

Q. What formal education have you had?

A. I was graduated from high school in Holdingford, Minnesota.

Q. What is your marital status?

A. Single.

Q. Have you recently returned from overseas?

WAR CRIMES OFFICE
Washington 25, D. C.

PROSECUTION EXHIBIT 24

A. Yes. I returned to the United States on 15 October 1945.

Q. To what unit were you assigned overseas?

A. The 200th Coast Artillery, Bataan, Philippine Islands.

Q. Were you a prisoner of war?

A. Yes.

Q. At what places were you held and what were the approximate dates?

A. I was captured by the Japanese on 9 April 1942, made the "Death March" to Camp O'Donnell from Kilometer Post 272. We remained at Camp O'Donnell until 6 June 1942, when we were transferred to Cabanatuan, where we stayed until about 15 July 1944. Then we sailed for Japan, arriving at Camp No. 23, Fukuoka, on 6 August, and we stayed there until 6 December, at which time we were transferred to Camp No. 1, Fukuoka. We stayed at this camp until 1 April 1945, at which time we were transferred to Camp no. 12, Fukuoka, where we remained until liberated on 12 September 1945.

Q. Please state the circumstances surrounding the beating you received at Camp No. 1, Fukuoka.

A. One day in the latter part of December, 1944, during our dinner hour, I started to walk from a group of prisoners around a fire where we were warming ourselves to the pump where we usually filled our canteens. This pump was about 100 to 150 feet from the fire. Before I reached the pump, one of the Jap guards, whose name I don't know, stopped me, took hold of my arm and walked me back to the group of prisoners around the fire. The same guard had three other men with him, one named Ackerman, an American sailor, and two others, whose names I don't remember. We were made to assume a "push up" position on the ground, supporting our bodies on our hands and toes. Then the guard left us for about five minutes to talk to Katsura, then he returned and started beating us with a bamboo pole about three to four inches in diameter and seven to eight feet long. This guard, nicknamed "The Beast," was about 5'8" or 5'9" tall and weighed about 160 pounds or more, and could really swing that club. He beat us in turn, and each of us was beaten the same as the other three. This guard beat us on the legs and back, but did not hit us on the head or shoulders. The beating lasted about forty-five minutes, after which we were permitted to get up and rejoin the group at the fire.

I ate the small portion of rice which was our meal, then we all went back to work. Our detail was carrying sand, which was used in construction work on barracks which we were to live in. I figured that if I attempted to exercise my legs they wouldn't be so sore that I couldn't march the six miles back to camp that night. I didn't work much that afternoon, but kept moving and tried to look busy.

Q. Did you receive any medical treatment after this beating?

A. That night, after work, we all went to Major Kosteki (then Captain), an American doctor, and showed him our bruises. There was nothing he could do to help us at the time, although he did give us all permission to remain in bed the next day - said he'd take the responsibility for it. We all stayed in bed the next day, but three of us got out of bed the following day. The only man who stayed in bed was a Dutchman from Java - I don't remember his name. He was removed to the hospital that same night and died within forty-eight hours. In my opinion, the beating this Dutchman received was directly responsible for his death. To the best of my knowledge, both of the other two men came back to the states after we were liberated.

Q. Who ordered the beating?

A. In my opinion, the beating was ordered by Katsura, a three star private, who acted as interpreter and was one of the "big shots" of the camp.

Q. In your opinion was there any provocation for this beating?

A. There was utterly no provocation for this beating, at least I don't see that there was, unless it was because I was going to get water from the pump, which we had been doing for days and continued to do thereafter.

Q. Did you suffer any disability or permanent injury from this beating?

A. No, although my legs are still pretty weak and I suffer frequently from backaches.

Q. Do you know of any other men who could give information in this case?

A. Major Kostecki, Pennsylvania, could give information, also Pvt. Nelson, South Dakota, so could Ackerman, but I don't know where any of these men are at this time. There were from 50 to 100 other prisoners who witnessed this beating, and I'm sure they could help if they could be found, but I don't remember their names.

Q. Do you have anything further to say?

A. No.

/S/ Clem J. Cherne
Clem J. Cherne

WAR CRIMES OFFICE
Washington 25, D. C.

State of New Jersey)
) SS:
County of Monmouth)

I, Clem J. Cherne, of lawful age, being duly sworn on oath, that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/S/ Clem J. Cherne
Clem J. Cherne

Subscribed and sworn to before me this 13 day of AUGUST 1946.

/S/ Joseph S. Smith
Joseph S. Smith, 1st Lt., Inf
Summary Court Officer

C E R T I F I C A T E

I, Joseph S. Smith, 1st Lt., Inf., O-1329998, certify that Clem J. Cherne, personally appeared before me on 13 August 1946 and gave the foregoing answers to the several questions set forth.

Place: Fort Monmouth, New Jersey

Date: 13 August 1946

/S/ Joseph S. Smith
Joseph S. Smith, 1st Lt., Inf.
O-1329998, 108th C.I.C. Det.
Area Intelligence Division
AC of S, G-2
Headquarters First Army
1270 Avenue of the Americas
New York 20, New York

A CERTIFIED TRUE COPY
Claude A. Muzzy
CLAUDE A. MUZZY
CWO, USA.

WAR CRIMES OFFICE
Washington 25, D.C.

R E S T R I C T E D

County of Spokane }
} ss.
State of Washington }

AFFIDAVIT

PERPETUATION OF TESTIMONY OF
HARRY J. FORSBERG
(Civilian Employee at 2nd Naval Air Base)
Clayton, Washington

My name is Harry J. Forsberg. My permanent home address is Clayton, Washington. I am now thirty-four years old. I was formerly an employee of the Second Naval Air Base. I went overseas in June, 1941 to Wake Island and returned to the states in December, 1945.

I was captured on Wake Island on December 23, 1941 by a Japanese Naval unit, the name of which is unknown to me. I was held at Wake Island until October, 1942. I was then sent to Camp 18, Fuoka, Japan and kept there until about September, 1943. I was then transferred to Camp 1, Fuoka and kept there until about September, 1944, when I was sent to Camp 23, Fuoka, located outside a town named Karata. I was liberated about the first of September, 1945.

20b ~~We called Camp 18 the "Death Camp". That was the worst of the bunch. We were under the navy when we first came in for about six months and then the army took us over. At this camp Zgowa Hase would pose as a friend of the prisoners and he would find out what they had been doing and then he would send the guards in to beat them up. Every night when we would come in from work we had what we called the "floor show". They would pick out a group of men and beat them until they were unconscious and then they would throw a bucket of water on them. They had two buckets of water, one to throw on the victim when he passed out and the other to soak their clubs in. This was a continual occurrence every night for about six months. During the time we were in the camp we lost 52 men out of 250. Most of those died indirectly from beatings, starvation and malnutrition. When the army took over they put in their commander - Eka Gombi. The camp did not improve any under him.~~ 20b

The interpreter at Fuoka Camp No. 1 was Capt. Kasura (we nicknamed him Katsio). Do not remember the Camp Commander's name. I saw this Captain in one instance beat the Dutch doctor (name unknown) across the face until it looked like a mass of raw beefsteak. The reason he did this was because the previous day this same interpreter had broken the arm of a prisoner and the Dutch doctor tried to get the prisoner who received the broken arm off from work. Another instance in which he did the same thing was on a fellow from Boise, Idaho. At this time I cannot remember the man's name. He was a large man normally weighing about 240 pounds, about 6' or 6'1". He had dark hair which was turning gray. He was the master

PROSECUTION EXHIBIT 25

Mechanic in our outfit who took Bill Pasetti's place when Bill came back to the States before the war broke out. The interpreter gave him the same treatment for supposedly eating lunch that was taken out to someone else. He beat and threatened workers all the time. He was in charge of workers. He used to sit up in the guard tower and watch the prisoners who were working and if he saw anyone who was not working, he would call the squad leader up to the guard tower, which was about thirty feet high. One time he pushed one of the fellows off the guard tower for not making his squad work. This one who was pushed off the guard tower was a young fellow from Guam - Sonosc Garcia. He also stood him up and beat him on the head with a bamboo club. Beatings usually lasted about an hour.

~~There was a mess sergeant there at Camp 1 - Oke Sun. He would~~ come through the barracks and pick out men at random and slap them for no reason at all.

Another one at Camp 1 - I don't remember his name but we called him "buck tooth". I believe he killed a prisoner there. and he was continually beating the men.

The only bad one I knew at Camp 23 was the medic who was in charge of the medical supplies and hospital. He used to beat the sick men and cut their rations down to where they didn't have enough to exist on. At this camp we didn't get much food and would get an occasional slap across the face but didn't get beat by anyone there other than the medic.

In all camps there were numerous incidents of beatings by guards but since the guards changed very frequently, those incidents were too numerous to mention.

~~The name of the man from Boise, Idaho, was Dick Elliot.~~

/s/ Harry J. Forsberg

State of Washington)
) SS
County of Spokane)

I, Harry J. Forsberg, of lawful age, being duly sworn on oath, state that I have read the foregoing statement consisting of two pages, and that it is true to the best of my knowledge and belief.

/s/ Harry J. Forsberg

Subscribed and sworn to before me at Spokane, Washington, this 24th day of August, 1946.

SEAL

J. R. DOWNIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES FEB. 26, 1947

/s/ JR Downie
Notary Public
Spokane, Wash.

A CERTIFIED TRUE COPY

CLAUDE A. MUZZY,
C.W.O., U.S.A.

PERPETUATION OF TESTIMONY OF
FRANK D. THAYER
(Former Civilian Worker
on Wake Island)
4329 South Grand Avenue,
Los Angeles, California.

My name is Frank D. Thayer. My permanent home address is 4329 South Grand Avenue, Los Angeles, California. I am now 42 years of age.

I was formerly a civilian employee of the Pacific Naval Air Bases, contractors, at Wake Island, where I was the foreman of a concrete plant at the time of the Japanese attack. I was captured on Wake Island on December 23, 1941. My group was left on Wake Island until September 30, 1942.

We were very loosely confined on Wake Island. The food was fair and the treatment in general not bad. We were confined in a small area, including four barracks surrounded by a three-wire fence with two guards at the front gate, but were permitted considerable freedom during the day time.

I recall one incident on Mother's day in 1942 when one of our men was executed. I know this man only by the name of "Babe". He was a man of German descent whose home was in San Francisco. He was somewhat alcoholic and succeeded in getting liquor somewhere on the island, possibly he had been breaking into warehouses. He was caught and given a trial and executed on Mother's Day 1943. There were about forty-five of us who saw him beheaded. The executioner was a member of the Japanese Navy. I cannot identify him except to say that he was in charge of the carpenter shop on Wake Island.

/s/F.D.T.

We went to Yokohama by a Japanese tanker which we called the HOTSI MARU, on Oct. 11, 1942. We were taken by train by Sosebo on the island of Kyushu to Camp 18 where we remained until March 13, 1944. The Japanese Navy was in charge of this camp until Oct. 13, 1943 when they were replaced by the Army.

When we left Wake Island we were given a speech by the commanding officer, who informed us that we had not been prisoners but merely guests of the Imperial Japanese Navy. When we reached the island of Kyushu we found this indeed to be a fact as we were then prisoners and mistreated from that time on. At Camp 18, while the Navy was still in charge, 50 men died through malnutrition, mistreatment and insufficient clothing. These deaths I believe were directly attributable to one Iwasa Haso, who was in charge of the Japanese Guard at that camp. The "Haso" I believe refers to his rank which was approximately that of a C.P.O. in our Navy. He was known by the nick-name of "Haywire". He & "Haywire" was an intelligent, scholarly but very brutal Japanese. He denied prisoners medical care in many instances. Red Cross supplies were diverted and given to the Japanese.

/s/F.D.T.

Julius Maynard Wofmister

PROSECUTION EXHIBIT 26

I know this to be a fact because at one time I stole some of these Red Cross supplies for our own men and was court-martialed for it.

About every 15 or 20 days we were made to stand general inspection by this Igawa. He was in direct charge of the guard and I saw him issue instructions each time we stood inspection to bring the sick men out of the hospital. These men were brought out in cold, miserable, wet weather and laid on the bare ground. Many of them were unable to walk and had to be carried out. Occasionally a blanket would be thrown over one of them but usually they were left exposed to the inclement weather. On many occasions one or two men would die during the night following such inspections and we would have to bury them the next day.

There was a Japanese civilian guard at Camp 18 whom we knew as "Grandma". He was about five feet two inches tall, weighed approximately 110 pounds; about 40 years of age. He had a rat face. He can easily be identified by a scar on the right side of his face. This scar was put there by one of our men. A boy named George had stood his torment as long as he could and one day hit "Grandma" with his shovel, leaving this scar which is quite noticeable.

Secure statement from Robert Lenoist c/o Moser Knudson Co. Inc. Boise, Idaho /s/F.D.T.

During August 1943 I had a carbuncle on my right knee which became swollen and infected. I could scarcely walk. Sick call was at 9 AM. I told "Grandma" I wanted to go to sick call and showed him my knee, which was swollen to twice its normal size. He kicked me on the knee and I went after him until our own boys stopped me. "Grandma" hit me with a shovel on the head, back, hips and legs. A boy named Arthur "Dynamite" from Mountain Home, Idaho, who was a powder man on Wake Island, and Clayton Waldon of Fresno, California, came to my help and we were all beaten unmercifully. This Clayton Waldon was beaten by "Grandma" innumerable times - almost daily.

/s/F.D.T.

About January 20, 1944 at Camp 18 Elbert Knox, age 42 years, and a former carpenter on Wake Island, was charged with cutting up a Japanese army issue blanket for clothing. Ikegami Gosho (rank) was the military officer in charge of the camp at that time. He had Knox thrown in the guard house stripped to his pants and shirt. It was very cold. He was given no food except one salted rice ball a day and no water except about a cup a day. I was one of the group which went to Ikegami asking to take food and clothing in to Knox. We stated that he would die unless he was given better care. Ikegami said "let him die. He has destroyed Japanese government property".

There were about 250 men in Camp 18 when we arrived there. Of these 53 men died, ranging in ages from 21 to 76 years.

We left Camp 18 in March 1944 and went to Fukuoka, sub-camp No. 1, also on Kyushu. There were 200 Americans, 200 Englishmen and 200 Dutch at this camp. The official Japanese interpreter at this camp whose name is ~~unknown to me~~, about 5 feet 5 inches in height, rather plump, weighing about 145 lbs.

Katsuma
/s/F.D.T.

He had spent several years in the United States, in New York, New Orleans and Southern California. He had been a chauffeur in the east and stated that his employers had given him a LaSalle car at one time. About once a month this interpreter would come into our barracks at night very drunk. He would make us all line up, beat us with his fists, kick us and practice Jiu Jitsu throwing us around. He stole our keepsakes and pictures.

A civilian guard at this camp was known as "Bucktooth". He was about 5 feet 8 inches, 160 pounds, with prominent gold front teeth. We were allowed one day in ten to wash, clean up and rest. He would come through the barracks, shouting attention and make us all stand up and salute him. Some men were too sick to get up. "Bucktooth" would jerk them up on their feet and beat them into insensibility. This happened on innumerable occasions.

There is a Captain Kostochi (the spelling is phonetic) an American Army doctor from Boston, who was captured on Bataan. He took copious notes on instances of brutality, which occurred at this camp.

We left sub-camp 1 on Dec. 3, 1944 and went to Camp 23, also on Kyushu, a coal mining camp. We were well treated there until the end of the war.

/s/ Frank D. Thayer

STATE OF CALIFORNIA)
: ss
County of Los Angeles)

I, Frank D. Thayer, of lawful age, being duly sworn on oath, state that I have read the foregoing statement consisting of three pages, and that it is true to the best of my knowledge and belief.

/s/ Frank D. Thayer
Frank D. Thayer

SUBSCRIBED AND SWORN to before me at Los Angeles, California, U.S.A. this 24th day of August, 1946.

/s/ William C Briggs
Notary Public in and for the County of Los Angeles, State of California.

SEAL
NOTARY PUBLIC
WILLIAM C. BRIGGS
L.A. CO. CAL.

My Commission Expires Jan. 31, 1950

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

RESTRICTED

AFFIDAVIT

Perpetuation of the Testimony of BENJAMIN JAMES MARSH, 1732½ Grand Avenue, Santa Barbara, California.

In the matter of atrocities committed at Fukuoka Prisoner of War Camp #18.

STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA BARBARA)

I, BENJAMIN JAMES MARSH, being first duly sworn upon my oath, depose and state that:

My full name is BENJAMIN JAMES MARSH. My present permanent home address is 1732½ Grand Avenue, Santa Barbara, California. I went to Wake Island 30 September 1941, to be employed by the Morrison-Knudsen Company in the capacity of carpenter. I was captured in Wake Island by the Imperial Japanese Navy in December 1941, and remained there until 30 September, 1942, when I was placed aboard a Japanese transport and taken to Yokohama, Japan. From there I was taken by rail to Fukuoka Prisoner of War Camp #18 arriving there 13 October, 1942. On 17 April 1944, I was transferred to Fukuoka Prisoner of War Camp #1 from which camp I was liberated by American Forces on 3 September 1945, and arrived in San Francisco, 18 October 1945.

~~At Fukuoka Camp #18, the Japanese Camp Commandant was a Lieu-~~ tenant by the name of Ikegami. This man stood about 5' 5" in height, weighed 150 pounds, judged him to be in the middle thirties and, it is my opinion from information received, that this man was a fisherman prior to the war. When I first went to Fukuoka Camp #18, it was under the supervision of the Japanese Navy, and on 10 October 1943, the jurisdiction of the camp was then taken over by the Army. Sachio Egawa was second in command in this camp while it was under naval control. He stood about 5' 6" in height, was slight to medium build, weighed approximately 130 pounds and was probably in his early thirties. Egawa could speak some English and he acted as liason between the Japanese camp commandant and the prisoners of war. ~~Egawa had the final saying as to whether a prisoner would go to work~~

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/s/ Benjamin James Marsh

PROSECUTION EXHIBIT 27

Rob ~~or not due to illness or injury. When we first arrived in this camp~~ Egawa told the prisoners of war that he was their friend. By doing so he drew to him a certain number of prisoners who later acted as Egawa's stool pigeons. To show the brutality practiced, I can cite one instance when we first came to camp: There were many sick men in our group and they had been excused from work. Egawa made all of these men line up on the parade ground in front of the barracks, including those who were desperately ill. Then he had them run around the parade grounds. In our group there was one man seventy-one years of age, and two over sixty-five. While this brutality was taking place, Egawa had various Jap guards stand around the parade grounds with clubs and any man who slowed down or fell out of line was severely beaten at Egawa's direct orders. He said his idea in doing this was to force the sick men to volunteer to go to work. This was his way of screening for sick call.

Reference is made to the beating and death of Fred Zay. Around the first of January, 1943, Zay, whose normal weight, conservatively, was 180 pounds, weighed just 90 pounds. He was a very sick man; had no clothes to wear, no place to warm himself, was covered with lice and other vermin, had malnutrition in the most advanced stage, had no control over his faculties, couldn't stand for very long at a time, was told to go to work or he would not eat. This at the direct orders of Egawa. I was not an eyewitness to the beating of Zay, however, I had excellent first-hand information. Zay was forced to go to work at the work site on, what the Japs termed, a light duty job. Zay and other Americans were caught by the Japs picking up onions and other scraps of food from a garbage pile, being as desperately hungry as they all were any slight scrap of food was eagerly grabbed and eaten. I mention this to show that Zay's actions in scavenging was most certainly not unusual among prisoners of war. However, Egawa had taken a certain dislike to Zay because of his inability to work.

Rob

/s/ Benjamin James Marsh

~~and when he saw Zay take the scraps of food Egawa beat Zay with a~~ club longer than a baseball bat. Egawa beat him until Zay's body went limp whereupon Egawa threw water on him to revive him and then continued to beat him all over his body for about an hour and a half. Zay had to be carried back by other prisoners of war from the work site into the camp. Within four days Zay died. I believe that the cause of his death was due directly to malnutrition and pneumonia, and most certainly indirectly to the beating he received from Egawa. The Japs allowed Zay to have no medical care until at the very end and, as a last resort, they gave him two shots of camphorine a Jap drug which they told us was supposed to speed up the heart. Whether this drug was given or not doesn't matter because Zay was so far gone that nothing could help him. I personally prepared Zay's body for burial and he was certainly in a most deplorable condition. We buried him about one-half mile from the camp.

Reference is made to the death of Lester Myers. Lester Myers was a young fellow (I don't know exactly how old he was) but he, in even normal times, would be considered slow-witted. Myers was also very nearsighted and he had lost his glasses, and so, due to the deficiency in diet, his eyesight became worse and worse; in fact, in the end he could hardly see his hand in front of his face. Egawa took a thorough dislike to Myers and as time went on, due again to diet deficiency, Myers became more slow-witted than he was before. Egawa caused Myers to be beaten on several occasions for supposedly infraction of the rules set down by the Japanese until in June 1943, Myers went completely crazy and died soon after. He was to the point where he had to be restrained in his bunk at the time of his death. I would say here again the direct cause of Myers' death was pneumonia and malnutrition, and most certainly indirectly to the beatings he received from Egawa or the beatings given by other guards at Egawa's direct orders. ~~At various times I had seen Myers beaten~~ with bamboo

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/s/ Benjamin James Marsh

20B clubs, pick handles, and rifle butts.

In the spring of 1943, Egawa, through his stool pigeons who were, in most instances section leaders in the camp, discovered that there were certain men in the camp that these section leaders could not control. So one night about 9:00 P.M., Egawa and his guards came into the barracks and ordered these malcontents from their bunks and ordered the guards to beat them in full view of the rest of the camp. I would say there were approximately eighteen or twenty men in this group. After the beating some of these men could not even walk and Egawa allowed no medical attention to be given them because he said they had made infractions of the rules and were not to be allowed medicine of any kind. Also at another time I heard Egawa tell a male nurse in the medical camp who dispersed the medical supplies, what little there were, not to give certain men any medical attention regardless of what was wrong with them. These were Egawa's direct orders and I heard him say it myself. Egawa took violent dislikes to some prisoners of war for apparently no reason and and caused them

20B such suffering because of his sadistic views.

The interpreter in this camp was a man by the name of Tomito Katsura who was a First Class Private in the Japanese Army. He had been born in Galveston, Texas, claimed to have lived in Riverside, California, and had been arrested on a narcotic charge somewhere in Florida. This man beat many prisoners of war until they died. Katsura told me he had been deported from the United States in 1939, and prior to this time he was chauffeur for Mrs. Thayer whose husband is connected with the Bell Telephone Company in New York. In the winter of 1945, Katsura beat a Dutch soldier, whose name I cannot recall, because he had stopped for ten seconds to warm his hands at a little fire the Jap guards had built. Prisoners in this camp were not supposed to have any heat during the winter months. I also saw Katsura steal Red Cross food and medical supplies which he took

/s/ Benjamin James Marsh

out of the camp either to use himself or sell on the "black market." He was also collecting United States money, jewelry, and all types of gold trinkets. Apparently, there was an elaborate spy system and Matsura was aware of who had money, jewelry, and other things of value. He would call the prisoner into the office and demand that he give up whatever it was that Matsura wanted. Among his collections, Matsura had several West Point rings. This Jap would stand 5' 5" in height, squatty build, weight approximately 140 pounds, and was between thirty-five and thirty-six years of age. He could be identified by knife scars on his stomach, also, the skin on his back was blotched much like the fur on a leopard. He spoke very excellent English and used all types of American slang. He also told me that at one time he was a Judo instructor in the States. In August 1944, Matsura broke my ear-drum by beating me with his fists.

This is about all the information I have at this time, however, I will gladly answer any further questions which might come up.

/s/ Benjamin James Marsh
BENJAMIN JAMES MARSH

Subscribed and sworn to before me this day of October 1946 at Santa Barbara, California

/s/ Edward E. Boyles
EDWARD E. BOYLES
1st Lt., Inf.
Summary Court

CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA BARBARA)

I, Edward E. Boyles, Special Agent, CIC, certify that [illegible] JAMES [illegible] personally appeared before me on the [illegible] day of Oct[illegible] 1946, at Santa Barbara, California, and made the foregoing statement concerning war crimes.

/s/ Edward E. Boyles
EDWARD E. BOYLES, S[illegible], CIC

A CERTIFIED TRUE COPY

Claude A. [illegible]

CLAUDE [illegible],
C.W.O., U.S.A.

PERPETUATION OF TESTIMONY OF
LEONARD ROY WARD
(Former Civilian Worker
on Wake Island)
2645 S. Normandie St.
Los Angeles 7, California

My name is Leonard Roy Ward. My permanent address is 2645 S. Normandie Street, Los Angeles 7, California. I am now 43 years of age. I am an engineer by profession and am presently employed by Morrison and Knudson in Los Angeles, California and intend to go to Afganastan in about one month.

I was formerly employed as a civilian operating engineer for Pacific Naval Air bases on Wake Island. I was sent to Midway Island on March 11, 1941 and was employed paving airports. When this job was finished, I was transferred on November 11, 1941 to Wake Island.

On December 23, 1941 I was taken a prisoner on Wake Island by the Japanese together with approximately 1700 including members of the Navy and Marines and other civilians, after the battle of Wake Island. During the battle, I fought side by side with the Marines, bearing arms as did all other civilians on the Island.

Immediately upon capture by the Japanese on December 23, 1941, approximately all of us were interned at the airport at Wake Island for a period of two days without food and water. The entire airport was surrounded by machine guns manned by Japanese soldiers.

Two days after I was captured, we were taken to the barracks at Wake Island which the Japs had surrounded by a barbed wire fence and I stayed there with the rest of the prisoners until September 30, 1942. We were fed poorly at this camp but to my knowledge there was no mistreatment with the exception of a civilian named Babe Hoffmeister. Hoffmeister was formerly from San Francisco and was a civilian member of the roofing crew at Wake Island and was personally known to me. The Japanese claimed that they caught him doing something which was never made very clear to the rest of us and he was kept in jail for two days. The Commanding Officer told us that he had been found guilty after a Japanese trial and that he would be beheaded. On May 12, 1942, they selected 30 of the prisoners to view his beheading. I was one of the prisoners forced to watch. The Japanese dug a grave, put a board down over the hole and made the prisoner kneel down. A Japanese interpreter by the name of Katsumi read the sentence in English which stated that he had been found guilty and that by order of the Japanese Emperor he must be beheaded. The Japanese Officer whose name I do not know, raised his sword and cut off his head. The Officer was a Lieutenant.

On September 30, 1942, I was taken to Yokahama, Japan together with 356 other prisoners, all civilians. We were put in the hold of the ship without ventillation. The Officer told us that they would

PROSECUTION
EXHIBIT 28

turn the blowers on 10 minutes out of every hour, but the blowers were not turned on, except for about 10 minutes out of every 24 hours. We were given a small amount of rice twice a day and a gallon of water for 220 men. We were kept in the hold of the ship for 11 days and were so crowded that we could hardly sit down. After approximately four days of the voyage, we were allowed 10 minutes a day outside for exercise.

Upon arriving at Yokahama, we were taken to a depot and put on a train. For two days and two nights we rode on this train to Sasebol on the Island of Kyushu, Japan. We were very crowded and sat up during all of the time, four men to a narrow seat, and were given a little lunch twice a day.

Camp No. 18 as it was called was located near the town of Sasebol. We arrived on October 13, 1942 and I stayed there until April 17, 1944. The Commanding Officer of this camp was the same as the Commanding Officer at the camp at Wake Island where Hoffmeister was beheaded. But the Commander in Charge was named Izawao "Haso" (rank). He came to the camp about a month after I arrived there. We lived in barracks which consisted of an old cement shed, which was filthy and infested with lice, fleas, mosquitoes and other vermin. We were issued four cotton blankets which constituted our mattress, pillows and bed clothes. There was no medical care, medicine and no doctors and the food was very poor and dirty. We were given a small bowl of rice 3 times a day and one small bowl of watery soup. We were never issued any clothing, although it was extremely cold with snow on the ground and we suffered a great deal from the cold. There was no fire at any time in the barracks and no furniture and many of the prisoners died of pneumonia. We requested the officers in charge on many occasions to change conditions but any time such a request was made, a mass beating was held in the camp and then we were told that they would change nothing because the Japanese were treated much worse by the Americans in their prison camps.

There was a great deal of sickness among the prisoners including beri beri, malaria and pneumonia and at all times we suffered from malnutrition. I have seen men swell up from beri beri as large as balloons and finally burst. A great many of the men died of pneumonia brought on by a weakened condition caused by malnutrition. There were no doctors nor any medical care provided and we were forced to work 12 hours a day even when sick. Many times it was necessary to carry a man out to the field to work who would not have the strength to stand up and he would be beaten if he could not work. If a man could walk, he had to work.

I worked on a dam every day 12 hours a day, rising at 4:30 in the morning. We had breakfast at 5:00 and at 5:30 we were put on the parade ground for exercise and at 6:00 we started work.

I was working at the rock crusher and at one time worked 33 hours at a stretch without stopping. Many of us worked 30 hours at a stretch.

This camp was famous for its mass as well as individual beatings. I received approximately 100 beatings while I was at this camp. We were beaten with all kinds of instruments, particularly a pole about the size of a baseball bat which narrowed at the ends and which

called a poyo [illegible] was beaten so badly at [illegible] could scarcely walk, as were the others. The excuses they gave for these beatings were varied and often no reasons were given at all. For minor infractions by one member of our group, we were all beaten or forced to stand on the parade ground for hours at a time.

Whenever the Japanese lost a battle in the Pacific, we were all beaten or whenever one member of our group did anything wrong, we were all beaten. I have received as many as 3 beatings in one day and so did the other members of my squad.

On February 14, 1943, the Officer in Charge accused our squad of losing one blanket. We were forced to stand at attention one whole day without food or water, and thereafter everyone received a beating. It was later discovered that a blanket was missing. On various occasions we were forced to stand two or three hours at a time because of something one of the members of the group did.

Out of Camp 16, approximately 71 died between October 13, 1942, and April 17, 1944 mostly from pneumonia caused by malnutrition.

Yamaguchi, the Navy "Honsho" was the Officer in Charge of Squadron 4. He heard from some source that one of the squadron said he was crazy. Every day he would line the squadron up to get a confession as to who made the statement but no one would admit that any such statement had even been made, but they would be beaten just the same.

A civilian "Honsho" by the nickname of "Grandma" was in charge of Squadron 7. He almost daily lined up the men and beat them for reasons which most of the time we never knew.

Moya, one of the Navy guards who I believe was a private, did much of the beating. One of the prisoners, a Mr. Thomas, a civilian, was old, sick and weak. He was unable to work and I saw Moya come over to him and heard him tell him that he was old and would die anyway and saw him kick him in the face and stomach until he was unconscious. He died shortly afterwards. This occurred in February or March of 1943.

In 1943, for Christmas, 204 of us received one Red Cross parcel for all of us but we never received any other parcels.

On October 10, 1944, the Japanese army took over the Camp although the Navy supervised our work. The rations were lower and the Commanding Officer was called Ikegami "Shoio" (rank).

One day a civilian by the name of George Dillon was feeding rocks into the crusher with a shovel. I saw "Grandma" strike him with a bamboo pole. He lost his temper and struck "Grandma" over the head with his shovel and injured him badly. The guards took Dillon to the camp and all of them received a beating. Dillon died in a penitentiary at Fukuoka.

~~I do not know the names of any of the guards who were over me,~~

~~because each month they were transferred from one camp to another.~~

A man by the name of Fu was in charge of the kitchen and he always helped beat the prisoners. The Japanese government would allot 50 bags of rice for the prisoners and he would feed us 20 and sell the other 30 at a profit.

In February 1944, a man by the name of Knox, a civilian, was accused by the Japanese of cutting up a blanket out of which he made mittens. He was put in jail and all of his clothes but shirt and pants were taken away from him. He was locked in the jail without a fire and given one rice ball a day. All the buttons were cut off his shirt and pants. We told Ikagama if they didn't give him more food and clothing he would starve or freeze to death. Ikagama said that he didn't care if he did die and that's what he wanted to happen. 13 days later Knox died. We went into the jail and took him out. His body was frozen stiff.

Igawa "Hus" took over Camp 18 and said he would try to get more food for us but he did nothing, in fact, our rations were lower. He administered many beatings and was responsible for most of the ones that we got having ordered them all. I heard that he later was sent to Nagasaki where he killed a man.

Out of the 245 at Camp 18, only 132 were left alive.

On April 17, 1944, we were taken to Fukoeka Camp No. 1. The Commanding Officer's name was Sakamoto "Chucy" (rank). I had beri beri at the time and was given a job in camp. Living conditions were no better but they had no more mass beatings. Hata, a nurse there, forced me to work while they were ill and when they could not get up to work because of illness, he beat them.

~~There were many Dutch and English men in this camp.~~ On January 30, 1945, a Dutchman whose name I do not know, was not working fast enough to suit a guard named "Blackie". "Blackie" beat him with a club until he was unconscious and he later died.

I suffered no mistreatment other than occasional beatings at this camp but I saw other prisoners who were beaten for minor infractions of the rules. An interpreter by the name of Ketsur administered a number of the beatings to other prisoners.

The two occasions on which I was chosen for individual beating was once on July 6, 1943 at Camp No. 18 when Igawa accused me with others of trading with the Japanese coolies. Although none in the squad had been doing so, some in the camp had, done some trading and I was accused of doing so together with several others. I was beaten by Igawa with a club.

On February 15, 1944, when I was dishing up rice for members of my squad "Grandma" of Camp 16, beat me with a club because I was not dishing up the rice fast enough. He beat me so badly that he rendered my arm useless for sometime thereafter. _____

Many prisoners received skull fractures, had their teeth knocked out and received innumerable bruises and cuts from beatings administered with clubs, rifles, swords, etc. At Camp 18, we were beaten at least twice a week and on one occasion I received 3 beatings in one day. In both camps, disease ran rampant, particularly beri beri, malaria and pneumonia. Out of the 245 prisoners who went to Camp 18, only 132 stayed alive, the rest mostly died from malnutrition which led to pneumonia and from injuries received from beatings. I did not weigh more than 100 pounds when I was finally liberated.

On September 15, 1945, all of the prisoners who were working out of the camp were brought into camp by the guards. We thought that the Americans had invaded the Island but did not know that the war was over. The Japanese told us nothing but the guards no longer restricted our movements and on September 15, 1945, I boarded an American plane and left the Island.

/s/ Leonard Roy Ward

State of California }
County of Los Angeles) SS

I, Leonard Roy Ward, of lawful age, being duly sworn on oath, state that I have read the foregoing statement consisting of five pages, and that it is true to the best of my knowledge and belief.

/s/ Leonard Roy Ward

Subscribed and sworn to before me at Los Angeles, California, U.S.A. this 16 day of September, 1946.

/s/ George M Bryant
Notary Public in and for the County of Los Angeles, State of California.

(SEAL)
GEORGE MARION BRYANT
NOTARY PUBLIC
LOS ANGELES
CO, CAL.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

Buffalo, Oklahoma

C O P Y

September 25, 1946

Subject: Crimes and Atrocities Committed by Japanese on American Prisoners of War

To: Paul Geissler, Representative
Veterans Administration
323 Federal Building
Enid, Oklahoma

1. At request of War Crimes Branch of Judge Advocates Office, I should like to submit the following information concerning my knowledge of Japanese atrocities committed against American prisoners of war.

2. This information is true and correct and it is hoped it will be of use in punishing those who have ruthlessly committed the atrocities.

A Japanese sergeant, named Hihara, in charge of the farm at Cabanatuan Prison Camp in the Philippines, has beaten many American Prisoners I myself was beaten mildly but many were beaten more severely for no reason at all. Many times when an interpreter was not available prisoners were beaten merely because they didn't understand the orders. A three-star private, whose name I don't recall, was in charge of the tool house. He beat Lieut. Sidney DeBriere, of Second Observation Squadron, most severely, kicking him in the face and knocking out some teeth. All prisoners were so weak and undernourished, which made such an act even more cruel than were it committed against a stronger and more healthy individual. Lieut. DeBriere, at that time, had one eye removed due to ulceration caused by Vitamin A deficiency. Lieut. Colonel Biggs, a Naval Ensign, and a Lieut. Colonel Brighton from Salt Lake City, were caught attempting to escape one night at Cabanatuan. They were beaten, turned over to a Judo expert who proceeded to break arms and beaten wholesale. The next day they were left tied up at the main gate all day, marched out that evening to a hole prepared by an American detail and were shot, standing by their grave.

The Death March out of Bataan is well known. Also the years of starvation with no medicine or comforts. Two individuals, who especially deserve punishment, are a Japanese Lieut. Toshino and a civilian interpreter, Mr. Wada. These two were in charge of the Prison ship that left Manila December 13, 1944. We were crammed into a small hold on the Oryoku Maru on decks that would not permit standing and no room to lie down. We were given no water or food after the first evening. American planes bombed and strafed the ship; Prisoners were frantic, insane, and dying of thirst. Many drank urine, some tried to suck blood from the wounded and dead. Latrine buckets were overflowing and yet the Nips kept threatening to shoot down the hold and cut off our meager air supply if we didn't quiet the crazy. Many prisoners committed suicide, some were killed by Americans and thus quieted, to keep the Jap from shooting down the hold. Of the 1619 prisoners that started on the voyage, less than 500 arrived at Moji Japan, January 31, 1945. Here again no medicine or food was furnished. The prisoners were divided and sent to various camps. One Hundred Ninety four of us were taken to Fukuoka Camp No. 1. ~~Of these 56 died before April 25, 1945. Two more died after we were taken to Jenson, Korea.~~

PROSECUTION EXHIBIT 29

C O P Y

At Fukuoka, A Japanese Sergeant Katsuri was very cruel to prisoners. This sergeant had spent much time in the United States before the war, spoke good English, but was mean by nature. A Major Raby of Veterinarian Corps was made to stand by the guard house all night during extremely cold weather. Beatings were a specialty with Katsuri. English and Dutch prisoners were his favorite victims.

It is well known that Japanese would not give us Red Cross parcels sent to us from the States. They would rob packages of cigarettes, food, etc. They denied us the bare necessities of food, medicine, clothing and warmth. According to General Wainwright, in his recent address at Oklahoma City, less than 25 per cent of the prisoners taken at the fall of Bataan and Corregidor lived through imprisonment.

Personally, I think Japanese Commanders in charge of the various prison camps are largely responsible for atrocities committed by those under them. Stories I have heard of the treatment in many camps in Japan also sound believable, knowing the Japanese as I do. Undoubtedly these should be investigated. Men held at Fukuoka Camp No. 17 have bad reports on treatment received there.

I should like to say that a Japanese officer, Lieut. Asobi at Jensen, Korea, during the last months of the war was a most understanding Japanese. He was definitely of a higher type and tried very hard to run his prison detachment in a business like fashion. This officer once slapped me as an offender, and punished others for misdemeanors, but nevertheless he was admired for his principles and efforts.

/s/ William J. Fossey
William J. Fossey, 0-411956
Captain, A.U.S.

STATE OF OKLAHOMA)
) ss.
COUNTY OF WOODWARD)

Before me, the undersigned, a Notary Public, in and for said County and State, on this 1st day of October, 1946, personally appeared William J. Fossey, Captain, A.U.S., to me personally known and known to me to be the identical person who executed the foregoing statement, and acknowledged to me that he executed the same as his free and voluntary act.

Witness my hand and official seal the day and year last above written.

/s/ Helen Haller
Notary Public

My Commission expires May 31, 1949

(SEAL)
HELEN HALLER
NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA
WOODWARD, OKLA.

A CERTIFIED TRUE COPY

CLAUDE A. MUZZY,
C.W.O., U.S.A.

RESTRICTED

STATE OF Washington

COUNTY OF Spokane 17 October 1945

AFFIDAVIT

I, Edgar Franklin Burns, now residing at E. 1012 14th Street, Spokane, Washington, after having been duly sworn according to law, depose say that the following information is true and correct to the best of my knowledge and belief:

I worked as a dredge carpenter on Wake Island before we were captured. After we were captured we were kept on Wake for about nine months. We were treated pretty well altho we were worked all the time.

We were taken to Japan in a boat called the Koko Maru. The trip was terrible. They put 365 of us in a little tiny hold. There was just room for everyone to lie down. They had blowers but they didn't run them. They would only turn them on when the men started passing out from the heat. We imagine that we went by way of Kwadjelein as we were in the tropics most of the trip. We left around the first of September 1942 and arrived in Yokohoma Harbor on the 13th of September 1942. They would only give us one teakettle of water a day for a squad of 15 men, and they had alot of fresh water on the boat. They didn't beat anyone on the ship.

~~I was only in two camps. The first camp that I was in was~~ Fukuoka No. 18. As far as the accommodations at these prison camps were concerned, I was never at a decent camp. Camp No. 18 was about one of the worst camps. They moved us in an old cement shed away up in the mountains where they were building a dam. There were 250 of us in this small building. The building didn't have a floor and was terribly dirty. We arrived at Camp No. 18 the 14th of October 1942 and stayed there for eighteen months. Most of our fellows died there. We lost thirty-five men in March 1943. We were divided in groups of twenty men. In March 1943 we lost six of our group. They all died of pneumonia. The Japanese worked us terrifically long hours. One time they worked us thirty-six hours without sleep. We worked in a rock quarry. On the job we worked under the Japanese Navy as it was a Japanese Navy dam which we were building. After we finished our day's work we were turned over to the Army who fed us and took care of us in camp. The Japs were always trying to trade us out of something. One of the Japs wanted a piece of an American Army blanket to make something. One of the fellows cut up a piece of a Japanese Navy blanket and gave it to a Jap. He happened to get a piece that had the Japanese Naval anchor on it. He was thrown into prison and was left there for ten days without hardly any food and no clothes or blankets. He died there. In this prison you had to crawl into the cell on your hands and knees as you couldn't stand up. They would throw you in there and take all your clothes except a pair of pants and one shirt. Then they would ~~cut you down to one rice ball a day.~~

We moved from Camp Fukuoka No. 18 to Fukuoka No. 1 on April 18, 1944. The first time I saw Kastura was at that time. He was acting as interpreter that day for the camp commander, Sakamota. In my estimation Kastura was one of the most treacherous and brutal of all the Japanese guards. He was a three star private. He was about 5'5" tall, weighed between 170 or 180 pounds; was thickset, very muscular and blocky. He spoke English very well. He wasn't American born, altho I understand that he lived in the U.S. for awhile, first with an Uncle in Texas and then he went to New York. I think that he was 17 or 18 when he returned to Japan. He spent a large portion of his life in the U.S. He was in the habit of coming down to our huts and talking to us. You couldn't trust him a second, as he would turn on us and beat us over nothing. We knew that we had to treat him decent.

PROSECUTION EXHIBIT 30

After we had been at Camp Fukuoka No. 1 for about a week, cleaning up the camp, they started us out on this job working on the airport. This was about the first of May 1944. They had us pushing cars on tracks and we were working in a cut getting the dirt and pushing it out on the airport and levelling it off. Kastura came out and was driving Otto Lulieck of Newport, Washington. He was trying to make him work faster. He took a shovel and hit Lulieck over the head and knocked him down.

He particularly disliked the Dutch prisoners of war that came from Java. They were half-caste, half Javanese and half Dutch. He would give them terrific beatings. Kastura would get out where the Dutch were pushing these big cars of dirt, and would take a big stick five or six feet long, and he would run up and down along these tracks beating the Dutch with this stick until they were practically unconscious. He would just seem to go mad and would start beating them and did not stop. I don't know of my own knowledge that he was directly responsible for any deaths as a result of these beatings.

One night in November 1944, a fellow by name of Bill Ryan from Portland, Oregon, lit a cigarette. This was at about midnight. Kastura and another Jap army guide came down in our hut. There was about 80 of us in the hut. They got everybody in one end of the hut out of bed -- tore everything off the shelves and the beds and went through all the personal belongings, hunting for matches. They started beating up on Ryan. Kastura must have knocked Ryan down fifteen or twenty times and a man by name of Bly Wilcox (also from Oregon) received the same treatment. Kastura and the other Jap beat up Wilcox and Ryan for about three hours and finally left and went away.

Colonel Saunders tried to get Kastura to intercede for us with the commandant, Sakamota. Kastura was responsible for much of the filching of Red Cross supplied. Apparently some of the prisoners had got the diarrhea from eating the meat in the Red Cross supplies. When the Red Cross supplies came into camp, Kastura got the commandant to remove all the meat (spam, etc.) and put it in the cookhouse. Kastura had complete charge of the cookhouse. He was known to have a large amount of corned beef, spam and cigarettes in his own quarters. I worked in the kitchen for awhile and Kastura would come in and bring his own beef to have the cook fix it with eggs. It was generally conceded by the prisoners of the camp that Kastura had got ahold of all the American money available -- approximately $6,000.00. He had procured it by selling better jobs for money. Such as, giving the men jobs working as mechanics where they would have contact with the Koreans who were friendly. I got my job in the cookhouse by paying fifty American dollars to Kastura for it. I held this job for two weeks and then someone else bought it.

When we were building the new camp in December 1944, Kastura was running the job and he passed out some terrific beatings and had some of the other guards pass out beatings. At Camp No. 1 there was one civilian guard called the "Snake", and he was very malicious. He gave me several terrible beatings.

Kastura had it in for an American named Benjamin J. Marsh of Inglewood, California. At Camp No. 18, Marsh had served as an interpreter for the Japanese. When we moved to Camp No. 1, Kastura learned that Marsh had quite a little American money and he tried to get it away from Marsh. One night I saw him knock Marsh down and beat on him for about one hour with his fists. Also, one day shortly before the end of the war, he caught Marsh cooking some beans in a messkit. Since this wasn't "kosher", he was going to hit Marsh over the head with an axe, but he didn't and proceeded to hit him over the head with a stick.

one night I had a little fight with one of the men in my squad whose last name was Sherwood. Kastura saw me two days later and wanted to know where I got my black eye. He told me to come over and see him that night. That night he left word for me to come over to his office. He had also sent for Sherwood and Bill Ward who was the Adjutant of my section. Kastura hit me very hard and hit Bill Ward several times. This Sherwood was a little skinny guy and Kastura hit him over the head with a club and he just kept hitting him with it.

No one in my camp ever tried to escape except one fellow who was crazy. He just walked out of camp and they picked him up downtown. He was returned to camp and they put a big mark on his back which was to designate that he was crazy. We all were made responsible for him with threat of severe punishment if anything should happen. If anyone escaped in the Fukuoka Camps, they were sent to a prison in Fukuoka where they kept regular Japanese prisoners. They brought one man to our camp who had been in prison in Fukuoka for over two years. Practically all the other Fukuoka camps were coal mines.

/s/ Edgar Franklin Burns
EDGAR FRANKLIN BURNS,
1012 14th Street,
Spokane, Washington

WITNESSES:

/s/ Robert L. Ryser
ROBERT L. RYSER

/s/ Delia E. Krause
DELIA E. KRAUSE

Subscribed and sworn to before me this 18th day of October 1946.

/s/ Vernon E. Mansur
VERNON E. MANSUR,
1st Lt., Air Corps,
Summary Court Officer.

CERTIFICATE

STATE OF Washington

COUNTY OF Spokane

I, Robert L. Ryser, certify that EDGAR FRANKLIN BURNS personally appeared before me on the 18th day of October, 1946, at Spokane, Washington, and made the foregoing statement concerning war crimes.

/s/ Robert L. Ryser
Robert L. Ryser
Special Agent, CIC, 6th Army

A CERTIFIED TRUE COPY

Claude A. Huzzy

CLAUDE A. HUZZY,
CWO, USA.

On this twelfth day of June one thousand nine hundred and forty six Peter Russell French, of "Murungha" Carroll Gap, in the State of New South Wales, grazier, makes oath and says as follows:

i) My former military status was:

No. NX.32834
Rank. Sergeant
Unit. 2/20 Bn.

ii) I was captured on SINGAPORE on 15 FEB. 42.

iii) On the ninth of September 1944 I was transferred to Fukuoka Camp No. 1 in Japan, where the undermentioned events took place. I was at this camp until I was liberated.

~~iv) HATA MATSATO was a medical orderly in Fukuoka Camp No. 1.~~ and was responsible for physical training in the camp;

v) During the winter months, December 1944, January and February 1945 we had to do physical training daily.

vi) S/Sgt. SIMS was suffering from a chill in the stomach. SIMS told HATA MATSATO that he was ill, but was told to go on parade. As he made his way on to the parade ground HATA MATSATO started to bash him with a stick.
S/SGT. SIMS was unable to carry outthe physical training and HATA MATSATO bashed him again with a stick.

vii) On numerous subsequent occasions, S/Sgt. SIMS was bashed by HATA MATSATO for not being able to do the physical training.

viii) Approximately six weeks after he received the first bashing, S/Sgt. SIMS went to hospital suffering with berri berri, from which he did not recover.

ix) After the capitulation of the JAPANESE, I, with a party of other soldiers discovered a large quantity of Red Cross supplies consisting of M & B tablets, quinine, sulphanilimide powder and vitamin tablets.

/s/ J W Collins Jr.

/s/ Peter R. French

PROSECUTION EXHIBIT 31

Sugamo Prison
Tokyo
20 May 1946

I, Takeo Kataure, now at Sugamo Prison, Tokyo, Japan, formerly residing at Kagoshima Ken, Oshima Gun, Mikatasan, Asani, Japan, do hereby affirm that according to my conscience, I will speak the truth, adding nothing and concealing nothing.

I am 39 years old (Japanese age). I was interpreter and soldier /s/ T.K. guard at Fukuoka Prisoner of War Camp Number 1, from November 1942 to 6 Sept 1945. I ate Red Cross Food Supplies on at least 20 different occasions. Sgt. Kiyohara, the Medical Sergeant gave me Red Cross Milk. I have consumed /s/ T.K. Red Cross cheese, cold beef, chewing gum, cigarettes, coffee. and a few other items the names of which I cannot remember.

I don't remember the name of the Dutchman, whose rib or ribs (I am not sure whether it was more than 1 rib) was or were /s/ T.K. cracked when I pushed him at Mushiroda in the autumn of 1944.

/s/ T.K.

I knocked an American Prisoner of War unconscious about July 194 with a blow to the chin with my fist when he stole some tea. I do not remember his name. He weighed about 150 lbs and was about 5'5" tall. He was about 2 inches taller than me.

/s/ Takeo. Kataura

39930680
/s/ T/4 George N. Shimian Hq Det. Sugamo Prison - APO 181
WITNESSED BY

/s/ J Deitch Capt F.A.
Legal Section GHQ.SCAP.

A CERTIFIED TRUE COPY:

Theodore R. C. King

THEODORE R. C. KING
Major, Inf.

PROSECUTION EXHIBIT 32

Sugamo Prison
Tokyo, Honshu
Japan
20 January 1946

I, TAKEO KATSURA, formerly Superior Private in the Imperial Army of Japan, at present confined in Sugamo Prison, do hereby affirm that, according to my conscience, I will speak the truth, adding nothing and concealing nothing.

I am of Buddhist faith. I can read, understand & speak English having resided in the United States from 1927 to 1938. I was camp interpreter at Fukuoka area Prisoner of War Camp Number One from December 1942 to September 4, 1945. In addition to my duties as interpreter I had other duties. I wish herewith to tell you of conditions at this camp while I was there and have freely and voluntarily requested that I be allowed to do so in my own handwriting.

In March or April, 1943 at Kumamoto, the Camp Commandant Sakamoto ordered me to hit an Englishman called Newman.

When I hesitated to do so, he ordered again to hit, so I slapped him in the face once, then he ordered to hit more and I slapped him once again.

This was the first time I had ever hit a prisoner. Sergeant Major Kakuyama and Sergeant Tomata were there also, at the time.

Newman was put in the guard-house cell. He was accused of stealing some money from other prisoner All other prisoners about 17 or 18 of them who were in the camp that day on the camp duties were questioned later by the commandant and when they told him that they did not know anything about the money they were all put in the guard-house cell. Sakamoto said to the men "I put you in the cell without food till you will confess"

They were in the cell without any food for about 24 hours. In the following morning Newman told the commandant that he he had taken the money. He was slapped in the face/ a few times by Sakamoto and all were released. Afterward, Newman told me he did not take the money, but he ~~did-so~~ said he did in order to let all other men out from the cell. Then I said to him "Shall I tell this to the commandant?" and he said "no, please don't". I did not mention this to the commandant, because I know that it will get those men more troubles ~~ee~~ especially Newman.

In December 1943 or January 1944, at Kashii Camp, 7 or 8 men were brought back to the camp from the working party, by a contractor's man who said that those men refused to work. The men were lined up in the front of the guard-house and the commandant asked them why did they refuse to work? An Englishman called Chilton who were in charge of the group said that they never had refused to work. So Sakamoto again asked the contractor's man to make it sure that those men had really refused and the man said "Yes they refused to work".

Again Sakamoto asked those men "why did you refuse to work" Chilton said that they never refused. Right then Sakamoto said "you are a liar" and kicked him in the stomack. Chilton fell on the ground and were kicked twice more and he was unconscious. Sakamoto picked him up, revived him and ordered other prisoners to carry him into the hut. Chilton lay down in the bed, I asked him how he felt and he said he was alright.

The other men were hit with a stick in the sholder twice each. I do not remember whether they were put in the guard-house cell ~~or~~ sent out to the working party. Sergeant Hozumi was there too.

While we were at the ~~at-the~~ Kashii, five or 6 men were brought into camp by the guard. They were accoused of going into a Korean houses and begging for some rice whilist on the working party. They were hit a few times each in the sholder by the commandant and confined in the guard-house cell for three or four days with a half ration.

In the Mushiroda Camp, in the summer of 1944, while I was on the watch tower at the working party, SAKAMOTO he came round for inspection and as he climbed up the watch tower he shouted at me. "What the hell ~~?~~ are you doing here,

PROSECUTION EXHIBIT 33

you cannot watch those men sitting down. Look over there, they are not doing anything. [illegible] hit them, so I went down [illegible] the tower and when I started to work toward the men, he shouted "Take the bamboo pole behind you and hit those men who are standing there." I hit them two or three times each on the shoulder, but I did not hit them hard. I stayed with the men till the commandant went away then I returned to the tower.

The commandant use to keep me on the tower with a field-glass. My duty was to stay up there from 7:30 in the morning to 5:00 in the afternoon and watch prisoners work and whenever I fined any person who don't work hard go and hit them. But this order was not carried strictly by me, because I thought it was not right to do as that.

The same sort of thing ~~happened once more~~ as I have mentioned above had happened once more on other working party, but I do not remember the name of those who were hit.

They were dutch men.

Every now and then the commandant took me to the working party for inspection.

On working party he use to tell the guards to hit anybody who does not work hard, but I cannot recall who those guards were. Sometimes they were civilian guards and sometimes they were soldiers who came to the camp for guard duties from other regiments.

Since Sergeant Kiyohara came to our camp in March or April 1945 I saw Kiyohara and Hashimoto drinking the red cross milk several times. They offered me to take some so I drank it two cups thinking it was given to them by one of the prisoners. One day in June or July I was called to the M. J. Room by Kiyohara. There were a dutch doctor and an American doctor with Kiyohara and Hashimoto. Doctors told me that they had asked Kiyohara to give them ~~these~~ their milk and butter that ~~Kiyohara~~ were kept in the M.J. Room store and when Kiyora gave the box contained the milk and butter they told him there should be more, but Kiyohara said that was all there were. They could not understand each other well so they sent for me.

The duch doctor who were keeping the record of those, whenever he were issued with them said that about 75 small cans of butter and more than 30 tins of milk were short. Kiyohara said to the dutch doctor that some of them had already been issued to the men and demanded the dutch doctor to bring and show ~~the~~ his record.

The doctor brought a lists which were writen on a few empty cigarrets packets and showed to Kiyohara but they were not clear. The american doctor and myself tried to straiten it up but it was difficult to read the figurs writen with pencil. The dutch doctor still said they were short. Kiyohara gave a hell to the doctor when he could not give a clear record of them. I told Kiyohara "This is bad" then he said that those milk and butter were in his charge and so he can use them whenever he wanted like other Japanese army medical supplies.

I said "I don't think so, they were handed to M. J. Room by the commandant to keep in the M J. Room store and issue only to the sick men whenever the doctor wanted to issue."

Kiyohara did not think so. I could not say any more, but I told all about the matter to Sergeant-Major Tomita who was in charge of all red cross supplies. While I was in the office with Tomita Kiyohara came in and he asked Tomita about the matter and Tomita said "What Katsura had told you was right" Kiyohara said he did not think so, and at this moment I walked out of the office so what happened afterwards, I do not know.

On the same day I told Hashimto "You should not drink the milk belong to the Prisoners" and he said "Well I am only a private soldier like you are, I can't help, I am doing just what I am told to do" I did not say any more.

The red cross supplies were kept in the store for a long time, sometimes three or four months or even longer and were issued by the commandant or by Tomita a litte by little.

Many times the officer went to the commandant and asked for the supplies

but they were not issued. I remember the commandant at the time said that he was in charge of the supplies and he only issue them when he wanted to.

One time Colonel Sunders went to the commandant and asked him to issue the food stuff because many men were sick and some were weak if they get them they will help those weak and sick a lot. The commandant said if I issue them, the men eat too much of those stuff at one time then they get diarrhoea and don't go out to work. They had to ask many times before they could get those supplies, even then they were issued a little by little, and the prisoners were dissatisfied because while there were so much supplies in the store they could not get them.

Sometimes the commandant said it was the order from the main camp that is preventing him from issueing the supplies.

Many clothings and shoes and medical supplies were kept in the store all the time and were issued little by little. Some men were wearing a worn down and torn shoes and TABI (shoes that Japanese labour and farmers wear) while there were so many of them in the store.

The prisoner doctors were complaining about the Japanese doctor and commandant withholding the medicine while they need them badly. They know that there were 3 or 4 large boxes of them in the store. (This was at Hakozaki Camp in 1945)

One time the American doctor asked Dr. Danno for those medicine in the store and Dr. Danno said that he cannot issue them till he got futher order from the main camp.

Later the American doctor told me "Mr. Kateura, there are so many man sick and some are dieing and I cannot get those medicin, there is such a good medicine for pneumonia in those boxes in the store". "If I could only get them now, I could probably save some of those men's life"

I asked doctor Danno about issueing the medicine but he said he has been ordered by the main camp not to issue them. Those medicine were for imergency. They were keeping them so that in case they get an air-raid and cannot get any more medicine, then they can use them. I went to Dr. Kostecki and ~~to~~ said to him "DR said no, he can not issue them now". "I am sorry doctor I wish I were the doctor or the commandant then I would give you the whole thing right now, but being a private soldier I cannot do anything about it."

The doctor said "I know"
Dr. Kostecki was a very good doctor. He was working very hard night and day I think if it were not for him many more men would probably have died.

I did not know who were really responsible for all these, but I thought the withholding of those medicines while so many men were sick and dieing one by one every day was really a crime.

When the war was over in August all those food stuffs, medicines, clothing shoes and other supplies were taken out of the store and issued to the men.

There were many porcinles of food stuffs, more then a hundred pairs of shoes and that three or four boxes of medicine. When I went to the M. J. Room and saw the medicine bottles and boxes they had taken out of the large boxes, I was suprised to see so much of them. I thought it was enough to open a ~~little~~ small hospital, and I still wondered why did they not issued them before.

~~I do not remember of Honda seeing Honda beat anybody.~~

I did not see Honda beat anybody, but heard from Dr. Kostecki that Honda hit somebody in hospital I do not remember the name of the person who were hit.

I did not see Hata beat anybody, but I saw him carrying a fancing stick and walking around the men while they were exercising.

~~I did not see H-~~

I saw Horum[redacted] prisoners a couple of time, [redacted] they were dutch men, it was on the working party but saw it from a distance I can't tell why these men were hit.

He was in charge of whole working parties when we were at Mushiroda and the guard and myself included were working under him.

I remember that he use to make prisoners work till late at night. Several times he made them work till ten or eleven o'clock at night in the rain. I remember some of the men complaining about it and when I asked them "Shall I tell the commandant" They said "no"

I did not tell these things to the commandant because they only caused more troubles.

Whilist on the working party, one day, the commandant came round and crimbed up to me on the watch tower and seeing some of the dutch party letting the cars go down the hill instead of holding them and letting them go down slowly, he said do not let them do that, if they don't obey them hit them. I said "yes sir" and I went to them and told not to let cars go, The commandant is watching from the tower" then I came back to the tower. He was still there. He stayed there for a while and went away. Then later when I went to the place, I heard some one shout I "look out" and when I turned I saw a few man had let the car go and those men were who were below were almost got caught between two loaded cars and had made a narrow escape.

I got mad because a little while ago I told them not to do it, and not only that, they knew that two men had already caught between those tracks and had broken their legs before I asked the men why did they let his car go that way and one of them said it was heavy and the party commandant told them to let it go.

So I pushed him with my leg behind his leg and he fell on the ground. I lifted him up and he said his side hurts I saw it but I could not see any wound.

I told him to rest. I told him I was sorry because I did not meant to hurt him. He said "I know" Later in the camp I learned from the doctor that one of his ribs were cracked or broken. He was in his bed in his hut and I saw him and again I told him I was sorry and apologised to him. After about two weeks he got well.

While he was in the bed I went to farm house and bought some eggs and gave him several times beside given some of my food and some left over rice from Japanese cook house and I took good care of him and I was forgiven by him.

He told me that he did not tell the doctors about me but some of the men had told it to doctor

Later I was called to the commandant's office where Japanese doctor was with the commandant.

The commandant said, "I hear that you have hurt a prisoner, what happened." So I told the story

I said I did not mean to hurt him. I only tried to prevent accident but unfortunatly hurt him.

He said "Be more careful in the future" "You may hit them if they disobey but do not hurt them"

We use to make some tea at the working party and issue it to the men a cup full each at meal time and also between the meal. Sometimes there was not enought of it and had to give only half a cup full each each.

There had been some complaints from the men about some one had been stealing the tea. One day, when I walked to the the fire place I caught a man stealing the tea. He had filled his cup as well as his two water bottles and he was doing it while other men were working. I thought to scold him and let him go, but right then a guard came round and asked me "what happened" so I said "Oh! Nothing" the guard said "Stealing tea again" and walked away toward the watch tower saying "Report it to the commandant"

So I hit him [redacted] jaw, because now not only [redacted] guard knew about it, but another guard was watching it from the tower, I had to do it rather than to take him to the commandant which meant for the man slapping, hit and then the cell, probably with half a ration or no food at all or stopping of the tea issue to all the men on the working party.

There were a quite number of men who were put in the cell during those years but they were all taken to the commandant by the guard or other Japanese and I swear that none of them were ever taken to him by me. The men who were put in the cell were usually hit by the guard before he they were taken to the commandant. (I did not see the guard hit them but heard from the man)

The commandant hit them sometimes with a fancing stick while he he was questioning them then put them in the cell every time, and this was bad enough but what was worse was that the guards were taken them out from the cell in the middle of the night and slapping them after the commandant had gone home and the camp staff gone to the bad.

Those guards were the soldiers who came from other regiment for the guard duty. They stayed only a month in the camp and changed with the guard from a different regiment and I do not know the name of any of them because I never associated with them. They did not like me. They thought I was too friendly with the prisoners and doing too much favors for them. I was disliked not only by the guard but also by the camp staff.

When Hata was sent away to other regiment, he wrote a cards to every man in the camp excepting me. I was really disliked by them. There is a man named Sakagami who is confined in this prisoner and who was with me in No 1 camp for a while, so you can ask him about me. I think he knows I was not liked by the Japanese staffs

When I was sent back to my old regiment. I did not even say a good bye to them. I just walked out.

During those three years of my stay in the camp I met with more than a thousand men, some going out and some coming in. but I could not please all of them but I am sure that the most of them especially those who were sick, weak, and old aged know how I tried hard to help them under the circamstances. I admit that I have slapped or hit some of those who had done a wrong deed, but I do not remember them because I did not mean to be hard on them besides I never treated them atrociously.

I think the commandant was very unfair man especially to me. Every morning, as soon as he came to the camp he use to call me ~~to come to him~~ in a nasty way to come to him.

Mr. Harugana who was an official military interpreter in No 1 Camp from May 1944 to April 1945, use to tease me by shouting at me "Katsura come here" in the same way the commandant nastly called me.

When I go to the commandant, he order me to gather all the men who are staying in the camp, some on camp duties and others were those weak and sick ones who were permitted by the doctor to stay in. These men were not fit to go out to the working party, but were usually detailed for cleanning up the huts or the camp compound.

When they gather and line up on the parade ground the commandant ask them one by one "~~white~~" What is wrong with you" a man say "I have a head ache" the commandant say "any feaver?" "a little" unswers the man, the commandant say "eh! That much of feaver and head ache is nothing, you go out to working party tomorrow"

Then he go to the next man and ask the same question. A man say "I have a stomach ache and diarrhoea" and a few men also say" We have a stomach ache and diarrhoea" then commandant ~~tell~~ tell them" I stop your food till you get rid of them" and sometimes they were not given any food for 48 hours or longer but I am not sure.

One time, the commandant asked a man the same question "What is wrong with you?" the man did not know what to say, so I said to the commandant that these 4 or 5 men are old aged and weak so I kept them in the camp. ~~then~~

. . . . then he said "wh[illegible] hell did you do that for, [illegible]en to work tomorrow".

After the commandant go away the ~~man~~ men say "Mr. Katsura, the camp commandant order us to go out to work but we are sick, we cannot work even we went out" then I say "Well it is the commandant's order and I cannot do anything for you now and if I keep you in the camp, not only I get in a trouble but you will also get in more troubles. You just go to the working party and I will let you rest there".

I use to let those sick and weak persons rest around the fire place where the tea was being made, and told them to watch for the commandant and the officer of the day (N.C.O.) come round, and when you see them coming you just pretend to do something.

Sometimes the soldier guard come round ~~to~~ and ask me "What are those men doing around the fire?" I say "They are sick men" then the guard would say "They are not sick they are only lazy ones" then I say "Well they say they are sick and I don't know because I am not a doctor and when they tell me that they are sick I have to let them rest."

Sometimes when I ~~am~~ was working in the interpreter's office, the commandant use to call me and ~~told~~ tell me to come with him to the working party

When he see the ~~men~~ men resting around the fire, he lines them up and ask the usual question "What is wrong with you" and after the men explain what was wrong with them, ~~he say~~ he scold some of them and send them back to work and sometimes tell guard to hit those who are lazy and come round to th fire for rest.

At the Mushiroda Camp, the commandant often told the men to fill the trucks with soil as much as possible and also told them ~~to~~ how many times they must push them before they return to the camp, and it was really more than they could make / t in a certain length of time. The commandant told me to make those men fill the trucks as much as they can and push them so many times and if they can not make it then let them stay at the working party untill they do it no matter how long it will take.

I use to tell the party commanders to tell more than they have actually done, when they are asked by the contractor's man

Couple of times I got in some trouble with the contractor's man for cheating them. We had to do something in order to make so many number of times in so much length of time set by the commandant. ~~I told the men to fill those cars, but make fill less much less~~ I told the men to fill the trucks less as soon as the commandant goes away

So every time they saw the commandant in a distance the man who saw him first shouted "The commandant" and every body watched him and when he came near they fill the cars full and when he goes some one shout "He is gone" then every body was happy and fill the ~~case~~ trucks less.

When the commandant ~~he~~ / ask me how many time we had done, I use to say more than we had done.

If he had found out that time about I letting the prisoners do such a thing he would probably have punished me severely.

One day, it started to rain and the contractor's ~~men~~ working men were quitting the work and were / going home so I told the men to stop the work and took them back to the camp. The commandant said to me "What happened" so I said "It is raining and it is very difficult to push those trucks, and the contractor's men were gone home too." then he said "This much of rain is nothing, go and push those trucks even if you had to swim in the mud" So I said "Yes Sir" and took the men back to work. This kind of thing happened several times. I always tried to make things more ~~e~~ easy for the men but I could not do it. I can give you the names and addresses of the some of the man who I am sure will tell you about the good deed I have done.

At the Hakozaki Camp, one time, when the commandant issued some of the red cross supplies, he told the hut commanders that some of the ~~stuff~~ red cross stuff he put back in the store will be issued to only those who will work hard.

I remember [redacted] clearly because I got mad a[redacted] foolish idea the commandant had. All of the time the men were asking me to do them a favour by ~~asking~~ to going to the commandant and try to get those red cross supplies for them and I tryed but failed. and now issues them but only some as usual then he say " I issue them only to those who will work hard" I got red up with the commandant and his red cross business and after he went away, I told Sergeant Tomita "I think the idear of giving the red cross stuff only to those who work hard is wrong.

Those things belong to the prisoners whether they work hard or not and another thing is that as soon as you receive them you should issue them right way.

If Japanes themselves bring some goods and then say "We will issue them to only those who work hard" any body can understand, but not with the red cross stuff.

It is funny, I can't understand it. Suppose Japanese send some goods to the ~~united states~~ Japanese internees in the United States and American authority say "Some of these things will be issued to only those who work hard" I am sure no budy will agree with that and another thing is that Americans will never do such a thing".

I was so mad with them ~~but~~ that I did not care ~~hap~~ what happened to me then, but I did not show it in the face. After I finished saying what I wanted to say. I thought I would be scolded or may be get a slapp in the face because I was risking myself by saying such a thing to my superior which I had never done before.

Sergeant Tomita only said that it was the order from the main camp and he did not scold me but I could see he was not happy about it ~~either~~ either.

I suppose it is difficult for you to understand my broken English, but I have tried my best.

/s/ ~~Takeo Katsura~~
/s/ Takeo. Katsura.

Subscribed and sworn to before me this 28th day of January 1946 at Sugamo Prison, Tokyo, Japan. The above statement consisting of thirty one (31) pages

/s/ Rudolph J. Stone
1st Lt. Air Corps
War Crimes Investigating Officer

A CERTIFIED TRUE COPY:

Theodore R.C. King

THEODORE R.C. KING
Major, Inf.

Another American prisoner at Camp 18, Sasebo, by the name of Benjamin Marsh, cooperated fully with the Japanese to get himself more food, tobacco and clothing, and, in doing so, caused the beating of many other American prisoners, which, in some cases, may have lead to the death of these prisoners. Marsh's description is as follows: 5'7" to 5'11", dark complexioned, black wavy hair, jewish characteristics and features of the face, stocky build, weighed about 180 to 190 lbs, scar on left side of the body just above the kidney caused by shrapnel fragments.

Extract from Affidavit of JERROLD K. ROGERS, Civilian former employee of P.N.A.B. on Wake Island, Badge No. [illegible].

A CERTIFIED TRUE COPY:

[redacted]
Major, JAGC

DEFENSE
EXHIBIT A

THE WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

In the matter of the mistreatment of prisoners of war by the Japanese at Camp No 18, Sasebo; Camp No 1, Fukuoka; Camp No 2, Nagasaki; and Camp No 9, Orio, Japan; also the collaboration of Americans with the Japanese during internment.	-	Perpetuation of Testimony of Gomer Henry Condit, Civilian.

Taken at: 3325 West Genesee Street, Syracuse, N. Y.

Date: 13 September 1946

In the Presence of: Joseph S. Smith, 1st Lt., Inf.
0-1329998, 103th CIC Det.
Area Intelligence Division
AC of S, G-2
Headquarters, First Army
1270 Avenue of the Americas
New York 20, New York

Reporter: Joseph S. Smith, 1st Lt.

Questions by: Joseph S. Smith, 1st Lt.

Q. State your name and permanent home address.

A. Gomer Henry Condit, 3325 West Genesee Street, Syracuse, N. Y.

Q. What is your occupation?

A. Draftsman, Engineering Designer - Solvay Process Co.

Q. When and where were you born?

A. 25 January 1917, Hagerman, Idaho.

Q. What is your marital status?

A. Married.

Q. What formal education have you had?

A. Graduated University of Idaho, BSCE, 1938.

Q. When did you return from overseas?

A. 16 October 1945.

Q. Were you a prisoner of war?

A. Yes.

DEFENSE EXHIBIT B

Q. In what capacity were you serving at the time you were captured?

A. Engineering drafting for PNABC, Wake Island.

Q. When did you arrive on Wake Island?

A. 6 September 1941. Captured 23 December 1941, held on Wake Island until 30 September 1942, then taken to Yokahama, arriving there 11 October 1942. Taken by train to Sasebo, then to a small village named Unoki, about five or six miles from Sasebo. At the time we arrived at Unoki there was no camp - just an old warehouse surroundered by a bamboo fence. We lived here until 17 April 1944, when we were moved to Fukuoka Camp No 1. The Unoki Camp was designated as Camp No 18 about a year after we arrived there. On 4 December 1944 we moved to Camp No 2, on an island in Nagasaki Bay, about three or four miles from Nagasaki. On 21 June 1945 we were taken to Orio, between Yowata and Fukuoka, where I remained until liberated on 11 September 1945.

Q. Please state your knowledge of the mistreatment of American prisoners of war by the Japanese.

A. Our treatment on Wake Island wasn't bad, although we thought at the time it was pretty rough. After we got to Japan the treatment became such that we came to expect at least one beating a week, whether as individuals or as mass punishment. For the most part the beatings were without cause, and we were beaten for failing to salute properly, for failing to stand properly at attention, and other such minor offenses. Of course, there were beatings with cause, but they were the exception. Our living quarters were very poor - we slept on straw on the floor, had four or five Jap blankets to protect ourselves against the cold. In the winter the only way we could keep warm was for two or three of us to sleep together - pooling our blankets. Aside from our own personal clothing, brought from Wake, we had only thin suits made of bamboo. After about a year - after our own shoes had worn out, we were given some Jap sandals - which were little protection against cold and wet weather. Our food ration consisted of less than a pint of rice, a half-pint of weak soup, and occasionally we were given a small piece of steamed bread in place of a rice ration.

Q. Have you knowledge of specific incidents of mistreatment of prisoners?

A. On Wake Island, about 10 May 1942, an American civilian named "Base" Hofmeister was beheaded by the Japs for stealing whiskey from a warehouse. I do not know for certain that Hofmeister stole the whiskey, but the Japs told us he had done so. He was caught in this act during the night and placed in the guardhouse. I didn't see him again until about ten days later, when I saw him taken from the guardhouse, blindfolded and under guard, and driven away in a truck to the place where he was executed. I did not see him killed, nor did I see his body afterward. About fifteen or twenty of us prisoners were called out to witness this execution, but I was not one of them. Lee Wilcox, plumber foreman from Klamath Falls, Oregon, and Isaac J. Wardle, President of "Workers of Wake", 313 Broadway, Boise, Idaho, were both present and could give eyewitness accounts of this act.

Q. Who ordered this execution?

A. I imagine the Jap commander of the island ordered Hofmeister's death, but I am not sure. An interpreter, Katsumi, had an active part in the trial and I imagine he could be considered as partly responsible. Katsumi had spent several years in the United States, working for the Jap Government, and also ran a newspaper in Honolulu.

WAR CRIMES OFFICE
Washington 25, D.C.

Q. Do you recall any other incidents?

A. In January 1944, at Sasebo Camp No 18, Frank Knox was placed in a cell and told that "he would die there". He was left in this cell for nine days without blankets - was given a plum-sized ball of rice daily, and no water. Knox died on or about 10 January 1944, of starvation and exposure. This treatment was punishment for having cut strips from his blankets to make sox for himself, although I don't know whether he actually did this. The Japs claimed he had done this and we had no way of knowing otherwise.

Q. Who was responsible for this act?

A. The punishment was ordered by 1st Lt. Ikegami, the camp commander at Sasebo Camp No 18.

Q. Describe Lt. Ikegami.

A. Height about 5'6", weight 160 pounds, claimed to be twenty-four years old, talked in a high-pitched voice, no other distinguishing marks that I can recall although he may have had a scar near one eye on his cheek.

Q. Do you know of any other examples of mistreatment of prisoners of war?

A. There was a Japanese Navy Petty Officer named Igawa Heiso who, in my opinion, was directly responsible for at least fifty deaths. He forced men to work in rain and snow, would permit no fires, forced men to work who were too sick to be out of bed, prevented us from getting extra food from any source. He also beat many men and ordered many more beaten by his own men. When I was transferred to Nagasaki he was in charge of the Naval Guards at the shipyards there.

Q. Describe Igawa Heiso.

A. Height 5'8 or 9", weighed 175 pounds, age about 25, very goodlooking for a Jap, was married to a Jap girl who spoke English rather well. Was a Navy non-commissioned officer - rank about the same as a Sergeant.

Q. Were there any other acts of mistreatment?

A. In Nagasaki, in Spring of 1945, Harry Reed fainted on the way to work one day and was accused by the Japs of faking illness. He was placed in a cell without food or water or blankets. About two days later he died in his cell. I don't recall what caused his death, but certainly this treatment by the Japs didn't help him any.

Q. Who ordered Reed's punishment?

A. One of the senior NCO's, Horai Honsho, was one of the Japs in charge of American prisoners of war and I believe he was responsible for Reed's being locked up and treated as he was. He was definitely an "American hater" and delighted in punishing us as severely as possible for little or no reason.

Q. Describe Horai Honsho.

A. He was tall and thin, had close-set eyes and a hooked nose, age about 30.

Q. Do you have any knowledge of Americans who collaborated with the Japanese?

A. The two worst offenders, Joseph Trui, a Cuban-American, and Lloyd Landewig, of Bavarian extraction but born in America, are both dead. Trui was killed after the war ended when struck by a case of soap dropped from an American plane, and Landewig was crushed to death by a tractor several months before the war ended. Another man, Benjamin Marsh, an American who was in charge of the sick bay at Camp No 11, acted as an informer for the Japs, also arbitrarily determined who would be hospitalized. If a "pay off" was made to Marsh, a man could get into the sick bay as a patient, otherwise it wasn't at all likely that he would be admitted to the sick bay. When a prisoner died Marsh would go through his effects and keep anything of value. It was common knowledge that Marsh was guilty of collaboration, but nothing was ever done about it. Marsh lived somewhere in California - his address could be obtained from Isaac Wardle, President of "Workers of Nake", 313 Broadway, Boise, Idaho.

Read

Another man, Robert Hoyland, was suspected of collaborating with the Japs, but I know of nothing which proves this, although I saw the Japs "pay him off" in the form of extra rations and other favors. Oscar Peterson, Jerome, Idaho may be able to supply additional information on Hoyland, and so might Isaac Wardle.

Glenn DeLay, Couer d Alene, Idaho gave the Japs information on several occasions, which resulted directly in the punishment of at least three men on different occasions. One was a Major Horrigan or Harrington - USAAF - imprisoned without food or water for seven days; another was Lawrence Gillis, beaten and jailed for two days without food or water; the third man was Robert McGinnis, beaten and imprisoned without food or water for ten days, was kept alive only by the food smuggled to him by other prisoners.

The complete addresses for these men, DeLay, Hoyland and Marsh, may be obtained from "Workmen of Nake", 313 Broadway, Boise, Idaho.

Q. Did you, as a prisoner of war, receive any treatment which seriously injured or disabled you in any way?

A. No, although I did receive two broken ribs when "Buck Tooth," a Jap guard, struck me with the butt of his rifle "for being an American". These ribs did not heal perfectly, but don't bother me at all.

Q. Did you receive any medical treatment?

A. Over the entire period of my imprisonment the medical treatment was very poor - there were some Red Cross medical supplies available, but it almost took "an act of God" to get any of them regardless how ill a man was.

Q. Do you have anything to add?

A. Yes, I have a copy of a statement I gave before the United States District Attorney about the 5th or 6th of September 1946, which may contain additional information. (Copy attached).

Q. Have you anything further to say?

A. No.

Sgd/ Comer Henry Condit
Comer Henry Condit

WAR CRIMES OFFICE
Washington 25, D. C.

State of New York)
)SS:
County of Onondaga)

I, Gomer Henry Condit, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

Sgd/ Gomer H. Condit
Gomer Henry Condit

Subscribed and sworn to before me this 18 day of September, 1946.

Sgd/ Joseph S. Smith
Joseph S. Smith, 1st Lt, Inf.
Summary Court Officer

CERTIFICATE

I, Joseph S. Smith, 1st Lt., Inf., 0-1329993, certify that Gomer Henry Condit personally appeared before me on 18 September, 1946 and gave the foregoing answers to the several questions set forth.

Place: Syracuse, New York

Date: 18 September 1946

Sgd/ Joseph S. Smith
Joseph S. Smith, 1st Lt., Inf.
0-1329993, 108th C.I.C. Det.
Area Intelligence Division
AC of S, G-2
Headquarters First Army
1270 Avenue of the Americas
New York 20, New York

WAR CRIMES OFFICE
Washington 25, D. C.

A CERTIFIED TRUE COPY
Claude A. Muzzy
CLAUDE A. MUZZY,
C.W.O., U.S.A.

Reports Control Symbol WDSCA-2

2385

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [illegible] Date of Report 20 February 1947

Title of case U. S. vs HUMANY, Hogue

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

Yokohama, Honshu, Japan

11 February 1947 - 12 February 1947

(Over)

Inclosure 2 to WD Letter (AGAN-PM 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

GUILTY - 10 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

---

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

---

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number [redacted] Date of Report [redacted]

Title of case [redacted]

PART A

1. Names and Nationalities of Accused

FUKAMI, Kazuo - Japanese

2. Nature, Place and Date of Offense

That between 1 May 1945 and 15 August 1945 the accused did at Fukuoka Prisoner of War Camp # 5, also known as Dispatch Camp #8, willfully and unlawfully, beat, mistreat and abuse numerous Allied Prisoners of War.

3. Names and Nationalities of Victims

Joseph Trusiewick - Canadian
J. R. Jessop - Allied POW
D. Abbott - Allied POW

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan - 18 October 1946

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P[illegible].000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2 #1

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

addendum to 238J

File Number [illegible] Date of Report 19 May 1947

Title of case U. S. vs FUKAMI, Kazuo

PART A

1. Names and Nationalities of Accused

FUKAMI, Kazuo - Japanese

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to specific accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General EIGHTH Army Approved 19 March 1947.

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8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

---

9. Date and Place of Execution of Sentence

12 February 1947 - Sugamo Prison, Tokyo, Japan

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Directory Civil Affairs Division, WDSC, The Pentagon, Washington 25, D. C.

25-89621-300

(938J)

VOLUME I

RECORD OF TRIAL
(4th Original Carbon)

in the case of

UNITED STATES

vs

KAZUO FUKAMI

Case Docket No. 97

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama, Japan
11 February 1947 - 12 February 1947

131

BASIC: Ltr, Hq. Eighth Army, dtd 17 February 1947, subject: "Transmittal of Record of Trial".

AG 000.5 (YR) 1st Ind

HEADQUARTERS EIGHTH ARMY, APO 343

31 MAR 1947.

THRU: Commander in Chief, Far East, APO 500

TO : Supreme Commander for the Allied Powers, APO 500
(Attention: Legal Section)

Transmitted, herewith in two volumes, are the record of trial, with opinion of the Staff Judge Advocate, action of the reviewing authority and military commission orders (vol. I) and exhibits (vol. II) in the case of United States vs Kazuo Fukami.

FOR THE COMMANDING GENERAL:

OTIS N. LUCKMAN
Capt A.G.D.
Asst. Adjutant General

2 Incl:
1. Vol. I - Record of Trial
2. Vol. II - Exhibits, etc.

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
14 March 1947

UNITED STATES OF AMERICA VS KASUO FUKAMI

Review of the Staff Judge Advocate

1. The attached record of trial of Kasuo Fukami, at Yokohama, Japan from the 11th to the 12th of February 1947, by a Military Commission appointed by paragraph 17, Special Orders No. 32, Headquarters Eighth Army, United States Army, dated 7 February 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME:	Kasuo Fukami
AGE:	Twenty-six (26)
RESIDENCE:	Obere Akkeshi gun, Fushiro, Hokkaido
MARITAL STATUS:	Married, one child
RELATIVES:	Parents and brothers and sisters
EDUCATION:	Graduate of primary school
VOCATION:	Not shown
MILITARY CAREER:	From 10 April 1941 to 28 August 1945. Highest grade attained: Superior Private.

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

Charge and Specifications	Pleas	Findings	Legally Sustained
Charge: The accused, serving with the Japanese Army, did at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and dependencies, and Japan, violate the laws and customs of war.	NG	G	Yes
Sp 1: In or about the months of June or July 1945, accused did willfully and unlawfully mistreat, abuse and torture Ralph Forsberg, a Canadian PW, by beating him and by forcing him to maintain a kneeling position for a long period of time.	NG	G	Yes
Sp 2: Between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat Joseph Trasiewick, a Canadian PW, by abusing and kicking him.	NG	NG	

Sp 3: Between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat J. R. Jessop and D. Abbott, Allied PW's, by abusing and beating them.	NG	Guilty, except the words "and D. Abbott" and of the word "Prisoners" and of the word "them", substituting for the word "Prisoners" the word "Prisoner", and for the word "them" the word "him", of the excepted words, Not Guilty.	Yes
Sp 4: Between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat numerous Allied PW's, by beating, abusing and torturing them, other than as alleged in Specifications 1 to 3 inclusive.	NG	G	Yes
Additional Specifications:			
Sp 1: Between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse J. E. Walsh and E. McBeath, Canadian PW's, by beating them.	NG	NG	Yes
Sp 2: At divers times between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse M. G. Carr, a Canadian PW, by beating him.	NG	NG	
Sp 3: On two occasions between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse J. F. Chard, a Canadian PW, by beating him.	NG	NG	
Sp 4: On two occasions between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse Leonard J. Bell, an Australian PW, by beating him.	NG	NG	
Sp 5: Between 1 May 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse an unidentified British PW, by kicking him and beating him with a club.	NG	G	Yes
Sp 6: On or about July 1945, accused did willfully and unlawfully mistreat and abuse G. J. Kitto, an Australian PW, by beating him.	NG	Guilty, except the words "beating him", substituting therefor the words "striking him with a rifle butt"; of the excepted words, Not Guilty, of the substituted words, Guilty.	Yes

Sentence Imposed: To be confined at hard labor for a period of ten (10) years.

Maximum Legal Punishment: Death.

3. Summary of Evidence:

a. For the Prosecution:

As to Specification 1: Ralph Forsberg was a Canadian prisoner of war at the Branch Camp Number 5 at Omire, Kawasaki, Fukuoka Area, Japan, from about January 1945 until his liberation in September 1945. Because of an injury to his back he was wearing a canvas cast. One night in June or July 1945 he and a group of prisoners were sitting outside of their huts to get some fresh air. Accused appeared and the rest of the group hurriedly entered their huts but Forsberg, because of the condition of his back, could not move quickly enough and was caught by accused. Accused became enraged and threatened him with a heavy hardwood stick and indicated that he should not have been out of the hut. At this point an English prisoner by the name of Clapp, who could understand and converse in Japanese, came forth and told accused that Forsberg had a fractured spine and that he might injure him if he beat him. Accused refused to follow this advice and proceeded to hit Forsberg over the head and in the face several times with the stick. He then took him to the guard room and forced him to kneel on the concrete floor and sit back on his heels. Forsberg was suffering with beri beri in his feet and this, together with his injured back, made it almost impossible for him to sit still. Every time he moved accused beat him over the head with his fist. He kept him in this position for about three hours, during which time he hit him over the head many times (Exs. 1, 2, 3).

As to Specification 3: The commission found accused not guilty of beating prisoner Abbott but guilty of beating prisoner Jessop. We shall consider here only so much of the evidence as supports this finding of guilty.

An affidavit by Harold Shepherd, a prisoner, states in part: "The 'Brown Bomber' left Henry and started down the hallway towards where I was standing. He checked the tallies on Rfn. Jessop's room, and found Jessop's out of place. He called Jessop into the corridor where he slapped him across the face 6 or 8 times with the half closed fist" (Ex. 2).

Rfn. T. R. Henry states that Jessop was "punched in the face" by the accused. Further "among those beaten up, as far as I can recall, were Rfn. Jessop of the Royal Rifles ..." (Ex. 6).

As to Specification 4: Other than that set forth in the above specifications, accused between 1 May 1945 and 15 August 1945 beat and tortured numerous Allied Prisoners of War. Fourteen affidavits admitted in evidence accuse him of slappings with half closed hands and with a bamboo pole. He forced prisoners to kneel on a concrete floor, sometimes on a bamboo pole, and forced them to stand at attention from fifteen minutes to two hours. He constantly looked for trifling irregularities in order that he might punish the prisoners. He kicked one man in the testicles without provocation. Another prisoner had an amputated leg and was on crutches when accused beat him for failing to salute properly. Whenever he heard that the Allies had taken another island he would line up four or five prisoners and beat them. With another guard, known as the Bamboo Kid, he participated in beating prisoners with fists, sticks, tools, rifle butts, straps, or anything they had handy (Exs. 2-15).

As to Additional Specification 5: On one occasion a British prisoner had his back toward accused and failed to notice his approach. Accused began beating him with a thick hardwood stick and continued until the prisoner collapsed. While in this condition accused kicked him and delivered a few more blows with the stick. The victim was unable to walk without assistance and was bruised on all visible parts of his body (Ex. 17).

As to Additional Specification 6: Each group of prisoners at the camp was checked before being marched to the mines. When accused had charge of such a group his custom was to beat the last one in the group. One evening prisoner G. J. Kitto was last in line and accused struck him a heavy blow with his rifle butt on his ankle. For some days subsequent thereto he could hardly walk and was lame for about a month. At the time of making the statement, 25 November 1946, he complained about suffering from weakness in the ankle (Ex. 18).

b. For the Defense:

The first witness introduced by the defense was Shigeteku Tomatsu who testified under oath, as follows: He and accused were both guard commanders and each had about 12 to 13 men under his authority. Accused's reputation among the other guards was good. As a guard commander he was very military and strictly followed regulations handed down by the camp commandant. There may have been times when they held him rather cold and aloof because he observed his duties very well. He enforced the rules against smoking in the rooms very strictly. The witness never saw accused strike a prisoner of war but heard of it once or twice. Accused did not, to his knowledge, ever hit an amputee prisoner of war. He heard of such a case that happened before he came to the camp but heard that Takahashi had done the act. There was a tally board at the camp and each prisoner was to keep it to date as to his whereabouts at all times. In case a prisoner failed to keep it posted properly as to where he was he was given a warning. To the witness' knowledge accused did not strike anyone for violating this rule. He did not ever see a prisoner kneeling on the concrete floor or on a bamboo pole. The witness and accused worked on different days and he was not in a position to see what accused did when on duty. He did not, at any time, see a prisoner of war beaten (R. 18-22).

The second witness for the defense was Takafumi Shiromaru who, upon being sworn, testified that he had been a civilian attached to the army from May to September 1945. He knew accused during that time. He had the same duties that accused had. He never saw him strike a prisoner of war but heard about it once or twice. Accused's reputation as a guard commander among the guards was "ordinary". Prisoners were allowed to smoke only in a designated place. If a prisoner violated this rule he would be warned once or twice and the third time he would be confined to the guard house for 24 hours. He did not have knowledge of accused's striking a prisoner for violation of such rule. He did not see a prisoner wearing a cast but saw the cast itself later. In the hospital there was a person who had an amputated leg (R. 22-24).

Hirosaki Takamura, a witness for the defense, was sworn and testified that he worked at the camp for about 15 days and subsequent to that associated with accused for about six months. Accused's friends considered him aloof at first but after being with him two or three times they became very attached to him. He was liked by many (R. 25-26).

Accused, after having been informed of his rights, chose to take the stand under oath. The gist of his testimony is as follows: He was a guard commander at the camp and his duties consisted of preventing fires, to care for prisoners, to prevent escape, to take proper steps in case of air raids, and to keep in contact with the prisoners in the camp. There were three such guard commanders. The other two were Shigeteku Tomatsu and Shiromaru Takafumi. Takahashi and Matsui were the guard commanders when the above three relieved. He heard nothing good or especially bad about Takahashi. He recalled no prisoner who had an amputated leg, nor did he ever strike a prisoner in that condition. He heard that someone, the name of whom he did not know, had hit a prisoner who had an amputated leg. Smoking was prohibited in all rooms except a place on the second floor and one in the sick ward, and also smoking was allowed in the yard in a designated place. The buildings were of wood, and accused warned them not to smoke in the rooms. Further, it would increase the danger in event of air raids. Many prisoners had to be warned about violations of the smoking rules. There were five or six times when he hit prisoners with his open hand two or three slaps for such violations. Some were knocked to the ground from such slappings. He hit prisoners for not having their tally on the board showing where they were. He did not remember how many times he hit them, but no one received a permanent injury therefrom. He recalled no prisoner who wore a cast. When he struck the prisoners he struck them on the cheek. He carried a rifle but did not strike anyone with it. He did not carry a stick at any time. He had been instructed that he was not to hit prisoners of war. At the time accused struck prisoners of war he did not think it was a bad thing to do because it was a Japanese custom and he was educated in that manner in the Japanese Army. He considered it unavoidable in preventing an incident from happening again. He admitted that "in thinking it over at the present time I think that I do feel that it was a bad thing to do...".

He knew slapping a prisoner was prohibited by regulation. He did not see other guards slapping prisoners. He did not kick a prisoner or require a prisoner to kneel on a bamboo pole. He admitted hitting prisoners of war on five or six occasions but not haphazardly (R. 27-37).

4. Opinion:

The record is legally sufficient to support the findings of the commission. Each allegation of the specifications of which accused was found guilty was substantiated by ample and competent evidence. The commission was constituted by proper authority and had jurisdiction of the accused and of the offences.

The prosecution introduced evidence by means of affidavits of former prisoners who were interned at the camp and who were in a position to know the facts of the matter in issue. From such statements the guilt of the accused was firmly established.

The defense objection to the admissibility of hearsay evidence was properly overruled. It was held in the Yamashita Case that Article of War 25 limiting the reception of depositions in a capital case to those of the defense, and the provisions of Article of War 38 providing for the prescribing of procedure for trials before military tribunals and carried out by executive mandate that in trials by court-martial hearsay and opinion evidence shall be excluded, are not applicable to the trial of an enemy combatant by a military commission for violations of the law of war (Matter of Yamashita 90 S. Ct. 352 Adv. Sheet). Such evidence is expressly admissible under SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945, paragraph 3d (1) (c). This SCAP rule is legal and in accordance with established practice in military commission trials, Ex parte Quirin 317 U.S. 1, 63 S. Ct. 2; Fairman, the Law of Martial Rule P. 276-277.

Accused was found guilty of five specifications and of the charge. He admitted slapping prisoners on several occasions. He had a fair trial and was ably represented by counsel. He exercised the right to call witnesses in his own behalf and chose to take the stand himself after being warned of his rights. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of accused or any failure to accord him a fair trial in every respect. The evidence supports the findings. There is no evidence that accused was not sane at the time the alleged acts were committed and at the time of trial.

5. Recommendations:

There are no letters of clemency from any members of the commission or from others.

The commission sentenced the accused to confinement at hard labor for ten years. The sentence is legal.

Accused was found guilty of the cowardly act of striking an invalid who were a cast on his back and of making him kneel in a painful position while he struck him over the head several times. Furthermore, he struck a prisoner, who had an amputated leg and was on crutches, for not properly saluting him. The evidence shows that he was a sadist of the worst type and delighted in having an excuse to slap or kick the prisoners. He kicked one prisoner in the testicles without provocation and beat other prisoners with fists, sticks, tools, rifle butts, straps, or anything that he had handy.

The sentence in the present case is inadequate. Mistreatment of prisoners of war is, for the most part, a barbaric practice of the past which is incompatible with modern international thought and agreement. The struggle for the elimination of this evil through the ages has not been an easy one. Only

Paul E. Spurlock

PAUL E. SPURLOCK
Reviewer
Judge Advocate Section

I CONCUR:

Allan R. Browne

ALLAN R. BROWNE
Lt Col JAGD
Army Judge Advocate

after a long, persistent and difficult struggle righteous-thinking men have won the battle in influencing civilized nations to adopt certain rules which protect prisoners of war and place them in the priviliged category of receiving an especially humane treatment during captivity. Mistreatment of prisoners of war now, under these rules, is an aggravated crime that should not be dealt with lightly. The sentence should be sufficient to punish the offender and, at the same time, severe enough to deter others who might be so inclined to offend in the future. However, even without the specific laws set up by the conventions of nations, such crimes are in themselves so basically and naturally wrong that they outrage the conscience of the normal man. The prisoner is always helpless and dares not defend himself against his cowardly aggressor. Therefore, in arriving at the sentence, the commission should not measure the gravity of the offense by comparison with what sentence a court of our own land would give for the same type of crime. The commissions are special courts, functioning under special rules to handle the special type of cases that they do, and they should consider that every war crime is an aggravated offense requiring a special sentence. The setting up of a table of punishments would be impracticable in war crimes because of the varied offenses committed at the different camps and the degree of brutality practiced. However, by comparison with sentences passed by the commissions heretofore, the sentence in the present case is extremely light. The evidence in the present case, and other Japanese war crimes cases, portrays a despicable step backwards in the annals of human decency and a reversion to the brutality of earlier times. Although inadequate, it is recommended that the sentence be approved in order that accused may receive some punishment for his crimes. Sugamo prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

A form of action designed to carry this recommendation into effect is attached hereto.

HEADQUARTERS EIGHTH ARMY
United States Army
APO 343

Yokohama, Japan
19 March 1947

In the foregoing case of Kazuo Fukuai, the sentence is inadequate for the offenses of which the accused was found guilty. However, in order that the accused may not escape punishment, the sentence is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Powers, or other proper authority, may direct, is designated as the place of confinement.

/s/ R. L. Eichelberger
/t/ R. L. EICHELBERGER
Lieutenant General, U. S. Army
Commanding

A TRUE COPY

F. E. Bouch
F. E. BOUCH
Capt. WAC

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

15 March 1947

Military Commission)
Orders No. 66)

Before a Military Commission which convened at Headquarters Eighth Army, at Yokohama, Japan, APO 343, pursuant to Letter Order, File AG 000.5 (5Dec45)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, subject: Regulations Governing the Trials of Accused War Criminals, as amended by Letter Order, File AG 000.5 (27 Dec 47)LS-L, General Headquarters, Supreme Commander for the Allied Powers, dated 27 December 1946, subject: Amendments to Regulations Governing the Trials of Accused War Criminals, Letter Order, File AG 000.5 (30 Aug 46)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 30 August 1946, with 1st Indorsement thereto, subject: Trial of Kazuo Fukami, Letter Order, File 000.5 (10 December 1946)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 10 December 1946, with 1st and 2d Indorsements thereto, subject: Trial of Kazuo Fukami, and paragraph 17, Special Orders No. 32, this headquarters, dated 7 February 1947, was arraigned and tried:

KAZUO FUKAMI, civilian guard, Imperial Japanese Army.

CHARGE: That the following person, serving with the Imperial Japanese Army, with his then known title:

KAZUO FUKAMI, civilian guard
also known as Kazuo Ando
"Ando", "The Brown Bomber"
"The Black Bomber" and "The
Black Bastard"

at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its allies and dependencies, and Japan, did violate the laws and customs of war.

Specification 1: That in or about the months of June or July 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat, abuse and torture Ralph Forsberg, a Canadian Prisoner of War, by beating him and by forcing him to maintain a kneeling position for a long period of time.

Specification 2: That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat Joseph Trusiewick, a Canadian Prisoner of War, by abusing and kicking him.

Specification 3: That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat J. R. Jessop and D. Abbott, Allied Prisoners of War by abusing and beating them.

Specification 4: That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat numerous Allied Prisoners of war, by beating, abusing and torturing them, other than as alleged in Specifications 1 to 3 inclusive.

Additional Specification 1: That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse J. E. Walsh and E. McBeath, Canadian Prisoners of war, by beating them.

Additional Specification 2: That at divers times between 1 May 1945 .

and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse W. G. Carr, a Canadian prisoner of war, by beating him.

Additional Specification 3: That on two occasions between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse J. S. Oburd, a Canadian prisoner of war, by beating him.

Additional Specification 4: That on two occasions between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse Leonard J. Bell, an Australian prisoner of war, by beating him.

Additional Specification 5: That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse an unidentified British prisoner of war by kicking him and beating him with a club.

Additional Specification 6: That in or about July 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse G. J. Aitto, an Australian prisoner of war, by beating him.

PLEAS

To all Specifications and to the Charge: Not Guilty.

FINDINGS

Of Specification 1:	Guilty
Of Specification 2:	Not Guilty
Of Specification 3:	Guilty, except of the words "and D. Abbot" and of the word "prisoners", and of the word "them", substituting for the word "prisoners" the word "prisoner", and for the word "them" the word "him"; of the excepted words not Guilty, of the substituted words Guilty.
Of Specification 4:	Guilty
Of Additional Specification 1:	Not Guilty
Of Additional Specification 2:	Not Guilty
Of Additional Specification 3:	Not Guilty
Of Additional Specification 4:	Not Guilty
Of Additional Specification 5:	Guilty
Of Additional Specification 6:	Guilty, except of the words "beating him", substituting therefor the words "striking him with a rifle butt"; of the excepted words Not Guilty, of the substituted words Guilty.
Of the Charge:	Guilty.

SENTENCE

To be confined at hard labor at such place as the reviewing authority may direct for ten (10) years.

The sentence was adjudged on 12 February 1947.

The sentence is inadequate for the offenses of which the accused was found guilty. However, in order that the accused may not escape punishment, the sentence is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Powers, or other proper authority, may direct, is designated as the place of confinement.

MCO #66, [illegible] Eighth Army, dated 19 March 1947, cont'd.

BY COMMAND OF LIEUTENANT GENERAL LICHELBERGER:

CLOVIS E. BYERS
Major General, GSC
Chief of Staff.

OFFICIAL:

[illegible]
J. M. GLASGOW
Colonel, AGD
Adjutant General

DISTRIBUTION:
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40 - Members of all 8A Military Commissions
1 - Prosecutor for the Commission
1 - Defense Counsel for ea accused
1 - Accused
2 - CO, Sugamo Prison, APO 181
6 - Commandant, Warden or CO of designated place of confinement for ea ind sentenced to confinement
3 - CO of prison or other place ea ind tried is held in custody
6 - The JAG, WD, Washington DC
3 - The AG, WD, Washington DC
1 - Professor of Law, US Mil Academy, West Point, NY
1 - Army War College, Washington DC
1 - PM, 8A
1 - G-1 Sec, 8A
5 - File

MILITARY COMMISSION
ARRANGEMENT OF
RECORD OF TRIAL, AND ALLIED PAPERS

VOLUME I

1. CARDBOARD COVER SHEET, (Title of case, etc, and labelled Volume 1.)
*2. 1st IND - Transmittal to SCAP
3. LETTER, Transmittal from Commission to Eighth Army - (reporter prepare, and President sign when record signed.)
4. MILITARY COMMISSION CHECK DATA SHEET
*5. MILITARY COMMISSION ORDERS (6 copies, plus one additional for each additional accused.)
*6. JUDGE ADVOCATE REVIEW
7. CHARGES, (original should contain original signed charges.)
8. LETTERS OF REFERENCE FOR TRIAL (Original record must contain original signed letters, or certified true copies.)
   a. Basic - SCAP to GHQ
   b. 1st Ind - GHQ to Eighth Army
   c. 2nd Ind - to President of Commission
9. ORDERS APPOINTING COMMISSION: with all amendments, if any.
10. General Orders 55 (if applicable).
11. SCAP LETTER, 5 Dec. 1945 "Regulations Governing Trial, etc."
12. SCAP LETTER, 6 Dec. 1945 "Detention, etc of Japanese War Criminals".
13. EIGHTH ARMY LETTER, 5 Feb 1946, "Rules of Procedure, etc for Trials etc".
14. REPORTER'S CERTIFICATE, (or vouchers, if EM reporter.)
15. CARDBOARD DIVIDER AND TITLE SHEET.
16. INDEX SHEETS (may be combined with Item 15 if space and material permit.)
17. RECORD OF TRIAL, (Number pages, starting first page trial proceedings.)
*18. ACTION SHEET.
19. CARDBOARD BACK.

Note: Normally, "Exhibits etc" will be separate Volume II, but where 2 separate bound volumes are impracticable, Volume II may be bound together with Vol I; item 20 becoming a cover-divider sheet, and items 20 to 23 incl, following item 18. "Clemency Papers, etc," if any, will be Vol III.

VOLUME II

20. CARDBOARD COVER SHEET (headed "Exhibits, etc, "title of case, Volume II.)
21. PROSECUTION EXHIBITS - numbered in sequence and all accounted for.
22. DEFENSE EXHIBITS - numbered in sequence and all accounted for.

Note: All exhibits in original copy of record must be originals or certified true copies, or a description, if impractical to include because of physical nature of exhibit.

23. MISCELLANEOUS DOCUMENTS, e. g. motions, briefs, and other such allied papers.
24. CARDBOARD BACK

VOLUME III

25. CARDBOARD COVER SHEET (headed "Clemency Papers ect", title of case, Volume III.)
26. LIST OF CLEMENCY PAPERS, and other documents.
27. CLEMENCY PAPERS, and other pertinent documents not part of "Record of Trial."
28. CARDBOARD BACK.

Note: Except items (2, 5, 6,18) indicated by asterisk (*) to be added later, reporter is responsible for completion of record so as to contain items 1 to 24, incl. and will check-initial those items on this sheet to show inclusion of same. Reporting Section Administrative Assistant is responsible for delivery of record to War Crimes Administration Section Chief. Include this sheet as top sheet of Vol I (original)

JA. War Crimes Div. Form 7 (Revised 17 Oct 46)

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

17 February 1947

SUBJECT: Transmittal of Record of Trial

TO : Commanding General, 8th Army, APO 343

Transmitted herewith is the completed record of trial in the case of United States vs Kazuo Fukumi, tried by Military Commission.

GEORGE W. KASTENDAY
Colonel JAGC
President

Incls:
Vol I - Record of Trial, Exhibits, etc.

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?	✓					
c. Was accused asked whom he desired as counsel?	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?	None —					
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?	None challenged					
b. Was the action of the commission upon challenges regularly and properly taken?	—					
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?	✓					

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
14. Were the interpreters sworn?	✓					
15. Was the accused properly arraigned?	✓					
16. Are there copied or incorporated into the record:	✓					
a. Charges and specifications?						
b. Name, grade and organization of person signing the charges?	✓					
c. Affidavit to the charges and specifications?	✓					
d. Name of the person who administered the oath verifying the charges and his official capacity?	✓					
e. The order of reference for trial?	✓					
17. Does each specification state an offense?	✓					
18. Are the pleas of the accused regularly entered?	✓					
19. Are the findings properly entered?	✓					
20. Was the vote upon each finding in closed session?	✓					
21. Was the vote upon the sentence in closed session?	✓					
22. Did at least two-thirds of the members present at time vote on each finding was taken concur therein?	✓					
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?	✓					
24. Does the evidence sustain the findings of the commission?	✓					
25. Are the findings legal?	✓					
26. Is the sentence legal?	✓					
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?		✓				
28. Is the record properly authenticated?	✓					
29. Does it sufficiently appear that the defense counsel accepts the record as correct?	✓					
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?	✓					

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?						
b. In death cases does the action refer the case to SCAP for final action?	No Deaths					
33. Is clemency recommended by the commission?		✓				

Just [illegible] for [illegible] in the absence of
John H Dickey
Prosecutor

28 Feb. 1947
Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

MILITARY COMMISSION DATA SHEET

Case (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
1. Was the Commission ordered by proper authority?						
2. Are all orders showing membership of the commission properly entered in record?						
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?						
4. Were there less than three members detailed or present at any meeting?						
5. Was the law member designated by the convening authority?						
6. Did the commission have jurisdiction of the person and the offense?						
7. Does the record show the place, date and hour the commission convened?						
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?						
b. If absent is reason for absence given?						
c. Has accused asked whom he desired as counsel?						
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?						
9. Was accused given an opportunity to challenge for cause any member of the commission?						
a. Was each member challenged for cause sworn for his examination on the challenge?						
b. Was the action of the commission upon challenges regularly and properly taken?						
10. Was the commission sworn?						
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?						
12. Were the personnel for the prosecution sworn?						
13. Were the reporters sworn?						

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
14. Were the interpreters sworn?						
15. Was the accused properly arraigned?						
16. Are there copied or incorporated into the record:						
a. Charges and specifications?						
b. Name, grade and organization of person signing the charges?						
c. Affidavit to the charges and specifications?						
d. Name of the person who administered the oath verifying the charges and his official capacity?						
e. The order of reference for trial?						
17. Does each specification state an offense?						
18. Are the pleas of the accused regularly entered?						
19. Are the findings properly entered?						
20. Was the vote upon each finding in closed session?						
21. Was the vote upon the sentence in closed session?						
22. Did at least two-thirds of the members present at time vote on each finding was taken concur therein?						
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?						
24. Does evidence sustain the findings of the commission?						
25. Are the findings legal?						
26. Is the sentence legal?						
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?						
28. Is the record properly authenticated?						
29. Does it sufficiently appear that the defense counsel accepts the record as correct?						
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?						

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?						
b. In death cases does the action refer the case to USCAP for final action?						
33. Is clemency recommended by the commission?						

Prosecutor

Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

****

Before the MILITARY COMMISSION convened by the COMMANDING GENERAL United States Eighth Army	)	UNITED STATES OF AMERICA VS KAZUO FUKAMI

****

CHARGE

That the following person, serving with the Imperial Japanese Army, with his then known title:

KAZUO FUKAMI, Civilian guard
also known as Kazuo Ando
"Onda", "The Brown Bomber",
"The Black Bomber" and "The
Black Bastard"

at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its allies and dependencies, and Japan, did violate the laws and customs of war.

SPECIFICATIONS

1. That in or about the months of June or July 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat, abuse and torture Ralph Forsberg, a Canadian Prisoner of War, by beating him and by forcing him to maintain a kneeling position for a long period of time.

2. That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat Joseph Trusiewick, a Canadian Prisoner of War, by abusing and kicking him.

3. That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat J. R. Jossop and D. Abbott, Allied Prisoners of War, by abusing and beating them.

4. That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number Eight, the accused, Kazuo Fukami, did willfully and unlawfully mistreat numerous Allied Prisoners of War, by beating, abusing and torturing them, other than as alleged in Specifications 1 to 3 inclusive.

28 August 1946

/s/ Alva C. Carpenter
ALVA C. CARPENTER
Chief, Legal Section
General Headquarters
Supreme Commander for the Allied Powers

AFFIDAVIT

Before me personally appeared the above named accuser this 28th day of August 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

A CERTIFIED TRUE COPY:

Claude A. Muzzy
CLAUDE A. MUZZY
CWO U.S.A.

/s/ John H. Pritchard

Captain, Infantry
Summary Court

United States vs Kazuo FUKAMI

ADDITIONAL SPECIFICATIONS

1. That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse J. E. Walsh and E. McBeath, Canadian Prisoners of War, by beating them.

2. That at divers times between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse M. G. Carr, a Canadian Prisoner of War, by beating him.

3. That on two occasions between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse J. F. Chard, a Canadian Prisoner of War, by beating him.

4. That on two occasions between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse Leonard J. Bell, an Australian Prisoner of War, by beating him.

5. That between 1 May 1945 and 15 August 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse an unidentified British Prisoner of War by kicking him and beating him with a club.

6. That in or about July 1945, at Fukuoka Prisoner of War Camp Number 5, also known as Dispatch Camp Number 8, the accused, Kazuo Fukami, did willfully and unlawfully mistreat and abuse G. J. Kitto, an Australian Prisoner of War, by beating him.

9 December 1946

/s/ Alva C. Carpenter
ALVA C. CARPENTER
Chief, Legal Section
General Headquarters
Supreme Commander for the Allied Powers

AFFIDAVIT

Before me personally appeared the above named accuser this 9th day of December 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing specifications and further that he has investigated the matters set forth in the specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R. Pritchard
Captain Infantry
Summary Court

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

AG 000.5 (Aug 46)LS

APO 500
August 1946

SUBJECT: Trial of Kazue FUKAMI.

TO : Commander-in-Chief,
United States Army Forces, Pacific.

1. It is desired that a Military Commission be appointed for the trial of the following named person, member of or serving with the Imperial Japanese Forces, for the alleged offences indicated on the attached charge:

Kazue FUKAMI

2. The trial will be held in the City of Yokohama, Honshu, Japan. All trials held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

1 Incl:
Chg vs Kazue FUKAMI

AG 000.5 (Dec 46)LS

APO 500
10 December 1946

SUBJECT: Trial of Kazuo FUKAMI.

TO : Commander-in-Chief,
United States Army Forces, Pacific.

Herewith additional specifications against Kazuo FUKAMI referred to you for trial before a Military Commission to be appointed by you by letter AG 000.5 (30 Aug 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Trial of Kazuo FUKAMI", 30 August 1946.

BY COMMAND OF GENERAL MacARTHUR:

1 Incl:
Add. Spec.

AG 000.5 (Dec 46)LS 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500,
December 1946.

TO: Commanding General, Eighth Army, APO 343.

Additional specifications against Kazuo FUKAMI forwarded herewith. Power to appoint the Military Commission for said trial was redelegated to you by first indorsement General Headquarters, United States Army Forces, Pacific, 30 August 1946, to reference letter cited in basic communication above.

BY COMMAND OF GENERAL MacARTHUR:

1 Incl:
n/e

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (Aug 46)LS, August 1946, subject: "Trial of Kazuo FUKAMI".

AG 000.5 (Aug 46)LS 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500, August 1946.

TO: Commanding General, Eighth Army, APO 343.

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (Aug 46)LS, General Headquarters, Supreme Commander for the Allied Powers, Subject: "Trial of Kazuo FUKAMI", August 1946, said power is redelegated to you and you are hereby directed to appoint a Military Commission for the trial of the following named person, member of or serving with the Japanese Imperial Forces:

Kazuo FUKAMI

2. The trial will be held in the City of Yokohama, Honshu, Japan. The trial held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named persons assigned to General Headquarters, Supreme Commander for the Allied Powers, have been made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Captain John H. Dickey, BGA, Chief Prosecutor
Captain John D. C. Boland, Infantry, Asst. Prosecutor

By command of General MacARTHUR:

1 Incl: n/c

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (10 Dec 46)LS, dated 10 December 1946, subject: "Trial of Kazuo Fukami".

AG 000.5 (YR) 2d Ind. 10 Feb 1946

HEADQUARTERS EIGHTH ARMY, APO 343.

TO: Colonel George W. Easterday, 02896, CAC, President of the Military Commission appointed pursuant to Paragraph 17, Special Orders Number 32, this Headquarters, 7 February 1947.

The attached charges against Kazuo Fukami are referred for trial to you as president of the Military Commission appointed by Paragraph 17, Special Orders Number 32, this Headquarters, 7 February 1947, APO 343.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Otis N. Luckman
/t/ OTIS N. LUCKMAN
Capt A.G.D.
Asst Adjutant General

3 Incl:
1. Ltr. GHQ, SCAP, file AG 000.5 (30 Aug 46)LS, dated 30 August 1946, subject: "Trial of Kazuo Fukami", with 1st Ind.
2. Chgs vs Kazuo Fukami.
3. Add Specs vs Kazuo Fukami.

A TRUE COPY
F. E. Bouch
F. E. BOUCH
Capt. WAC

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 32

7 February 1947

EXTRACT

17. Appointment of a Military Commission.

Pursuant to authority contained in letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45) LS, Subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals", a Military Commission is hereby appointed to meet at the Yokohama District Court Building, Yokohama, Japan on or about 11 February 1947, to try Kazuo Fukami and such persons as may be properly brought before it.

DETAIL FOR THE COMMISSION

COL GEORGE W. [illegible], 02[illegible]96, [illegible], Hq Eighth Army, LAW MEMBER
COL WILLEM JOHANNES [illegible], 853, Royal Netherlands Indies Army
MAJ JOHN F. TRACEY, 0139895, AC, Hq Eighth Army
CAPT HERMAN A. KELLNER, 0335315, Cav, 8th Cav

FOR THE PROSECUTION
(VOCG)

MAJ JOHN M. DICKEY, RCA, Chief Prosecutor
MR JACOB SCHNEIDER, Assistant Prosecutor

ADVISORY COUNSEL FOR THE DEFENSE

MR JOHN L. MURPHEY
Accused are expected to provide individual defense counsel.

The procedure of the Commission will be governed by letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945, AG 000.5 (5 Dec 45) LS, Subject: "Regulations governing Trials of Accused War Criminals", as amended by letter AG 000.5 (27 Dec 46) LS-L, General Headquarters Supreme Commander for the Allied Powers. Subject: "Amendment to Regulations governing the Trials of Accused War Criminals", 27 December 1946, letter, This Headquarters, 5 February 1946, AG 000.5 (YO) Subject "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", as amended by letter this Headquarters, same subject, dated 16 January 1947, file number AG 000.5 (YR) and such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers. The employment of an enlisted or civilian court reporter is authorized. (AG 334)

(K. Fukami - Case # 97)

Extract SO 32, Hq Eighth Army, dated 7 February 1947, cont'd.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

OFFICIAL:

J. M. GLASGOW
Colonel, AGD
Adjutant General

HQ. EIGHTH ARMY
OFFICIAL COPY
ADJUTANT GENERAL'S OFFICE

DISTRIBUTION:
2 - Each individual named par 17
2 - CG, FEAF
5 - G-1 Sec
6 - CG, Hq Eighth Army
6 - CG, Royal Netherlands Indies Army
6 - CO, 8th Cav Reg
10 - Legal Sec, SCAP
20 - War Crimes Adm
10 - JA Sec
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1 - PRO
2 - CinC, FE
1 - SCAP
2 - CofS Sec
2 - PH Sec
5 - File

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500

AG 00.5 (27 Dec 46)LS-L 27 December 1946

SUBJECT: Amendments to Regulations Governing the Trials of Accused War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Reference is made to Letter Order, AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Regulations Governing Trials of Accused War Criminals."

2. The following amendments are directed in Letter Order, referred to in paragraph 1 above:

a. In paragraph 1a, delete the words, "units and organizations."

b. In paragraph 3a, delete in the last sentence thereof, the words "in open court" and add immediately after said last sentence the following: "This fact will be announced by the president of the commission in open court."

c. Delete paragraphs 5d(4) and 5d(5).

d. Delete "(6)" from 5d(6) and substitute therefor "(4)."

e. Delete paragraph 5d(7) and substitute therefor:

"(5) All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured."

f. In paragraph 5g, delete the first sentence and substitute therefor:

"g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, forfeiture of real or personal property, fine, or such other punishment as the commission shall determine to be proper."

6. Add paragraph 7 as follows:

"(7) OATHS.

a. Power to Administer Oaths.

Any person, military, naval, civilian, who, by competent authority is assigned the duty of administering, investigating, prosecuring, or defending suspected war criminals subject to trial under these regulations, and while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, or by the convening authority or his designee, to administer oaths with respect to all matters in the execution of such duty."

3. These amendments shall not affect any case in which the accused has been duly arraigned and, except as amended, all provisions of the subject regulations continue to remain in full force and effect.

BY COMMAND OF GENERAL MacARTHUR:

/s/ J. B. Cooley
JOHN B. COOLEY
Colonel, AGD,
Adjutant General.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
AG 000.5 (5 Dec 45)LS 5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
Commanding General, Sixth Army, APO 442.
Commanding General, Eighth Army, APO 343.
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offences against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, AFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

c. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to

submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

AG 000.5 (YO) 5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO: Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE.

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)L, subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as war criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements affidavits and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any statement, affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of the trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications, excepting therefrom all testimony relative to the issue of guilt or innocence.

5. In case in which the defense moves for a finding of not guilty after the conclusion of the prosecution's case, and upon the overruling of the motion rests its case without offering evidence in defense, and the court after submission of the case, finds the accused guilty, the court before imposing sentence may permit the defense to offer competent evidence in extenuation or mitigation of the offense alleged, subject to the right of the prosecution to rebut such evidence.

6. Interpreters and Interpretation.

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

(1) The Chief Interpreter will be advised of a complaint during the next court recess.

(2) The Chief Interpreter will investigate the matter and:

(a) Convince the complaining party that no substantial error exists; or

(b) Caution and advise the interpreter if necessary; or

(c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or

(d) Prepare an opinion to be given to the Commission if required.

(3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

b. Counsel are reminded that:

(1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and rearrangement of thought.

(2) Counsel is advised, when working through an interpreter:

(a) To use short, simple questions as free from artifice as if examining a small child.

(b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.

(3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile discussions:

(a) Long questions. (Impossible for interpreter and witness to remember)

(b) Complicated questions. (Dependent clauses confuse both interpreter and witness)

(c) Conditional questions. (Usually beyond comprehension of an oriental witness)

(d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)

(e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No -- I saw them")

(f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)

(4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trial.

a. The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.

b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the

record the fact that the record has been submitted to him and checked by him prior to authentication.

c. In the event the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

SECTION II: OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commissions of persons, units and organizations accused as war criminals.

There will be present:

- Commission
- Accused
- Prosecution Staff
- Defense Staff
- Interpreters
- Commission Reporters
- Press Representatives
- Photographers
- Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Bailiff" for the Commission will announce the entrance of the Members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of accused as read from the caption).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

(Reporters sit down and thereafter are not required to rise until oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTOR: "The Interpreters will be sworn."

(Interpreters rise, and the Prosecutor facing them repeats the following oath:)

"You (names of Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do."

(Interpreters are then seated.)

PROSECUTOR: "The following Members of the Commission appointed by Paragraph _____, Special Orders No. _____, Headquarters _____, dated _____ (as amended by Paragraph _____, Special Orders No. _____, dated _____ are present."

(The Prosecutor announces by name and rank the Members present.)
"There are no Members absent."
(Or: "Absent, Colonel Jones, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

"Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being 'Regulation Governing the Trials of Accused War Criminals.'

"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated _____, with the subject being "Trials of _____."

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated _____, with the subject 'Trials of _____.'

"Paragraph ____ of Special Orders _____, Headquarters Eighth Army, dated _____, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to Challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel _____ for cause.' The Defense then states reasons for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of _____(name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel _____, Colonel _____, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the Court until they shall be published by the proper authority or duly announced by the court, except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do."

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

PRESIDING OFFICER: "The Prosecution will be sworn. You Major _____, Captain _____, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help You God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

DEFENSE: "The Charge and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel, the proceedings will continue. If accused desires Counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If accused desires Counsel of his own selection and requests that the proceedings be continued until such Counsel be made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charge and Specifications will be read to the accused."

(Prosecutor will read the complete Charge and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of Commission, the Prosecution introduces the Charge and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special Pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "_____(Naming accused) at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either 'Guilty' or 'Not Guilty'".

(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each specification and to the charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refused to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of "Not Guilty".

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)

PROSECUTOR: "The Prosecution calls as its first witness: _____."

(Witness presents himself in front of and faces the Presiding Officer, and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

*NOTE: Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecutor).

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) to be attached to the record and marked Exhibit _____, (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its Opening Statement."

(The Defense makes its Opening Statement).

DEFENSE COUNSEL: "The Defense calls as its first witness _____."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct

examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

(The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the Arguments for the Prosecution and Defense." (Arguments to be conducted as directed by the Commission)

PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgement and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (All of whom remain standing), the Presiding Officer announces the judgement and sentence.)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Ward W. Conquest
WARD W. CONQUEST
Colonel, AGD
Adjutant General

CIVILIAN REPORTER'S CERTIFICATE

17 February 1947

I, the undersigned hereby certify, that I reported and transcribed the attached record of trial, that I am a civilian court reporter, in the civil service of, and paid for such service by, the United States.

Robert G. Carter

RECORD OF TRIAL

of

KANEO TSUKADA

by

MILITARY COMMISSION

APPOINTED BY THE COMMANDING GENERAL

HEADQUARTERS EIGHTH ARMY

Tried at

Yokohama, Japan 11 February 1947

RECORD OF TRIAL

of

KAEDO FUKAMI

by

MILITARY COMMISSION

APPOINTED BY THE COMMANDING GENERAL

HEADQUARTERS EIGHTH ARMY

Tried at

Yokohama, Japan — 11 February 1947

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Yokohama Courthouse
Yokohama, Japan
11 February 1947

PROCEEDINGS OF A MILITARY COMMISSION

which convened at Yokohama, Japan, pursuant to Paragraph No. 17, Special Orders Number 32, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 7 February 1947.

The Commission met at the Yokohama District Courthouse at 0940 hours, 11 February 1947.

PRESIDENT: The Commission is in session and is ready to hear any matters to be brought before it.

PROSECUTION: The prosecution is ready to proceed with the trial of the United States of America against Kauno Fukami. The accused is present together with defense counsel appointed by the convening authority. The prosecution is ready to proceed.

PRESIDENT: You may proceed.

PROSECUTION: The reporter will be sworn.

Mr. Robert G. Gantor, civilian court reporter, was then sworn.

PROSECUTION: The interpreters will be sworn.

Mr. Goro Oishi and Mr. Marutsugu Maruyama were sworn as court interpreters.

PROSECUTION: The following members of the Commission appointed by Paragraph 17, Special Orders Number 32, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 7 February 1947, are present:

DETAIL FOR THE COMMISSION

COL GEORGE W. EASTERDAY, 08096, CAC, Hq Eighth Army, LAW MEMBER
COL WILLEM JOHANNES LEYDS, 853, Royal Netherlands Indies Army
MAJ JOHN F. TRACEY, 0139895, AC, Hq Eighth Army

ABSENT

CAPT HERMAN A. KELLNER, 0335315, Cav, 8th Cav

FOR THE PROSECUTION

MAJ JOHN H. DICKEY, RCA, Chief Prosecutor
MR. JACOB SCHNEIDER, Assistant Prosecutor

ADVISORY COUNSEL FOR THE DEFENSE

MR. JOHN L. MURPHY

PROSECUTION: The prosecution submits for incorporation into the record of these proceedings, the following documents:

Letter Order AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being, "Regulations Governing the Trials of Accused War Criminals."

Letter order AG 000.5 (30 Aug 46)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 30 August 1946, with the subject being, "Trial of Hideo Fukumi."

Letter order AG 000.5 (30 Aug 46)LS, General Headquarters, United States Army Forces, Pacific, dated 30 August 1946, with the subject, "Trial of Hideo Fukumi."

Letter order AG 000.5 (10 Dec 46)LS, General Headquarters, Supreme Commander for the Allied Powers, dated 10 December 1946, subject, "Trial of Hideo Fukumi," which letter forwarded the additional specifications of the same date.

First endorsement, Letter AG 000.5 (10 Dec 46)LS, General Headquarters, United States Army Forces, Pacific, dated 10 December 1946, subject, "Trial of Hideo Fukumi."

Paragraph 17, Special Orders Number 38, Headquarters Eighth Army, United States Army, Office of the Commanding General, dated 7 February 1947, entitled, "Appointment of a Military Commission."

PRESIDENT: Has the defense counsel been given an opportunity to examine these documents prior to their being offered?

DEFENSE: Yes, sir.

PRESIDENT: There being no objection, the documents will be received and incorporated into the record of these proceedings. Does the prosecution desire to challenge any member of the Commission for cause.

PROSECUTION: The prosecution has no challenges. May it please the Commission, it is sometimes requested that the Eighth Army Rules, that is, the letter, Headquarters Eighth Army, AG 000.5 (YC) of the 5th of February 1946, subject, "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals," be put in as part of the formal documents, and I now tender the same so that there will be no question. That will be added to the formal documents.

PRESIDENT: There being no objections, it will be incorporated in the record.

DEFENSE: No objection.

PRESIDENT: Does the defense desire to challenge any member of the Commission for cause

DEFENSE: No challenge, sir.

PRESIDENT: The Commission will be sworn.

The members of the Commission and the prosecution were then sworn.

PROSECUTION: May the record show the prosecution is ready to proceed with the arraignment of Hideo Fukumi.

PRESIDENT: Any remarks by the defense.

DEFENSE: Yes, sir. The charges and specifications have been received by the defense counsel. The accused is duly apprised of each offense charged. The accused is also advised of his rights as provided in paragraph 5-b of Letter AG 000.5 (5 Dec 45)LS, General Headquarters,

Supreme Commander of the Allied Powers, entitled, "Regulations Governing the Trials of Accused War Criminals," heretofore introduced into the record of these proceedings.

PRESIDENT: Then does the accused desire to introduce as defense counsel:

DEFENSE: The accused introduces as defense, the advisory defense counsel, myself, J. L. Murphy, and Mr. Hirohiko Terajima.

PRESIDENT: The charge and specifications will be read to the accused.

PROSECUTION: I believe I should read in, prior to reading the charge and specifications, the letter of referral to yourself, sir, AG 000.5 (WR) second indorsement, Headquarters Eighth Army, APO 343, to Colonel George W. Lasterday.

The letter of referral was read into the record by the prosecution.

PRESIDENT: The charge and specifications will be read to the accused.

The prosecution then read the charge and specifications against Kenno Fukami.

PROSECUTION: With permission of the Commission the prosecution introduces the charge and specifications which have been read to the accused for incorporation into the record of these proceedings.

PRESIDENT: Have you had an opportunity, defense, to examine the charge and specifications?

DEFENSE: Yes, sir, I have. May I ask with reference to Specification 4, that is, of course, in the original specifications, it states in the last line, "--together than as alleged in Specifications 1 to 3 inclusive." It does not state anything with reference to what might be included in the additional specifications. It would appear likely that the additional specifications may be an enlargement and cover the instances referred to in Specification 4. If that is the case, may I ask the prosecutor if he would wish to amend or withdraw Specification 4 of the original specifications.

PROSECUTION: Well, may it please the Commission, if counsel for the defense feels that it is at all required, I have no objection to Specification 4 being amended to read, "Specifications 1 to 3 inclusive, and additional Specifications 1 to 6 inclusive."

DEFENSE: That's all right.

PRESIDENT: It is so ordered. It will be so amended. That's the exact verbiage on that.

PROSECUTION: After the word "inclusive" in the last line in Specification 4, add the words "and additional Specifications 1 to 6 inclusive."

PRESIDENT: "--in Specifications 1 to 3 and in additional Specifications 1 to 6 inclusive." There being no objection, the charge and specifications are received and will be incorporated into the record. Are there any special pleas by the defense.

DEFENSE: No objections. No special pleas, sir.

PROSECUTION: May it please the Commission, do you wish the charge and specifications to be translated in open court.

Now while he was at this camp in that brief period of time the evidence will disclose that this accused earned for himself the reputation of being a dangerous man and one whom apparently all the prisoners had cause to fear. The prisoners knew him, those that learned his name, as Hanno Ando or Onda. He is at present going under the name of Hanno Fukumi, and is so charged. The prosecution is unable to bring forward any evidence which will disclose the reason for this change of name. It may be that the defense will have evidence which will enlighten the Commission as to why this accused is now known as Fukumi, but I think that all the evidence that is available to the prosecution simply discloses that any name which the prisoners were able to attach to this man was Onda or Ando. He was also known by a variety of nicknames in the camp. The first one, and apparently the most popular one, was The Brown Bomber. Now any members of the Commission that follow the boxing game at all may be able to see for themselves the reason for the attaching to this accused the nickname that is popularly used for the present world's champion heavyweight title holder. The other most popular nickname was The Black Bastard, and that may be an eloquent indication of the reputation of this accused among the prisoners of war and their estimate of his character and behavior.

Now the evidence which the prosecution will produce is completely documentary. We have no live witness but we have the affidavits of the prisoners who complained that they were mistreated by this accused, and certain other affidavits of prisoners who have personal knowledge of the acts complained of. The specifications disclose a number of specific instances of serious beatings and torture and mistreatment of prisoners of war by the accused. In addition there is a good deal of evidence which tends to show that this particular guard was very callous and

PRESIDENT: No.

DEFENSE: He has been advised.

PRESIDENT: The accused will stand. [illegible], at this time the Commission will hear your plea to the charge and specifications which have been read to you. You may plead either guilty or not guilty.

ACCUSED: (Through interpreter) I plead not guilty.

PRESIDENT: I understand from the counsel he pleads not guilty to the charge and to all specifications

DEFENSE: That is correct, sir.

PRESIDENT: The prosecution will make its opening statement.

PROSECUTION: May it please the Commission, this is a case arising out of the operation of a Prisoner of War Camp which was part of the Fukuoka area of prisoner of war camps, which was situated in a village called [illegible] near [illegible] in Fukuoka Prefecture in the island of Kyushu. This camp was variously known throughout its history as Branch Camp No. 5 and Dispatch Camp No. 8. It is a straightforward and comparatively simple case. I don't think that any of the normal complications that we run into in many of these cases will worry the Commission in this case. The accused, the evidence of the prosecution will show, was a civilian guard employed at this camp for a rather brief period of time. The evidence will be that he came to the camp sometime about the middle of May 1945 and that he was there at the camp until the cessation of hostilities on the 15th of August, 1945, a period of approximately four months.

adopted a conscious and calculated course of conduct in his treatment, in his brutal treatment of the prisoners. A great majority of the affidavits that will be produced will refer to the beatings by this accused of a regularity and a scope which they say makes it impossible for them to recall the individuals involved and the dates and the various details of the incidents. That will appear from the evidence as it is produced.

Now in addition most of the affiants will stress the lack of provocation or reason for the actions of this particular guard. I think that is true, but I certainly don't intend to press it. It's there in the affidavits, but I don't intend to rely on it because personally I feel that even the most extreme provocation, the most extreme instances of misbehavior or that sort of thing on the part of the prisoners could hardly be any justification at all for the type of ordeal through which this particular guard put the prisoners in this camp. Now the camp was under the command at this time of an army lieutenant who was in control and command of the camp and against whom personally the prisoners of war have no complaint. They say, I think without a single exception the prisoners say that the camp commander at this time was the best Japanese that they ever had ever them, and the same is true of the camp sergeant at this time. He is very highly spoken of by all the prisoners, and that will appear from the affidavits, but the one real complaint that the prisoners have in this period at the camp are the actions and the treatment accorded them by the accused. Now without any further preliminary I will commence the introduction of the evidence for the prosecution.

If it please the Commission, I affirm that the affiants of all the affidavits which will be produced are, to the best of my knowledge and belief, not present in Japan, Korea, the Ryukyus or the Philippines. The defense have examined all the originals, with the exception of one which I didn't have with me yesterday but which I will show him this morning, and I believe that there is no objection to any of the affidavits on the grounds of incompleteness or improper attestation or anything of that nature. There may be individual objections to phrases or the contents of some of the affidavits, but I understand that there is no objection to the documents themselves, and I will ask the permission of the court to produce the original in the usual way and then have it withdrawn, substituting authenticated copies.

DEFENSE: No objection.

PRESIDENT: It is approved.

PROSECUTION: Prosecution introduces as its first exhibit the affidavit of R-4497, Private Ralph Forsberg, sworn at Winnipeg the 31st day of May, 1946. Now, sir, I might say in explanation of this affidavit, it is a supplementary deposition. The defense have seen the original affidavit which was considerably longer, and this supplementary deposition was requested as the affiant was the victim of one of the most serious beatings which we allege against the accused, and in his longer affidavit he put the date of the incident as January 1944, a time at which this accused was not at the camp, and the other evidence indicated that the incident had in fact taken place in the early summer of 1945. This was drawn to the affiant's attention and he was asked to explain how he fixed the date as January 1944 and he deals with that fully in para. 6 of the present deposition. Now I have the original affidavit here. It's been examined by the defense, and if the Commission wishes to see it, it's here, but I didn't think it necessary in view of the defense's agreement.

PRESIDENT: Prosecution will decide which affidavits they wish to submit.

PROSECUTION: Very good, sir.

DEFENSE: There is no objection.

LAW MEMBER: There being no objection, the affidavit of Forsberg will be marked Exhibit No. 1 and incorporated in the record. If any of the affidavits pertain to more than one specification, indicate that to us.

PROSECUTION: Yes, sir. This affidavit refers to Specification 1.

Prosecution's Exhibit No. 1 was read into the record.

PRESIDENT: This photograph is in evidence as part of the original

PROSECUTION: That's right, sir.

PRESIDENT: You may proceed.

PROSECUTION: The prosecution tenders as its Exhibit No. 2 affidavit of E-3[illegible]180, Sergeant-Major Warrant Officer Class 1 Harold Barlow Shepherd, Canadian Army, sworn the 23d September 1946 before John R. Pritchard, Captain, Infantry, Summary Court, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: There were no objections to No. 1. I have objections to the second, the affidavit of Harold Barlow Shepherd. My objections are on the grounds to begin with, Shepherd lays no foundation for virtually everything he says here, which leaves us in a position where we are unable to answer it. It's vague, indefinite, and a great deal is based on hearsay and unsubstantiated conclusions; also on page 2 particularly where he's referring to Ralph Forsberg, that is to say, sub-paragraph 1 to Paragraph 4, primarily hearsay and we object to it on that basis.

LAW MEMBER: The defense is aware hearsay is admissible

DEFENSE: I'm aware of that, sir. I wish to call it to the attention of the court.

LAW MEMBER: The objection is not sustained. The Commission will evaluate this deposition for what it is worth. It will be received in evidence as Prosecution's Exhibit No. 2.

PROSECUTION: May it please the Commission, this affidavit will refer particularly to Specifications 1, 3 and 4.

Prosecution's Exhibit No. 2 was read into the record.

PROSECUTION: Prosecution tenders as Exhibit No. 3 the affidavit of H.20798, Private John Fertel, sworn at Calgary, Alberta, the 15th day of January, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: I assume that the prosecutor is referring to Paragraph 8, which is the only thing that concerns the accused in this case.

PROSECUTION: Yes.

DEFENSE: And the defense does object to that on similar grounds as previously. The affiant has laid no foundation whatsoever. This whole story is probably based on hearsay. He gives no evidence that he saw these things happen himself, and his whole statement amounts to a conclusion.

LAW MEMBER: One remark you made, he doesn't say anything he saw himself?

The reporter read back the last statement of the defense.

LAW MEMBER: Although this affidavit contains no statement of what the affiant saw himself, it does state what was common gossip and knowledge at the camp, and as for it being hearsay evidence, it is admitted under the SCA Rules and the Commission will accept it and evaluate it for what it is worth.

PROSECUTION: May it please the Commission, this exhibit will refer particularly to Specifications 1 and 4.

Prosecution's Exhibit No. 3 was read into the record.

PRESIDENT: At this time the Commission will take a ten minute recess.

The Commission then took a recess until 1050, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PROSECUTION: The prosecution tenders as its Exhibit No. 4 the affidavit of N-30584, Rifleman James Robert Jessop, Royal Rifles of Canada, sworn at Quebec the 18th of January, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: I assume Major Dickey is referring to Paragraphs 21, 24 and 30.

PROSECUTION: Yes. As I indicated to you yesterday, the first part of Paragraph 30.

DEFENSE: I mean to say 24 and 30, pardon me.

PROSECUTION: Well, actually I wasn't relying on Paragraph 24.

DEFENSE: Just 30.

PROSECUTION: The first part of 30 and Para. 38, as I indicated yesterday.

DEFENSE: No objection.

LAW MEMBER: There being no objection, the affidavit of Rifleman Jessop will be marked Exhibit No. 4 to be admitted into evidence and incorporated in the record.

PROSECUTION: This affidavit refers particularly to Specifications 1, 3 and 4.

Prosecution's Exhibit No. 4 was read into the record.

PROSECUTION: Prosecution produces as its Exhibit No. 5 the affidavit of H.6238, Lance Corporal Joseph Frederick Trasiewick, Canadian Army, sworn at Winnipeg the 1st day of March, 1946, the original to be withdrawn and authenticated copies substituted therefor.

LAW MEMBER: Any objections to this affidavit?

DEFENSE: Referring to Paragraph 3.

PROSECUTION: First to Paragraph 3 and the description at the top of Page 2.

DEFENSE: Which is Paragraph 8. Referring to Paragraph 3, defense objects to

the introduction of this affidavit inasmuch as the affiant has not given any time, place, circumstances, has himself assumed to say that without provocation he was kicked, etc. I believe the question of provocation on his part is conclusion only, the question of provocation is a matter for the court to decide, and object to the affidavit.

LAW MEMBER: What specification does 5 refer to?

PROSECUTION: This refers to Specification 2 only, sir.

LAW MEMBER: I would like to inquire of the prosecution if the "at Camp Omine" referred to in the affidavit is the same as the Camp Fukuoka Camp No. 5 known as Despatch Camp No. 8.

PROSECUTION: Yes, sir. I believe I pointed out in the opening address this camp was in the village of Omine near Kawasaki, and a good many of the prisoners referred to it as Camp Omine or Ormine.

DEFENSE: If it please the court, I'm perfectly willing to stipulate with the prosecution that that is correct.

LAW MEMBER: Although this affidavit refers to the accused only by virtue of his nickname given in camp, the Commission will evaluate it for what it is worth and the objection is not sustained. It will be admitted into evidence.

PROSECUTION: May it please the Commission, there is photo identification in Paragraph 8 in the original. This refers to Specification 2, Para. 3.

Prosecution's Exhibit No. 5 was read into the record.

LAW MEMBER: On Page 1 of the deposition you have the whole page lined out from 3 down. I think the Commission should keep in Figure 1, "In Exhibit 'A' - Black Bastard."

PROSECUTION: Yes. Well, it's repetitious, sir. I don't think it will cause any objection if it is kept in.

LAW MEMBER: "8" goes ahead to describe Black Bastard, but you haven't got Figure 1 in. You lined it out.

PROSECUTION: It's in Paragraph 8, the last line, sir.

LAW MEMBER: All right, the remark will be withdrawn.

PROSECUTION: Prosecution now tenders in evidence as Exhibit No. 6 the affidavit of E-30475, Rifleman Thomas Raymond Henry, sworn at Saint John, New Brunswick the 14th day of December, 1945, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: May I ask does the prosecution intend in this instance to refer to Paragraph 11?

PROSECUTION: Yes, Paragraph 11.

DEFENSE: The defense objects to the admission of this affidavit on similar grounds given. This whole statement in Paragraph 11 is probably based on hearsay, Page 4, and I'm appreciative of SCAP Rules with reference to hearsay, of course, but nevertheless I do believe it affects the value of the evidence greatly. The whole statement in Paragraph 11 is indefinite. There is no statement as to where, when, how it happened to the witness.

The witness himself admits that he isn't sure. He uses the expression, "as far as I recall" in about the fourth line from the end of it, "among those beaten up as far as I recall." There's a whole spirit of vagueness and indefiniteness about this, and it is probably based on hearsay and I object to it for that reason.

LAW MEMBER: The Commission will take into consideration the remarks of the defense counsel. However, the objections are not sustained and the affidavit will be admitted into evidence.

PROSECUTION: This exhibit will refer particularly to Specifications 3, 4, and additional Specification No. 1.

Prosecution's Exhibit No. 6 was read into the record.

PROSECUTION: Prosecution tenders in evidence as Prosecution Exhibit No. 7 the affidavit of M6453, Sergeant Jose A Firmin Legros, sworn at Vancouver the 11th day of January, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: May I ask the prosecution if he is referring to the second page, paragraph 10 in this particular affidavit

PROSECUTION: The first half of paragraph 10.

DEFENSE: Defense objects to that on the grounds that it does not necessarily allege a crime to the defense inasmuch as the affiant only states he has seen the Brown Bomber strike prisoners whom he does not recall by name. There's no indication he violated International Law whatsoever. It may be just discipline in the camp.

LAW MEMBER: This affidavit has probative value to the Commission in that it further substantiates the identification of the accused. The objection is not sustained. It will be marked Exhibit No. 7.

PROSECUTION: This refers to Specification 4.

Prosecution's Exhibit No. 7 was read into the record.

PROSECUTION: The prosecution tenders in evidence as Exhibit 8 the affidavit of E-30547, Maurice Davignon, sworn at Quebec the 27th day of March, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: May I request of the court and of the prosecutor also at this time that the introduction of this particular affidavit be delayed until all the additional affidavits have been introduced?

PROSECUTION: Yes, certainly.

DEFENSE: Do you wish my reasons for asking that? Because there are in the affidavits yet to come, some elements that will give me in my opinion a basis upon which I can object to this.

LAW MEMBER: Has prosecution any objection?

PROSECUTION: I have no objection, no, sir.

LAW MEMBER: The request of the defense will be granted.

PROSECUTION: Will it be marked as Exhibit 8 for identification?

LAW MEMBER: It will be marked 8 and offered into evidence at a later date. We'll hand it back to you.

PROSECUTION: The prosecution tenders in evidence as Prosecution Exhibit No. 9 the affidavit of H.6241, Private Daniel Dunsmith, Winnipeg Grenadiers, sworn at Winnipeg the 11th day of April, 1946, the original to be withdrawn and authenticated copies substituted therefor.

LAW MEMBER: Any objection?

DEFENSE: I assume prosecution is referring to paragraph 10, page 2?

PROSECUTION: That's correct.

DEFENSE: Defense objects to this on the same basis as previous affidavits as indefinite, vague, giving no particulars. We're given no proof that the acts of the accused might not have been justified under International Law under the simple application of discipline. We're given no possibility as defense to show any mitigating circumstances under the way in which this affidavit is given.

LAW MEMBER: Objection is not sustained. It will be marked Exhibit No. 9 and is admitted into evidence.

Prosecution's Exhibit No. 9 was read into the record.

DEFENSE: May I refer the court to, in view of what the prosecutor has just read, affidavit No. 5 to what I consider a rather fair discrepancy in the description of the accused.

LAW MEMBER: But I think you can properly bring that out in defense.

DEFENSE: All right, sir.

LAW MEMBER: I had already noted that, but you will bring it out in defense.

PROSECUTION: The prosecution tenders in evidence as Exhibit No. 10 the affidavit of Corporal Walter Gordon Billson, sworn at Aachen the 22d day of January, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: For the record, the same objections as before, that affiant lays no foundation, gives a very vague and indefinite story, leaves the defense with no opportunity to answer in mitigation, and also assumes the conclusion with reference to such words as "brutal"; it's the prerogative only of this court to decide whether it's brutal. The affiant is certainly not entitled to try this case, and I object to it.

LAW MEMBER: We will evaluate that for what it's worth. The objection is not sustained. It will be marked Exhibit 10 and admitted in the record.

PROSECUTION: This refers to Specification 4, sir.

Prosecution's Exhibit No. 10 was read into the record.

PROSECUTION: The prosecution tenders in evidence as Exhibit No. 11 the affidavit of TX 8950, Sergeant Denis H. Spanlon, sworn at Hobart the 24 of July, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: You are referring to paragraph 6, Major, would that be correct?

PROSECUTION: Yes, the last portion of paragraph 6.

DEFENSE: The affiant uses the expression 'ill-treated'. We object to this affidavit on the grounds that it is a conclusion without any particular foundation and as such leaves the defense without any basis to offer evidence in mitigation, and also is again an infringement on the prerogative of the court by stating conclusions; object to it.

LAW MEMBER: The objection is not sustained. The affidavit will be admitted into evidence. However, the remarks of the defense counsel will be taken into consideration. This refers to Specification 4?

PROSECUTION: This refers to Specification 4, sir. May it please the Commission, we are unable to rely on this identification because the original which has been in the custody of the Australian Division has not the exhibit attached and they're looking for it, but apparently when it was being copied the exhibit became lost and can't be found.

Prosecution's Exhibit No. 11 was read into the record.

PROSECUTION: The prosecution tenders in evidence as Exhibit 12 the affidavit of Grey Edmiston sworn at Melbourne, Victoria the 19th day of June, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: Major, you are referring to Paragraph 4, is that correct?

PROSECUTION: Yes, Paragraph 4.

DEFENSE: In Paragraph 4 the affiant uses such expressions as 'particularly brutal,' 'punished for trivial offenses.' These, of course, are all conclusions. He also states that, 'I cannot recall the names of any of the victims.' Vague and indefinite; we object to the introduction of this affidavit.

LAW MEMBER: The objection is not sustained. The affidavit will be admitted into evidence and marked Exhibit No. 12 and appended to the record.

Prosecution's Exhibit No. 12 was read into the record.

PROSECUTION: The prosecution tenders in evidence as Exhibit 13 the affidavit of NX 10653, Sydney George Barber, sworn at Sidney the 25th day of October, 1946, the original to be withdrawn and authenticated copies substituted therefor. This is the original that I don't think the defense saw yesterday.

DEFENSE: No objection to this affidavit.

LAW MEMBER: There has been no objection. The affidavit of Sydney George Barber will be marked Exhibit No. 13, admitted into evidence and incorporated in the record.

Prosecution's Exhibit No. 13 was read into the record.

PROSECUTION: Prosecution tenders in evidence as Exhibit No. 14 the affidavit of 0-87383, Rifleman Murray Garnet Carr, sworn at Saint John the 20th day of December, 1945, the original to be withdrawn and authenticated copies substituted therefor.

LAW MEMBER: Any objection?

DEFENSE: You are referring to Paragraph 9 on Page 3, is that correct, Major?

PROSECUTION: Yes, Paragraph 9, the first part of the paragraph.

PROSECUTION: Yes, 3-a, the last half of the paragraph.

DEFENSE: And agg 2 to the identification features of it

PROSECUTION: I wasn't going to rely on the identification.

DEFENSE: Defense makes similar objection here, that the beatings referred to here may well have been justified in the exercise of discipline under International Law. There is nothing shown to the contrary. The defense is given no opportunity in the circumstances set in here to answer this in the nature of any mitigating circumstances. Objection to the admission.

LAW MEMBER: Objection not sustained. The affidavit of Difleman Chard will be admitted in evidence and marked Exhibit No. 15 and incorporated in the record.

PROSECUTION: This exhibit refers to Specification 4, and No. 3 additional.

Prosecution's Exhibit No. 15 was read into the record.

PROSECUTION: Prosecution tenders in evidence as Exhibit 16 the affidavit of L. J. Bell, XX 7815, Corporal Leonard J. Bell, sworn at Hobart on the 24 day of July, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: Objection is on the same grounds as before. I assume you are referring to Paragraph 9.

PROSECUTION: Paragraph 9, the end of the paragraph.

DEFENSE: Defense objects to this. For instance, the use of the words "most vicious" is obviously conclusion which is the prerogative of the court only to decide. The affiant gives no evidence whatsoever of provocation. It might well be that these hittings were well within the bounds of International Law in the exercise of discipline at this camp. There's no evidence given whatsoever of the time, place or circumstances. We object to the introduction of this affidavit.

LAW MEMBER: Just for the information of this Commission, in several of your objections, "no evidence as to the place--"

DEFENSE: The place is the camp, sir. I do not mean that, of course. I appreciate what you mean. I was referring more to the time and the location of the camp in, of course, what I meant by "place".

LAW MEMBER: The objection is not sustained. The affidavit will be admitted into evidence and marked Exhibit 14 and incorporated in the record.

PROSECUTION: This affidavit refers particularly to Specification 4 and No. 2 additional specification.

Prosecution's Exhibit No. 14 was read into the record.

PROSECUTION: Prosecution tenders as Exhibit No. 15 the affidavit of C65288, Rifleman John Frederick Ghard, Royal Rifles of Canada, sworn at Toronto the 4th of January, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: Defense objects to the admission of this affidavit. Major, you are referring to paragraph 9-a.

DEFENSE: No circumstances set out to indicate that this was necessarily a violation of International Law. There are no circumstances set out that offer the defense any opportunity to offer any mitigation which might exist.

LAW MEMBER: Not sustained. The affidavit of Bell will be admitted into evidence and marked Exhibit No. 16 and incorporated in the record. To what specification does it refer

PROSECUTION: Specification No. 4 additional.

Prosecution's Exhibit No. 16 was read into the record.

PROSECUTION: The prosecution tenders in evidence as Exhibit No. 17 the affidavit of NX90485, Sergeant S. E. Davies, sworn at Sidney the 29th day of June, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: No objection.

LAW MEMBER: There being no objection, the affidavit of Sergeant Davies is admitted in evidence and marked Exhibit No. 17 to be incorporated in the record.

PROSECUTION: If it please the Commission, this exhibit refers particularly to Specification 4 and No. 5 additional.

Prosecution's Exhibit No. 17 was read into the record.

PROSECUTION: The prosecution tenders in evidence as Exhibit No. 18 the affidavit of Calvin James Kitto, sworn at Adelaide the 1st day of July, 1946, the original to be withdrawn and authenticated copies substituted therefor.

DEFENSE: You are referring to paragraph 8 I assume, Major, on page 3

PROSECUTION: Yes.

DEFENSE: Defense objects to the admission of this affidavit to the fact that it does not necessarily allege any crime or violation of International Law and as a matter of fact by the witness's own story, which will be read, by his own story what happened may well be justified. What I contend is that he himself gives sufficient facts here that may well justify what happened.

LAW MEMBER: Objection is not sustained. The affidavit of Kitto will be admitted into evidence and marked Exhibit No. 18 and incorporated in the record.

PROSECUTION: This refers to Specification 4 and 6 additional.

Prosecution's Exhibit No. 18 was read into the record.

DEFENSE: May I ask the prosecutor continue to read paragraph 9, or may I ask permission to read it myself.

PROSECUTION: The whole of paragraph 9.

DEFENSE: Yes.

Prosecution read paragraph 9 of Exhibit No. 18 into the record.

DEFENSE: May I ask the prosecutor is he willing to stipulate that the character here referred to as Air Force has been identified here and in other

specifications as a man named Takahashi, in various affidavits we have here.

PROSECUTION: Yes, I certainly will stipulate that a civilian guard by the name of Takahashi was at this camp and was known by the nickname of The Air Force Kid, or Airforce.

LAW MEMBER: You just wanted paragraph 9 read. Now about 10

DEFENSE: No, sir.

PROSECUTION: Now may it please the Commission, Exhibit 8, the affidavit of Maurice Devignon.

LAW MEMBER: Any objections to 8 now, at this time.

DEFENSE: No objection to 8.

LAW MEMBER: There being no objection, the affidavit of Maurice Devignon will be admitted into evidence and marked Exhibit No. 8 and incorporated in the record. The specification referred to is

PROSECUTION: This refers to Specification 4, the general specification, if it please the Commission.

Prosecution's Exhibit No. 8 was read into the record.

PROSECUTION: May it please the Commission, that is the case for the prosecution.

PRESIDENT: Do I understand that the prosecution rests.

PROSECUTION: The prosecution rests.

PRESIDENT: At this time before proceeding the defense to make its opening statement, we will recess to reconvene at 1330 this afternoon.

The Commission then took a recess until 1330, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PRESIDENT: The defense will make its opening statement.

DEFENSE: If it please the Commission, the first point I might take this opportunity to clear up, in his opening statement the prosecutor referred to the divergence in names used by the accused. This accused's name was Ando, and last February, February 1946 he married into the Fukami family, he married into a family which had only one daughter, no sons, and I'm informed by other Japanese here with me that it's customary in a situation like that in order to preserve the family name, that a man marrying into a family will take the name of his wife, which is in explanation of why this man is now using the name of Fukami.

The defense will offer evidence to show two facts in this case; first, that several of the acts which are alleged against the defendant he did not commit, and secondly that he did commit some of the acts that are alleged against him, but committed them in a lawful exercise of military discipline. Such slappings as he did administer were given only after several warnings and under circumstances where violations, continued violations of regulations by the prisoners of war would have endangered their own safety. An example of this is the fire regulations. The accused reprimanded several prisoners concerning violation of smoking regulations in the barracks and after several warnings did slap some of them in order to assure that the fire regulations would be observed and to prevent any fire in these

inflammable buildings, and in that fashion the punishment that he did administer was administered for the safety of the prisoners themselves. The defense will introduce only up to four witnesses. All of them, including the accused here, were guards at this particular prison camp in question. The first witness which we will call is Tsunetsu Shigetoku.

Tsunetsu Shigetoku, a witness for the defense, was sworn and testified as follows:

PROSECUTION: (To interpreter) Tell him to repeat after me. In accordance with my conscience I swear that I will tell the truth, I will add nothing and I will conceal nothing. Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission or any other American court or commission?
A. (Through interpreter) Yes.

DIRECT EXAMINATION

Questions by defense:

Q. Will you state your name to the Commission?
A. Shigetoku Tsunetsu.

Q. What is your address?
A. The Furukawa Onine Coal Mine Company, Tagawa gun, Fukuoka Prefecture.

Q. What is your occupation?
A. Do you mean at present?

Q. Yes, at present.
A. I am an employee of the Furukawa Mining Company at present.

Q. What was your occupation from May till September 1945?
A. I was a civilian attached to the army.

Q. Where were you stationed?
A. At Onine, Fukuoka Prefecture, the Fukuoka No. 8 Dospatch Camp.

Q. Do you know the accused in this case, Kazuo Fukuoka?
A. Yes.

Q. If he is in this courtroom, will you point him out?

DEFENSE: Let the record indicate he pointed to the accused.

Q. Where did you first meet him?
A. I met him at a hospital, a veterans' hospital which was located in Nagamachi Kasuya gun, Fukuoka Prefecture.

Q. How did you happen to get your job as civilian guard at this prison camp?
A. There was a man called Katano who was previously working at the No. 8 Dospatch Camp, and he urged me to work there also, and so I did.

Q. Were you a patient at the hospital?
A. Yes, I was a patient at the hospital but about that time I was almost healthy.

Q. Was Fukuoka a patient at the hospital with you?
A. Later I got to know him at the hospital, but I do not know if he was in there as a patient from before.

Q. Did you go to this prison camp as a guard together with Fukami?
A. Yes.

Q. Was there anyone also with you besides yourself and Fukami that went at this same time?
A. A person called Shirosaru.

Q. Where did you first meet Shirosaru?
A. At the hospital.

Q. Do you recall the date that you first went to work at this prison camp.
A. Yes, I do remember.

Q. What date?
A. May the 14th.

Q. 1945, is that correct?
A. Yes, 1945.

Q. And did Shirosaru and Fukami report with you at that same day?
A. No, not on the same date. We worked in relief.

Q. What exactly was the title of your job as a guard at the prison camp?
A. To prevented the escape of the prisoners of war, to protected them from being harmed in any way from anybody outside, to ascertained the number of prisoners of war that were present, and especially the number that went to work as well as the prevention of fires and the taking of measures in case of airraids.

Q. Did you have any guards under you?
A. Yes.

Q. How many?
A. I believe about 12 to 13 men.

Q. Was Fukumi also a guard commander?
A. Yes.

Q. And were his duties as guard commander approximately the same as your own?
A. Yes.

Q. What was Fukumi's reputation as a guard commander?

PROSECUTION: If it please the Commission, this witness might be qualified in some way or other as to what he is going to base this opinion on. He is being asked to give an opinion as to the reputation of this man as a guard commander. I'd like him to be asked the reputation in whose eyes, the other guards or the prisoners, or in some way indicate to the Commission what his evidence is going to be.

DEFENSE: The witness has already qualified himself as a guard commander. However, I will ask the question with reference to his own knowledge as a guard commander.

Q. What was Fukumi's reputation among the other guards as a guard commander?
A. It was good.

Q. To your knowledge what was his reputation as a guard commander among the prisoners?
A. He was very military in manner and strictly adhered to the regulations handed down by the camp commandant, and therefore there might have been times when they thought him rather cold and aloof because he observed his duties very well.

Q. I am referred just now to regulations handed down by the camp commander. Can you describe these in more detail?
A. For example, there was a regulation prohibiting smoking within the room, and if he saw a prisoner of war smoking, then he would give them warnings, and whenever anything like that occurred, he would never fail to give them warnings, and because he was like that and having served only a short time, that is about three months, he may not have been very well liked, but I do not actually know because I was never on the spot myself.

Q. Why was it necessary for there to be a regulation against smoking in the room?
A. It was an order handed down by the camp commandant.

Q. To your knowledge do you know if Fukumi ever struck or beat a prisoner of war?
A. I never saw him do that myself.

Q. Did you ever hear of his having done it?
A. Once or twice I did hear of that.

Q. Do you know any of the circumstances of those instances you have mentioned?
A. I do not know the circumstances.

Q. Do you recall any prisoner of war at this camp who wore a plaster cast from his shoulders to his hips because of a back injury?
A. I do not remember him.

Q. Do you recall any prisoner of war at this camp who had an amputated leg?
A. Yes, I do remember him.

Q. Did Fukumi, to your knowledge, ever hit such an amputee prisoner of war?
A. I have never seen nor heard of that.

Q. If he had done such a thing, would you likely know about it?
A. Whenever there was such an incident First Lieutenant Williams and Warrant Officer Clapp would in all cases report to the camp commandant.

Q. Do you know of any prisoner of war with an amputated leg ever being hit by anyone at this camp?
A. After serving in the camp I heard that such a prisoner of war was hit before I went there.

Q. Do you know who he was hit by?
A. It was before I served there, the incident took place before I served there so I do not clearly remember the name.

Q. Do you know another employee at this camp whose name was Takahashi?
A. I do know of a civilian attached to the army called Takahashi.

Q. What was Takahashi's position at the camp?
A. He was our senior.

Q. Do you mean he was a guard also superior to you?
A. He was a guard, and by "senior" I mean he was serving there longer than us.

Q. Among the guards what was Takahashi's reputation?
A. I did not hear anything good about him.

Q. Did you ever have any discussions with Takahashi concerning prisoner of war discipline?
A. When I first went to the camp he instructed me on certain things.

Q. What were those certain things.
A. He instructed me to strictly adhere to the internal regulations put out by the camp commandant, and warned me against talking to the prisoners of war. He did not state this emphatically but he warned me nevertheless, and he instructed me about the duty regulations of the guard.

Q. What type of construction were these camp buildings?
A. They were wooden structures.

Q. Was there any danger of fire?
A. No.

Q. You said earlier that prisoners of war were not allowed to smoke in various buildings. What were those buildings.
A. They were wooden structures.

Q. Do you know of any disciplinary action being taken by the accused Fukami against any prisoner for smoking in the sleeping rooms?
A. Fukami as well as we gave warnings about that.

Q. Do you know of Fukami ever striking a POW for this?
A. I do not know of that.

Q. In the case of an airraid did the guard commanders have any duty to check the presence of prisoners of war.
A. Yes.

Q. What were those duties? How did they perform these?
A. When alert was sounded the prisoners of war were allowed to stay within the rooms. However, when the airraid alarm sounded then they were lined up in the yard and checked.

Q. What was the duty of the guard commander in this checking?
A. After the checking the guard commander would report to the camp commandant and after instructions were handed down by the camp commandant the prisoners of war would take refuge in the airraid shelters.

Q. Was there any system at the camp for checking the whereabouts of prisoners of war at all times?
A. Yes.

Q. Will you describe it?
A. There were wooden labels or tally boards on which were written the numbers of the prisoners of war, and there were various positions such as work, rest, latrine, or yards on which these tally boards could be placed, and if they went to work then they placed the tally boards in the position marked work, and if they rested in their room then they placed their tally board on a position marked rest, and if they went to the latrine or were in the yards, then they put the tally boards in those places respectively. That was the regulation.

Q. In case a prisoner failed to put his tally board in the proper place, what were your instructions as to enforcement?
A. Because there would be difficulties in checking the personnel during airraids, the camp commandant warned us strictly about this matter.

Q. In case any a prisoner violated this, what disciplinary action was taken?
A. In that event First Lieutenant Williams, Warrant Officer Clapp and the prisoner of war involved would be called to the guard office, and since we could not speak English we asked Interpreter Clapp to warn the prisoner of war not to do the same thing hereafter.

Q. With reference to Takahashi do you know if Takahashi ever struck a prisoner of war who had an amputated leg?

PROSECUTION: I believe that the witness has already answered that question; been asked and answered that question.

LAW MEMBER: To save time let him answer it again. Repeat the question.

The reporter read back the last question.

LAW MEMBER: He already answered that question. Don't repeat questions.

DEFENSE: I don't believe he did so, sir. I may be wrong. However, strike it.

LAW MEMBER: Go ahead and answer the question.

A. We did not see Takahashi hitting that prisoner of war, but we heard of that later.

DEFENSE: That's all.

CROSS EXAMINATION

Questions by prosecution:

Q. These instructions that you received from Takahashi on arrival at the camp, were they the regulations laid down by the camp commander?

Q. To your knowledge did Fukami ever strike a prisoner of war for violation of this regulation?
A. I do not remember any such thing.

Q. How long was Fukami at the camp?
A. About three months.

Q. When did he leave?
A. Soon after the end of the war.

Q. Were you still there then yourself?
A. Yes.

Q. Why did Fukami leave before you did?
A. He was suffering from hemorrhoids, and although he was urged to enter a hospital before the end of the war, he did not have any chance because he was too busy in his duties. He was suffering very much from this hemorrhoid and so he entered a hospital soon after the end of the war.

Q. How often did you have the guard commander duty?
A. Three of us took turns in doing guard duty. If we took up guard duty one day, then the next day we rested, and the day following that we worked in the office.

Q. Were these three people you have mentioned yourself, Fukami and Shiromaru?
A. Yes.

Q. Whenever you assumed the guard duty what time of day would you go on duty?
A. 8:00 a.m.

Q. At any time while you were at the camp on an occasion when you did relieve Fukami, did you ever find him at the guard room with a prisoner of war kneeling on the concrete floor or on a bamboo pole?
A. No.

A. Because it was the first time that we took up duty there, we wacked a period of time together with Takahashi in order to be instructed in regards to the regulations.

Q. How did I understand you correctly, that your instructions were that if you found a prisoner of war not obeying the regulations you were to warn him?
A. Yes.

Q. How of what would that warning consist?
A. If it was a big incident the warning would be given under the supervision of the camp commandant. However, if it was only a small matter then the matter would be referred to the prisoner of war leader, First Lieutenant Williams and Interpreter Warrant Officer Clapp, and they would warn the prisoner of war involved. They would give various warnings to the prisoner of war involved.

Q. Is there any regulation authorizing you or the other guards or guard commanders to strike prisoners of war when they had disobeyed the regulations?
A. No.

PROSECUTION: That's all.

EXAMINATION BY THE COMMISSION

Questions by members:

Q. How you stated that you and the accused were both guards of the same status at this camp, is that correct?
A. Yes, that is correct.

Q. Did you go on duty at the same time and on the same day?
A. The day differs.

Q. When the accused was on duty as guard commander, where would you be?
A. It would either be a rest day for me or I would be at the office.

Q. If it was a rest day where would you be?
A. In the dormitory.

Q. All right. Then while you were resting or in the office you weren't in the position to see what the accused was doing during the day, were you?
A. Yes.

Q. Yes what? Do you mean no?
A. I was not in a position to see.

Q. If you weren't in a position to see, he may have struck him and you not know it, couldn't he?
A. I would not see it then.

Q. Now just to clear up a point, about this Takahashi did I understand you to testify that you did not hear anything good about him, or am I mistaken?
A. Yes.

Q. Did you hear anything bad about him?
A. I did not hear anything especially bad about him, but I did not want to be friends with him.

Q. Why?
A. After we went on duty and took over the duty on our own responsibilities, he would come over and warn us about a lot of things, and although he had no authority to do this he did it because he thought he was our senior, and we did not like him because of this.

Q. Now First Lieutenant Williams was the senior prisoner of war leader, is that correct?
A. There were two other majors, but they were medical officers, and since First Lieutenant Williams was a combat officer, he became the leader.

Q. Warrant Officer Clapp, was he a CW?
A. Yes.

Q. And was he an interpreter?
A. He was not an interpreter, but he spoke Japanese very well so we asked him to do interpreting work.

Q. Now you say if a prisoner of war violated this regulation, hanging a block of wood on the tally board, that if he was caught violating it he was warned, is that correct?
A. Yes.

Q. Now did you know or did you think these prisoners of war might have violated it because they forgot about the block of wood, or did they do it intentionally?
A. I think they forgot about the tally boards.

Q. Now I don't understand exactly what you mean by the word 'warn'. Now I'd like you to give an example of what you would say when a prisoner of war forgot about the tally board.
A. In case a prisoner of war put his tally board inthe wrong place I would warn the prisoner of war and the prisoner of war would know by looking at the tally board that he did make a mistake, and because I did not understand English I would ask Warrant Officer Clapp to tell the prisoner of war involved not to make such a mistake again.

Q. What did you tell him would happen to him if he should do it again?
A. We did not have any authority to punishthe prisoner of war involved, and because there were a lot of prisoners of war we could not tell whether the same prisoner of war made the same mistake twice.

Q. You stated that you did not see Tahahashi strike a prisoner of war with an amputated leg but you heard of it later. Who did you hear it from?
A. I didn't hear it from any particular person, but I heard rumors to that effect.

Q. Was any action taken against Tahahashi for this act?
A. This incident took place before we began serving at the camp, so I do not know what transpired.

Q. You heard of the act but you didn't hear the consequences, is that right?
A. Yes.

Q. Had there been any consequences would you have heard of them?
A. We probably would have heard what the consequences were, if there were any consequences. However, we did not know to what degree he hit that prisoner of war, whether he hit him lightly or hard. We just heard that he hit the prisoner of war.

Q. Did you have inthe camp a rule that there was a difference between hitting a prisoner of war hard or hitting a prisoner of war light?
A. No.

Q. No difference?
A. There were no regulations to beat prisoners of war.

Q. And you never saw a prisoner of war beaten?
A. No.

PRESIDENT: No further questions by the Commission.

PROSECUTION: No further questions.

DEFENSE: No further questions.

PRESIDENT: There seem to be no further questions. The witness is excused.

There being no further questions, the witness was excused and withdrew.

PRESIDENT: At this time the Commission will take a ten minute recess.

The Commission then took a recess until 1500, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

DEFENSE: The defense calls as its next witness Tokofumi Shiromaru.

PROSECUTION: Raise your right hand. Repeat after me. In accordance with my conscience I swear that I will tell the truth, I will add nothing and I will conceal nothing. Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission or any other American court or commission?
A. (Through interpreter) Yes.

DIRECT EXAMINATION

Questions by defense:

Q. State your name to the Commission.
A. Tokofumi Shiromaru.

Q. What is your address?
A. Hanagi Kawasaki machi, Takawa gun, Fukuoka Prefecture.

Q. What is your present occupation?
A. I am working at present at the coal mine.

Q. Where?
A. Omine.

Q. What was your occupation from May till September of 1945?
A. I worked as a civilian attached to the army.

Q. Stationed where?
A. In the prisoner of war camp within the Omine Coal Mine area.

Q. Did you know Kazuo Fukami?
A. Yes.

Q. Do you see him in this courtroom, and if so point him out.

DEFENSE: Let the record show that the witness indicated the accused.

Q. Did you know him at the prison camp you referred to?
A. Yes, I did know him.

Q. What was his job there?
A. He had the same duty.

Q. What were your duties at this prison camp.
A. Guard commander.

Q. As guard commander just what duties did you perform?
A. Our duties especially involved the inspection of the number of prisoners of war in the camp and the general discipline of the camp, the prevention of fires and escapes and so forth.

Q. Were there any guards under you?
A. Yes, there were 12 to 13 persons employed by the mine.

Q. Were the same number of guards also under Fukami?
A. Yes.

Q. To your knowledge did Fukami ever strike or beat a prisoner of war?
A. We do not work at the same time so I have never seen him doing such a thing, but I heard of that once or twice.

Q. Do you know any of the circumstances of these incidents you heard about?
A. I do not know the circumstances.

Q. Among the guards what was Fukami's reputation as a guard commander?
A. Among the guards his reputation was ordinary.

Q. What do you mean by ordinary?
A. In general when one first meets him gets the impression that he is very military in manner and he is rather cold and indifferent, but if one associates with him for a long time one gets to feel that he is a very honest man and he could be very friendly to you.

Q. Did the camp have any regulations about prisoners of war smoking?
A. I have no definite recollection, but the regulations concerning tobacco were strict.

Q. What type of construction were the camp buildings?
A. They were wooden structures.

Q. What precautions were taken against fire in these buildings?
A. About forty prisoners of war comprised a fire prevention group, and all of the company guards were included in this as well, and there were water buckets around the wooden structures and there was a place set aside for smoking, that is, there was a smoking room, and there were bamboo containers containing water in the rooms, in the recreation room and also in the mosshall, and there were water containers placed in the yards as well and also in the hospital.

Q. You referred to a smoking room. Was this the only place where smoking was allowed by the prisoners?
A. Yes, they were allowed to smoke only in the place designated.

Q. If they smoked anywhere else was any disciplinary action taken against them?
A. Yes. The regulation was such that for the first or second time the prisoner of war involved was given a warning by Commander William and interpreter, Warrant Officer "Black", and the third time he would be put in the guardhouse.

Q. For how long would he be put in the guardhouse?
A. I think it was for 24 hours.

Q. Do you know of any prisoners of war actually being put in the guardhouse for this particular violation?
A. I think there was a person who was put in before I served there. I know this because after the end of the war I helped in burning a lot of documents and among that was the fire prevention diary, and I think I remember one man that was put in the guardhouse for 24 hours.

Q. Do you know of Fukumi ever striking a prisoner of war for violating these smoking regulations?
A. I do not know of that.

Q. How often did you have the duty as guard commander?
A. At first three persons took turns and assumed the duty once every three days. Later only two persons took turns and it was once in every two days.

Q. Who were these three persons?
A. Shigetoku, Fukumi and Shiromaru.

Q. Do you recall any prisoner of war at the camp who wore a plaster cast from his hips to shoulders.
A. I do not know him, but I did see the cast itself later.

Q. Do you recall any prisoner of war with an amputated leg?
A. I would remember him if I saw his face.

Q. Do you recall any prisoner at the camp who did have an amputated leg?
A. I do not have any recollection of such a prisoner of war. There was such a person in the hospital.

DEFENSE: That's all.

CROSS EXAMINATION

Questions by prosecution:

Q. Were there any instructions from your superiors at the camp authorizing you to strike prisoners of war for infractions of any regulations?
A. There was no such regulation.

PROSECUTION: That's all.

EXAMINATION BY THE COMMISSION

Questions by members:

Q. Do you know whether the accused was ever rewarded, praised or promoted for his services at the camp?
A. I do not know because we served there for only a short period of time.

Q. Do you know if he was ever reprimanded at that time?
A. I do not know.

PRESIDENT: No further questions. The witness is excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: Defense calls as its next witness Hiroshi Tahamura.

PROSECUTION: The witness will be sworn.

Hiroshi Tahamura, a witness for the defense, was sworn and testified as follows:

PROSECUTION: Raise your right hand. Repeat after me. In accordance with my conscience I swear that I will tell the truth, I will add nothing and I will conceal nothing. Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission or any other American court or commission?
A. (Through interpreter) Yes.

DIRECT EXAMINATION

Questions by defense:

Q. What is your name?
A. Hiroshi Takamura.

Q. What is your address?
A. 1515 Oaza Shimosho, Takawa gun, Fukuoka refecture.

Q. What is your present occupation?
A. I am a chauffeur working for the coal mine company.

Q. What was your occupation in the months from May to September 1945?
A. I worked as a chauffeur driving a car.

Q. For whom?
A. The Furukawa Omine Mining Company.

Q. Do you know Kazuo Fukami?
A. I do know him.

Q. Where did you first meet him?
A. Within the camp area.

Q. What camp?
A. The 8th Despatch Camp where Fukami was working.

Q. When did you first meet him?
A. I am not clear on this, but I worked with him for about fourteen to fifteen days and then I quit.

Q. What type of work were you doing when you were working with Fukami?
A. I worked as a guard.

Q. Where?
A. The No. 8 Despatch Camp.

Q. What do you mean when you say you quit?
A. I had an army permit to drive a car and the company was able to obtain a car, so I went over there.

Q. Was that the coal mining company?
A. Yes, it was the Furukawa Omine Mining Company which took care of the No. 8 Despatch Camp.

Q. What do you mean by "took care of that camp?"
A. The No. 8 Despatch Camp was within the area of the Furukawa Mining Company and they had confined the prisoners of war there.

Q. Do you mean the prisoners of war from this particular prison camp worked in this particular mine? Is that correct?
A. Yes.

Q. Did you see much of Fukami after you quit as a guard at the prison camp?
A. I associated with him for about six months.

Q. In what manner did you associate with him?
A. His actual home was in Hokkaido and both of his parents were in Manchuria and so he appeared very lonesome and I was in sympathy with him. I had confidence in his character and I associated with him as a friend.

Q. Did Fukami through you meet other of your friends?
A. Fukami had a rather large number of friends.

Q. Among your friends what was Fukami's reputation?
A. When one first met him one felt that he was very aloof. However, if one associated with him once, twice or three times, they became very attached to him and he was liked by many.

Q. Did you know many of the other guards at this prison camp?
A. Do you mean while I was working there?

Q. While you were working there and at any other time.
A. I know many of the guards and there were some that were relieved after one month, there were some that were relieved after ten days, but anyway there were many who were from Tokyo and Iberagi and other places, and I do not clearly remember just who was who.

DEFENSE: That's all.

PROSECUTION: No questions.

PRESIDENT: There seem to be no further questions. The witness is excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: I would like to ask an adjournment until tomorrow because I would like to put the accused on next and would like to have an opportunity to talk further with him. It's almost time for adjournment now. May I ask that the court recess until tomorrow morning, subject to any objection, of course, by the Major.

PROSECUTION: No objection.

PRESIDENT: At this time the Commission will adjourn, to reconvene at 0900 tomorrow, the 12th of February, 1947.

The Commission then at 1600 on 11 February 1947, adjourned to meet at 0900 on 12 February 1947.

Jacob Schneider,
For and in the absence of

JOHN H. DICKEY
Major, Chief Prosecutor

Yokohama Courthouse
Yokohama, Japan
12 February 1947

The Commission met, pursuant to adjournment, at 0900, all the personnel of the Commission, prosecution and defense, who were present at the close of the previous session in this case being present.

The accused, interpreters and the reporter were also present.

DEFENSE: Defense calls as its next witness Kazuo Fukami, the accused.

PRESIDENT: Has the accused been informed of his rights?

DEFENSE: Yes, sir.

PRESIDENT: He is fully conversant with them

DEFENSE: Yes, sir.

PRESIDENT: Kazuo Fukami, you have the right to take the stand as a witness in your own behalf or you may remain silent. If you take the stand you may make a sworn or unsworn statement, but in either case you will be subject to cross examination on statement made. Cross examination is in no wise limited to matters brought out in direct examination. Through your counsel I will inquire what you wish to do.

ACCUSED: (Through interpreter) I wish to testify under oath.

PRESIDENT: Take the stand.

Kazuo Fukami, the accused in this case, was sworn and testified as follows:

PROSECUTION: Raise your right hand. Repeat after me. In accordance with my conscience I swear that I will tell the truth, I will add nothing and I will conceal nothing. Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission or any other American court or commission?

ACCUSED: Yes.

DIRECT EXAMINATION

Questions by defense:

Q. What is your name?
A. Kazuo Fukami.

Q. Were you ever known by the name of Ando?
A. Yes.

Q. How did you acquire the name of Fukami?
A. February of last year I married into the Fukami family. That is why I assumed the name of Fukami.

Q. When were you born?
A. September the 15th, 1920. I was born in Obore Akkeshi gun, Fushiro, Hokkaido.

Q. How long did you live there?
A. Twenty-one years.

Q. How much education have you had?
A. I graduated the primary school.

Q. How old were you then?
A. Sixteen years old.

Q. After living 21 years in Kobbaido, where did you go?
A. I went to Manchuria for a while.

Q. With whom?
A. I went with my whole family consisting of both parents and my brothers and sisters.

Q. What was your occupation at this time?
A. Farming.

Q. Was your family farming in Manchuria?
A. Yes.

Q. Did you ever serve in the Japanese army?
A. Yes.

Q. When did you enter?
A. I entered active service on April 10th, 1941.

Q. When were you discharged from the army?
A. After I became a disabled veteran on August the 20th, 1943.

Q. Is 1943 correct there?
A. Yes, 1943. I wish to correct myself--August of 1944.

Q. How did you become a disabled veteran?
A. Because of sickness.

Q. What type of sickness.
A. Sickness in the chest.

Q. Tuberculosis?
A. Yes.

Q. Where did you see service with the Japanese army?
A. Do you mean at first?

Q. During your entire service where were you, what places were you?
A. At first I served in the Hiroshima No. 2 Unit of the Western Army and I received a three months' education in the wireless. Later in August I went to Shanghai and from there I went to Woosung and there I received a one month's education in wireless again. In October I went back to Shanghai and then in November, I think it was the 17th, I was sent to the South Seas and I disembarked at a place called Shingore in the Malays, and there I became attached to the Brigade Headquarters and I stayed in the Malays until December of 1942. Then from there I went to Java and at Java the Brigade Headquarters was disbanded and so the whole unit was transferred to the 19th Army Headquarters and there I served as a messenger. Later the 19th Army Headquarters moved to Ambaina and there I stayed for ten months. In November of 1943 I was hospitalized because of illness and from December I went from Java to Batavia to Malaja and finally to Manila. On March the 17th I returned to Japan because of illness.

Q. What was the highest rating you ever achieved in the Japanese army?
A. Superior private.

Q. When you returned to Japan and were discharged, what happened then?
A. I convalesced at the Fukuoka Veterans' Hospital.

Q. When did you leave the hospital?
A. May the 14th, 1945.

Q. Where did you go then?
A. I went to the No. 8 Despatch Camp which later became the No. 5 Branch Camp of the Furukawa Omine Mining Company in Kawasaki, Tagawa gun, Fukuoka Prefecture.

Q. What was your position there?
A. I worked there as a civilian attached to the army and as a guard commander.

Q. How long did you stay at this prison camp as a guard commander?
A. About three months.

Q. At the end of that three months what did you do?
A. I was hospitalized because of illness.

Q. Where were you hospitalized?
A. I was hospitalized in the Ito Hospital, which was just outside of the town of Kawasaki in Tagawa gun, Fukuoka Prefecture.

Q. What was the nature of your illness?
A. Hemorrhoid.

Q. How long were you in the hospital?
A. About two months.

Q. Where is your wife living at present?
A. In Sho, Soeda machi, Tagawa gun, Fukuoka Prefecture.

Q. Do you have any children?
A. One.

Q. Where are your parents at present?
A. My foster parents are at the address I just mentioned, but my real parents are in Manchuria.

Q. When were you arrested by American authorities?
A. June of 1946, June 4th, 1946.

Q. You stated that you were a guard commander at this prison camp. Will you describe your duties as such?
A. The duties of the guard commander consisted of preventing fires, of medical matters, that is, when prisoners of war were sleeping without their blankets to cover them up and so forth, to prevent escape, to prevent any prisoners of war to escape from the guardhouse, and to take proper steps in case of airraids and to keep control of the persons in the camp, and so forth.

Q. How many guard commanders were there?
A. There were three.

Q. When you first arrived inthe camp who gave you your instructions?
A. Both Matsui and Takahashi.

Q. What position did these men hold at the camp?
A. Their position was the same as ours.

Q. What were their instructions with reference to discipline of prisoners of war?
A. Instructions pertaining to fires, the control over the personnel, the proper steps to take in case of escapes, and so forth.

Q. Were Takahashi and Matsui your superiors in command?
A. They were my seniors, that is to say they served longer than I did, but they were not my superior.

Q. You said that there were only three guard commanders. Who were the three? Will you name them.
A. Shigetoku Tomatsu, Shiromasu Takofumi and myself.

Q. Were the other two men you named the men who appeared as witnesses in this court yesterday?
A. Yes.

Q. You say that Takahashi and Matsui had the same position that you did, and yet you say there were only three guard commanders. What was the position of Takahashi and Matsui precisely?
A. Takahashi and Matsui were the guard commanders before us, and after the three of us arrived they were transferred to the office.

Q. Among the guards what was Takahashi's reputation?
A. I didn't hear anything too good about him.

Q. Did you ever hear anything bad about him?
A. I did not hear anything especially bad either.

Q. Do you recall a prisoner of war during the time you were at the camp who wore a plaster cast from his hips to his shoulders.
A. I do not recall him.

Q. Do you recall a prisoner of war who had an amputated leg?
A. I do remember him.

Q. Did you at any time ever strike this prisoner of war with the amputated leg?
A. No.

Q. To your knowledge did any Japanese employee at this camp ever strike the prisoner with the amputated leg?
A. I have heard of that but I have never seen it myself.

Q. What were the circumstances that you heard?
A. The only thing I heard was that he hit him with the hand.

Q. Who? Who hit whom?
A. That I don't know.

Q. What were the regulations in the camp regarding tobacco smoking?
A. Smoking was prohibited in the rooms.

Q. What rooms?
A. All the rooms.

Q. Was there any place in the camp where smoking was allowed?
A. There was one place on the second floor and there was also a place in the sick ward, and there was a designated place in the yard where the men could smoke.

Q. What construction were these camp buildings?
A. They were constructed of wood.

Q. Did you ever have any troubles with prisoners violating these smoking regulations?
A. No special difficulties were encountered, but I thought that if they smoked in the buildings that there was great danger from the standpoint of fire hazard.

Q. Did you ever have to warn any prisoners for smoking in the prohibited areas?
A. Yes.

Q. Will you explain the circumstances?
A. The prisoners of war would go out to work in three shifts and if anyone should smoke in their rooms and did not take care of their cigarette butts properly, it would be a great fire hazard after they left for work, and if they should smoke in their sleeping quarters where they have mosquito nettings, it would also be a fire hazard, and so it was not an individual problem but it concerned the entire prisoners of war, and so I gave such warnings for the sake of the entire prisoners of war. At that time the airraids were very severe and so if they smoked at night the danger of airraids increased.

Q. Do you mean that the fire might possibly give location to enemy aircraft?
A. Yes.

Q. Were there any prisoners of war that you had to warn more than once about this smoking violation?
A. Yes.

Q. Were there many such prisoners of war that had to be warned several times or more than once, rather?
A. No, there were not too many of these.

Q. Did you ever go beyond merely warning these prisoners of war in discipline?
A. Yes.

Q. In these instances what did you do?
A. There were times when I hit such prisoners of war with my open hand.

Q. How often did this happen?
A. There were five to six such occasions during my tenure of duty.

Q. In any particular instance such as this, how often would you hit this prisoner of war?
A. Two to three times.

Q. Did you inflict any permanent injury on any of these men in these instances?
A. No.

Q. Were any of them knocked to the ground as a result of your hitting them?
A. No.

Q. What system did you have in the camp for determining the whereabouts of the prisoners of war?
A. In front of each room there was a place where one could place labels and there was a place marked work, mealhall, latrine, and so forth, and they placed the labels on the places where they were to go.

Q. What was the reason for this?
A. It was to keep control of the personnel in the camp and to make clear that no one has escaped.

Q. In case any a prisoner of war had not properly placed his tally on this board, what was done?
A. A warning was given in the presence of First Lieutenant Williams and Warrant Officer Clapp, and Warrant Officer Clapp did the interpreting.

Q. Were any prisoners of war ever disciplined for breach of this tally regulation?
A. There were times when I hit some prisoners of war who continued to violate this procedure. Is it all right if I make an explanation of this?

Q. Certainly, go ahead.
A. At that time the war situation was very aggravated and if a prisoner of war should have escaped there was danger of such a person being harmed in some manner by the persons around the camp, and in order to prevent such an incident from occurring I gave strict warnings and I did this because it was my responsibility to do so.

Q. Do you recall approximately how many times you hit prisoners of war for this particular violation?
A. I do not remember.

Q. Do you recall whether you ever knocked any of them to the ground as a result of the force you used?
A. No.

Q. Did you ever inflict any permanent injury on them as a result of the force you used?
A. No.

DEFENSE: That's all.

PRESIDENT: We'll take a ten minute recess.

The Commission then took a recess until 1025, at which hour the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PROSECUTION: The accused, Kazuo Fukami, still on the stand, is reminded that he is under oath sworn in this case.

CROSS EXAMINATION

Questions by prosecution:

Q. Mr. Fukami, in your direct examination you said that you could not recall a prisoner of war wearing a cast from hips to shoulders. Do you remember any prisoner of war who appeared to have broken his back prior to your coming to the camp?
A. No, I do not remember such a man.

Q. Do you remember any prisoner of war wearing any kind of a cast on his body in the Spring of 1945?
A. I have no recollection of that.

Q. During the period you were at the camp you were guard commander at least every third day, weren't you?
A. Yes.

Q. And during your tour of duty you would move about the camp in order to carry out your duty, would you not?
A. Yes.

Q. Now were there any prisoners who were not sent to work in the mine but who were kept to work in the camp during the day?
A. To my recollection prisoners of war with weak constitution were not sent to the mines but were allowed to remain in camp to do light work.

Q. About how many, do you recall?
A. I do not recall.

Q. Now on your days of duty would you see those prisoners who were not sent to the mine but worked in the camp?
A. Yes.

Q. Did some of them work in the kitchen?
A. Only designated personnel worked in the kitchen.

Q. How many people worked in the kitchen, do you remember, in the PW kitchen?
A. I have no definite recollection, but I think there were about ten prisoners of war working in the kitchen.

Q. Now do you say that at the time you were at the camp there was not a prisoner working in the kitchen who was wearing a cast as a result of having suffered a broken back?
A. I have no recollection.

Q. You say you do not remember. Are you prepared to say there was no such person?
A. I don't think there was such a patient working in the kitchen.

Q. Do you think there was such a person in the camp at all?
A. I have no recollection.

Q. You say you do not remember. Are you prepared to say there was no such person in the camp?
A. I cannot tell.

Q. Now you have testified that on some occasions you slapped prisoners of war for violation of the regulations against smoking and for failing to carry out the system of properly placing their tally. Can you give the Commission any idea of the number of times this occurred?
A. There were five to six such occasions during my tenure of duty.

Q. Stand up and demonstrate to the Commission how you struck these prisoners.

PROSECUTION: Let the record show that he struck with the right hand opened a blow across in front of his body.

PRESIDENT: He didn't say where he struck him.

PROSECUTION: Well, I was going to come to that, sir.

Q. Now on what part of the PW's body did you strike them?
A. I hit their cheeks.

Q. Now did you as a guard commander carry any sort of weapon in the camp?
A. I carried a rifle.

Q. Did you ever strike a prisoner with the rifle?
A. No.

Q. Did you ever carry a stick of any kind when on duty in the camp?
A. No.

Q. Did you ever strike a prisoner with a stick or any wooden object
A. No, I never did do such a thing. The camp commandant definitely prohibited such an action.

Q. Did the camp commandant definitely prohibit the slapping of prisoners
A. I did not hear him saying that he absolutely prohibited slapping, but I did hear that he did prohibit that.

DEFENSE: If it please the court, may I ask that that question be repeated? I am informed by my co-counsel that he believes that the witness may have misunderstood the question.

PROSECUTION: Certainly. If there's any question of misunderstanding I'd like to have it cleared up.

PRESIDENT: He may mean he never saw the regulations on it but he heard the commanding officer was against it.

PROSECUTION: Yes. (To interpreter) Would you ask the question again and see if he gives the same answer?

The reporter read back the last question.

PROSECUTION: I used exactly the same words as he had used in his previous answer.

A. He did not say that he absolutely prohibited that.

Q. Did he or any other of your superiors in the camp instruct you that you were entitled to slap the prisoners of war?
A. I have not heard that it was all right for me to hit prisoners of war.

Q. As a matter of fact, you were instructed that you were not allowed to hit prisoners of war, isn't that true?
A. Yes.

Q. How you displayed those instructions by slapping the prisoners of war. How is it that the reason you give for not hitting them with sticks was that there were instructions against it?
A. The camp commandant was a man of character and a very splendid person, and he absolutely prohibited the mistreatment of prisoners of war, that is, to treat the prisoners of war severely, and it is a fact that I did hit some of the prisoners of war, but at that time I did not think that that was a bad thing to do. The reason for this is that it was a Japanese custom and I was educated in that manner in the Japanese army, so I did not think that that was a bad thing to do. I gave strict warnings to the prisoners of war in order to prevent any incidents from occurring and to carry out completely the regulations handed down by the camp commandant. In thinking the matter over at the present time I think that I do feel that it was a bad thing to do, that is, hitting the prisoners of war was a bad thing to do, but at that time I did not feel this way. I feel that I hit them because it was unavoidable in preventing an incident from occurring.

Q. Now did the camp commander ever warn you that you were not to slap or strike the prisoners of war?
A. I have not heard of that directly from him, but that was prohibited by regulation.

Q. Did the camp sergeant, Sergeant Maruda ever warn you that you were not to strike or slap the prisoners of war?
A. No, I was not warned by him.

Q. Isn't it true that Sergeant Maruda on several occasions punished you because you had slapped prisoners
A. I was never punished.

Q. Were you ever warned by Sergeant Maruda in relation to any specific instance of your having slapped prisoners?
A. Yes, once.

Q. Did you ever see any other guards or guard commanders slapping prisoners of war at this camp?
A. I have never seen them hitting prisoners of war.

Q. Did you ever hear of them having hit or slapped prisoners of war?
A. Yes, I did hear of that.

Q. Who did you hear had slapped prisoners?
A. I have no recollection of that.

Q. How often did you hear of these slapping incidents by other Japanese guards?
A. About two or three times.

Q. Now Mr. Fukumi, do you recall any individual prisoners of war by name?
A. I served there for only a short time, so I have no recollection.

Q. Now you have had the specifications to the charge against you fully translated. Do you recall any of the incidents set out in those specifications?
A. I do not know their names and so I cannot tell which incident refers to which prisoner of war.

Q. Did you ever kick a prisoner of war?
A. No.

Q. Did you ever force a prisoner of war to kneel either on the concrete floor of the guard room or on a bamboo pole?
A. No. If such an incident did occur, it should have been reported to the camp commandant by way of First Lieutenant Williams.

PROSECUTION: That's all, if it please the commission.

DEFENSE: No redirect.

EXAMINATION BY THE COMMISSION

Questions by members:

Q. You were returned to Japan, hospitalized from Manila. For what were you hospitalized?
A. It was due to pulmonary tuberculosis.

Q. Do you still have tuberculosis, or were you cured?
A. I am cured.

Q. In setting forth the duties of the guards you did not mention whether the guards left the camp to go to the mine with the prisoners. Did you leave the camp to go to the mine with the prisoners?
A. They did not accompany the prisoners of war.

Q. The guards remained in camp at all times?
A. No.

Q. Does he mean they did remain in camp or did not remain in camp, the guards?
A. It was part of the guards' duty to guard the outside of the camp, and it was also the guards' duty to make a tour of inspection over the working places outside of the mine.

Q. When you were on duty every third day, the guard commander, you stayed in camp, didn't you?
A. Yes.

Q. Now referring back to this Tokuhashi, I want to clear up a point. You said you did not hear anything good about him or anything especially bad either. Now tell us just what did you hear?
A. Tokuhashi was not held in very good standing among his fellow workers. To offer an explanation of this, Tokuhashi was on duty at the office and in spite of this he would meddle into the affairs of our duties in various ways, and for this reason the fellows were displeased with him.

Q. Now you have admitted hitting, slapping prisoners of war on five or six occasions about, and I understand you testified that this was not authorized by the commanding officer. All of these slappings and hitting were on your own initiative, is that correct?
A. Yes, that is correct. I did hit them on my own initiative because it was my responsibility.

Q. Now these prisoners of war were unarmed and defenseless, weren't they?
A. Yes.

Q. What would have happened to a prisoner of war if he had struck you back after you had struck him?
A. In that case the matter would be reported to the camp commandant and he will take proper measures.

Q. Well, he might have had him killed, mightn't he?
A. No.

Q. Now you testified you do not remember just exactly how many times you did strike prisoners of war, is that right?
A. Yes.

Q. All right, so if a prisoner of war gives an affidavit under oath that you struck him or that he saw you strike another prisoner of war, it's most likely to be true, isn't it?
A. No.

Q. Well, you say no. If fourteen prisoners of war testified under oath that they saw you strike and mistreat many prisoners of war, and if nine other prisoners of war would testify under oath that they saw you strike prisoners of war, numbering nine by name, to a total of 23 prisoners of war testifying under oath that you either struck them or saw you strike them, what would you have to say about that?
A. It is a fact that I did hit some prisoners of war, but I did not hit many prisoners of war haphazardly.

Q. Would you say that all these prisoners of war who testified under oath are not telling the truth?
A. That I do not know.

Q. You stated you didn't remember prisoners of war by name because you were only there a short time. Don't you recollect a prisoner of war by the name of Forsberg?
A. No, I do not remember him.

Q. You testified that you never forced a prisoner to kneel with a bamboo stick underneath his legs. Did you ever force a prisoner of war to kneel down on the floor and sit down on his heels?
A. No.

Q. You have stated that you do not remember a prisoner of war whose back was in a cast. Do you know what the word 'cast' means?
A. No.

Q. How do you mean you do know what it means or you don't know what it means? Tell us what a cast is.
A. I do not know what a cast means.

Q. Then how could you testify that you didn't know a prisoner of war wearing a cast when you didn't even know what the question meant? Why didn't you tell the Commission?
A. I was not thinking of that.

Q. Well, now I will explain to you what a cast is. Look at me. It is a covering. It can be made of canvas, it can be made of plaster of paris or combination of both, which goes around the body all the way around and supports the back, about that thick, here to here. Now did you know a prisoner of war with such a piece of apparatus on him?
A. I do not have any recollection.

Q. In the affidavit of Barber it is mentioned regarding the tally, "This course may have been open to all guards but I have seen it done by only this Jap who seemed to take such delight in it that he spent a great deal of his leisure time at this 'hobby'". Can you give an explanation for why your conduct looked different from the conduct of your colleagues, of your comrades?
A. I never did act like that.

PRESIDENT: No further questions by the Commission.

PROSECUTION: No further questions.

DEFENSE: No further questions.

PRESIDENT: There appear to be no further questions. The witness is excused.

There being no further questions, the witness was excused and resumed his seat at the defense table.

DEFENSE: Defense rests.

PRESIDENT: Does the prosecutor or the defense desire to introduce any rebuttal witnesses?

PROSECUTION: No rebuttal for the prosecution.

DEFENSE: None, sir.

PRESIDENT: The Commission will now hear the arguments for the defense.

DEFENSE: I'd like to ask the court adjourn until 1:30 this afternoon, at which time I'll be ready.

PRESIDENT: The request is granted. At the request of the defense the Commission will recess until 1330 this afternoon, at which time the defense will be prepared for closing argument.

The Commission then took a recess until 1530, at which hour all the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PRESIDENT: The Commission is in session.

Oral arguments were then made by the defense and prosecution.

PRESIDENT: The Commission will be closed, to reopen at 1530 this date.

The Commission was then closed until 1550, at which hour all the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PRESIDENT: The Commission is in session. The defense will bring the accused before the Commission accompanied by counsel.

VERDICT

HAZUO FUKAWI, the Commission by the affirmative secret written votes of not less than two-thirds of the members present finds you on the specifications and the additional specifications as follows:

Of Specification 1: Guilty.

Of Specification 2: Not Guilty.

Of Specification 3: Guilty, except of the words "and D. Abbot" and of the word "prisoners", and of the word "them", substituting for the word "prisoners" the word "prisoner", and for the word "them" the word "him"; of the excepted words Not Guilty, of the substituted words Guilty.

Of Specification 4: Guilty.

Of the Additional Specification 1: Not Guilty.

Of the Additional Specification 2: Not Guilty.

Of the Additional Specification 3: Not Guilty.

Of the Additional Specification 4: Not Guilty.

Of the Additional Specification 5: Guilty.

Of the Additional Specification 6: Guilty, except of the words "beating him", substituting therefor the words "striking him with a rifle butt"; of the excepted words Not Guilty, of the substituted words Guilty.

Of the Charge: Guilty.

SENTENCE

The Commission by the affirmative secret written votes of not less than two-thirds of the members present sentences you:

To be confined at hard labor at such place as the Reviewing Authority or higher authority may direct for a period of ten (10) years.

PRESIDENT: Is there any further business to come before the Commission?

PROSECUTION: Prosecution has no further business.

PRESIDENT: The Commission is closed.

The Commission then, at 1555 on 12 February 1947, adjourned to meet at the call of the President.

AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution exhibits No. 1 to No. 18 accompanying, referred to, and identified therein, except such portions of the exhibits as have been lined out, deleted, and initialed, constitute the complete record of trial in this case.

GEORGE W. EASTERDAY
Colonel, President

Jacob Schneider,
For and in the absence

JOHN H. DICKEY
Major, Chief Prosecutor

I examined the record before it was authenticated, and Prosecution exhibits No. 1 to No. 18 accompanying, referred to, and identified inthe record are a part thereof except such portions of the exhibits as have been lined out, deleted, and initialed.

MR. JOHN L. MURPHY
Advisory Defense Counsel

SUPPLEMENTARY DEPOSITION

CANADA
PROVINCE OF MANITOBA
TO WIT:

In the matter of personnel held Prisoner of War by the Japanese and in the matter of the Supplementary Deposition of H-6497 Pte. Ralph FORSBERG, Winnipeg Grenadiers, C.A.

I, No. H-6497 Pte. Ralph FORSBERG, a member of His Majesty's Canadian Army, make oath and say:

1. I am No. H.6497 Pte. Ralph FORSBERG. I reside at Kenwatin, in the Province of Ontario. I am a member of His Majesty's Canadian Army, and at all times pertinent hereto a member of the Winnipeg Grenadiers, C.A.

2. I was taken prisoner on the 25th December, 1941, while at the Aberdeen Reservoir. About the 30th of December, 1941, we were taken to Sham Shui Po, and about the 23rd of January, 1942, we moved to North Point, where I remained till the 26th of September, 1942, when we returned to Sham Shui Po. About the 19th of January, 1943, we left on draft for Japan. We landed at Nagasaki and from there went to the Camp at Orimino. I remained at that camp until the war ended.

3. I was held prisoner of war by the Japanese at Ormine Camp in Japan from about January, 1943, till I was liberated after VJ Day. While at Ormine Camp I injured my back and I was put in a plaster cast reaching from below my hips to my armpits. I were this plaster cast from the date of my injury until approximately two months before I was liberated in September, 1945, and I was then put in a canvas cast. Shortly before the cast was changed from the plaster cast to the canvas cast, I believe it was the end of June or the early part of July, 1945, I was sitting outside one of the huts in camp getting some fresh air. The night was very warm and several others were outside the hut also getting fresh air. On the night in question, while outside the hut, one of the Japanese camp guard, known to us as "The Brown Bomber", approached. All of the men disappeared inside the hut except myself, and because of my injury I could not move fast enough to get out of the way. "The Brown Bomber" came up to me and threatened to hit me with a heavy hardwood stick which he carried, and worked himself into a rage because he said I should not have been outside the hut. He was talking to me in Japanese, which I did not understand. An English prisoner of war in Ormine Camp, whom I believe was R.S.M. Clapp of the British Imperial Army, and who spoke Japanese, came up and explained to "The Brown Bomber" that my back was in a cast as a result of a cave-in at the mine and that my spine had been fractured, and that I might be injured if he beat me.

/s/ RF
/s/ W.H.A.

SEAL:
WILLIAM
HOWARD
AUGUST
NOTARY PUBLIC
MANITOBA

/s/
R. Forsberg
/s/
W.H. August

4. "The Brown Bomber" did not listen to R.S.M. Clapp and hit me several times over the head with the stick he was carrying. He also hit me several times in the face. He then took me to the guard room and forced me to kneel on my knees on the concrete floor of the guard room and to sit back on my heels facing his desk. I was suffering from what was commonly called "electric foot", which I believe is also known as beri beri, at

PROSECUTION EXHIBIT
No. 1

the time, and this, coupled with the strain of my back, made it almost impossible for me to sit still. Every time I moved "The Brown Bomber" got up from his chair and beat me over the head with his fist. He kept me kneeling in this position from approximately 2100 hours until some time after 2400 hours that night, when the new guard came on and relieved him. During this time he beat me with his fist or hand on the head many times.

5. Now shewn to me and marked Exhibit "A" to this my affidavit is a group picture of some Japanese who were at Ormine Camp. The third person from the right in the third row, identified by an "X", is "The Brown Bomber". He is the man referred to in this deposition as the guard who beat me on this occasion.

6. In my original deposition, sworn before C. H. Johnson, a Notary Public in and for the Province of Manitoba, on the 1st day of March, 1946, it is stated that I was beaten by "The Brown Bomber" about the month of January, 1944. This was a typographical error which I failed to notice when I read my deposition after it was typed. That date in the original deposition is incorrect. As near as I can recollect the beating occurred either the end of June or the early part of July, 1945. I know that the weather was extremely warm and that was the reason for my being outside the hut on the night in question. I also remember that it was shortly before my plaster cast was changed to the canvas cast, and this was approximately two months before we were liberated in September, 1945.

/s/ WHA

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this 31st day of May, 1946, consisting of two pages each signed by the Deponent.)

/s/ R Forsberg
(H.6497 Pte. Ralph FORSBERG

/s/ W H August.

A Notary Public in and for the Province of Manitoba.

SEAL:

WILLIAM HOWARD AUGUST
NOTARY PUBLIC
MANITOBA

A certified true copy of an original document compared by me and certified this 6th day of September 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt Canadian Army
Member Canadian War Crimes Liason Detachment

A F F I D A V I T

IN THE M TTER OF THE UNITED ST'TES
OF AMERICA VERSUS KAZUO FUKUMI

I, E-30180 Sergeant-Major (WO I) Harold Barlow Shepherd, Canadian Army, having been duly sworn, make oath and say as follows:

1. In civilian lif I am a papermaker.

2. I was a member of Headquarters Company, Royal Rifles of Canada, and took part in the defence of Hong Kong. I was made prisoner of war by the Japanese Army on 25 December 1941, on capitulation of Hong Kong Island.

3. From 23 January 1943 until liberation on 22 September 1945, I was imprisoned at Fukuoka Prisoner of War Camp, Branch Camp No. 5, Omine, Kawasaki, Fukuoka Pref., Kyushu, Japan. I recall a civilian guard whom we knew as Indo or Onda, and whom we nicknamed "The Brown Bomber" and "The Black Beatem". This civilian guard came to Omine Camp, as far as I can recall, about the middle of the month of May 1945. He was a guard on the staff of this camp till the surrender of Japan on 15 August 1945.

4. Immediately on his arrival, this guard began to indulge in the beating and harassing of prisoners. Although he was only there a short time, he earned the reputation of being one of the most brutal guards we had experienced during our captivity. He toured the hallways at least 5 or 6 times durin his tour as a guard commander, which was every third day. His main sport was checking the tallies that we used to indicate our whereabouts on the outside of our rooms, and he invariably caught 2 or 3 men that had their tallies in the wrong position. Sometimes the men would be punished right on the spot, by being slapped with the half closed hand, or beaten with a bamboo stick; and if a man's tally was out of position and the man was not in the room, the "Bomber" would take that tally down to the guard room with him, and the man concerned would have to go down to the guard room to collect it. On his arrival at the guard room, the man would be subjected by the "Bomber" to various types of punishments. He would be slapped around considerably, sometimes made to kneel on a round bamboo pole, or kneel on the concrete floor of the guard room, or stand at attention for a period ranging from 15 minutes to 2 hours. Any irregularity brought to his attention while parades were formed up in front of the guard room ready to go to work, he would take over punishment immediately on the spot. On roll-call parades he would walk up and down the ranks looking for irregularities, such as a pocket unbuttoned, or a button unbuttoned on a shirt, or not having the prison number attached to the shirt, and these irregularities would be invariably punished by slappings or being taken to the guard room after parade and being forced to stand at attention there for periods of an hour or two hours. This guard really appeared to enjoy discovering prisoners in minor infractions of the rules, and the subsequent punishment that he would immediately inflict. On occasions where a man was caught in an infraction by another guard, and he was being reprimanded, if the "Bomber" came along, the man would receive a slapping from the "Bomber", whereas the other guard would ordinarily have let the man off with a reprimand. The reason I cannot identify many specific cases is that he mainly picked on the British and Australians, who were largely newcomers in camp, and whom I did not know. The particular instances which I can now recall are as follows:

(1) Pte Ralph Forsberg of the Winnipeg Grenadiers had been seriously injured in a mine accident in the fall of 1944. I believe that his back was broken, and in the spring or early summer of 1945 he was still wearing a cast on his body. One night, I believe in the month of June, I was in my room and heard a disturbance outside in the compound. I looked out to see what was the matter and saw Forsberg standing to attention in front of the "Brown Bomber". The "Bomber" appeared to be reprimanding Forsberg

PROSECUTION EXHIBIT
No. 26

.....?2

and that went on for a few minutes, when Warrant Officer Clapp came out into the compound, and then the three of them started out of the compound towards the guard room The next morning I asked Forsberg what had happended and he said that the "Bomber" had caught him out there and he had not jumped to attention fastenough when the "Bomber" passed, so he proceeded to slap him around, and he was taken to the guard room and made to kneel there for about an hour or so, after which time he was allowed to return to his quarters.

(2) One particular incident connected with the "Brown Bomber's" habit of punishing for failure to move the tellies occurred about the end of July 1945. I came out of my room and heard a commotiondown at the opposite end of the hallway. I saw the "Brown Bomber" strike Rfmn Henry of the Royal Rifles across the face twice. The "Brown Bomber" left Henry and started down the hallway towards where I was standing. He checked the tellies on Rfmn Jessop's room, and found Jessop's out of place. He called Jessop into the corridor where he slapped him across the face 6 or 8 times with the half closed fist. I walked away from the room and then decided to go back and put my shirt on. I ran into the room without moving my telly, and before I could get out again, the "Bomber" had got down to my room and found that my telly wasout of place. The "Bomber" called me into the hallway where he slapped me once with his open hand across the face. I tried to explain to him that I had merely run inthere to get something and did not intend to stay, but he said that that was no excuse.

5. On 16 July 1946 I visited Sugamo Prison and there saw and spoke to the guard I know as Ando or Onda, the "Brown Bomber" and the "Black Bastard", who was then in custody at Sugamo Prison under the name of Kazuo Fukami. I identify Kazuo Fukami as the civilian guard at Prisoner of War Camp, Fukuoka No. 5, to whom I refer in this affidavit. Now produced and shown to me and marked Exhibit "A" to this my affidavit is a full face photograph, which I identify as a true photographic likeness of Kazuo Fukami, "Ando", "Onda", the "BrownBomber" or the "Black Bastard".

23 September 1946 /s/ Harold B Shepherd

Subscribed and sworn to before me this 23rd day of September 1946

/s/ John H. Pritchard
Captain, Infantry
Summary Court

Certified a true copy of an original document compared by me and certified this 20th day of November, 1946, at the City of Tokyo, Japan.

J.H. Dickey

(J.H. Dickey) Major
Canadian Army

CANADA

Province of Alberta

To wit

(In the matter of atrocities committed
(by Japanese Guards on Allied Prisoners
(of War.

AFFIDAVIT OF H.20798, Private John FERTAL

I, John FERTAL, of the City of Wetaskiwin in the Province of Alberta, make oath and say:-

(1) That I was captured at Hong Kong on the 25th of December, 1941, while serving with No. 3 Section, No. 10 Platoon, "B" Company, of the Winnipeg Grenadiers. We were taken to the North Point Camp on the 28th of December, 1941, and remained there until the 21st of September, 1942. During the period we were held in this Camp, beating of Allied Prisoners of War by the Guards using rifle butts and boots were a common occurence. I do not remember any particular incident because they occured so often, although to my knowledge there was never anyone killed or seriously injured as a result of the beatings.

(2) That on the 21st of September, 1942, we were moved to the Sham Shui Po Camp, where we remained until the 19th of January, 1943. While held in this Camp an epidemic of diphtheria which lasted for two months broke out. This epidemic was the result of the inadequate sanitary conditions and the acute shortage of medical supplies. During the period this epidemic ravaged the Camp, anywhere from three to eight men died every day.

(3) That during the epidemic a request for medical supplies made to a Japanese Officer was refused. Captain John Norris of "D" Company, Winnipeg Grenadiers, said something to the Japanese Officer that I did not hear. Captain Norris was immediately set upon by one of the Guards known as "The Kamloops Kid" and was badly beaten with a rifle butt and then kicked when knocked to the ground. His face was bruised and swollen for four or five days after and he limped very badly for several days immediately following the incident.

(4) That this Guard was called "The Kamloops Kid" because he claimed he was born in Kamloops, B.C. He spoke good English and was used as an Interpreter at the Sham Shui Po Camp. He was about five feet, seven inches, tall, dark complected with dark hair. He had a long face and slanted eyes. He did not wear glasses or a moustache. He was quite young - about twenty-four or twenty-five. I actually saw this beating of Captain Norris and I understand this particular Guard had been involved in more beatings than this one.

/s/ Brian R.B. Gore
B.R.B. Gore, Captain

/s/ John Fertal
John FERTAL

PROSECUTION
EXHIBIT No. 3

(5) That on the 22nd of January, 1943, we were moved to Nagasaki and then on the 23rd of January, 1943, we entered the Omine Camp where we remained until liberated on the 19th of September, 1945. ~~Upon our arrival in Camp Omine we had to do Japanese Army drill during the day and be to the counter three times in the morning for the first two weeks.~~ Then we were taken out on working parties to the Konzaiko Mine. There we worked underground, building shafts and tunnels for one and a half years. During this time the only clothes we were allowed to wear were a tunic and a pair of slacks, both made of a material so thin you could see through it. In the mine cold water was dripping on us the whole time we were working, with the result that we got soaking wet and cold before we came up to the surface at quitting time. When we came out of the mine we got still colder and the only way we could get any warmer when we reached Camp was to roll up in a blanket as there was no heating system in our buildings. Some time in June of 1944 we started working a still lower level in the same mine for coal. This section of the Konzaiko Mine was called the Niko Mine.

(6) That the Commandant of the Omine Camp, until about two months before we were liberated, was Captain Kaneka who was very brutal and unjust. He was continually attempting to make life for the Prisoners of War as miserable as possible by such means as Roll Calls at 0230 hours, followed by thirty minutes of physical training. I remember one of our Officers saying something on parade one day and Kaneka walked up to him and brandished his sword under our Officers nose informing him that if he ever did it again he, Kaneka, would chop his head off with his sword. It was this Commandant who was responsible for us not being allowed to wear anything but the thin tunic and slacks during all the cold weather.

(7) That during this period in Omine five other chaps and myself were caught playing cards by one of the Guards. We were taken to Captain Kaneka's Office where, after the Guard had stated that he had caught us playing cards, we were thoroughly beaten up with chairs and rifle butts while Kaneka looked on. A Sergeant Ushida hit me across the arm and side of the body with a chair and as a result my ~~arm was swollen and stiff for about two months.~~

/s/ Brian R.B. Gore
B.R.B. Gore, Captain

/s/ John Fertal
John FERTAL

~~another chap named Robinson, from the Royal Rifles of Canada, and whose home~~ is in Quebec, was kicked in the stomach by one Guard and immediately fainted. He was revived by the Guards throwing two buckets of cold water on him. McLean from the Winnipeg Grenadiers and "Chevannes," a Breed Indian, and Johnny Shalala, both from the Royal Rifles of Canada, were the other three beaten up. Immediately after this beating we were sent out on our ordinary working party. Instead of working down in the mine where we usually worked we were set to unloading carloads of rock on the surface. This was recognized as one of the toughest jobs there, /s/ O. was as a quota of four or five cars per man per day was set and if you hadn't finished by the regular quitting time you continued until you had finished. We worked from 0700 hours until 1730 hours each day for two weeks on this job. During this time we were kept in the Guard Room at night and only received half rations. /s/ J.F

(8) That a chap from the Royal Rifles of Canada named Murray, George W., who was working at the mine on the surface had been ill for a long time, although he had been forced to keep on working. He suffered from Dysentry and Pelagra among other things and sometimes had to go the toilet fourteen times during the course of a days work. The civilian supervisor, Kawahara, reported him to the Guard Commander as being lazy and not working hard enough. The Guard Commander beat Murray very badly with his fists while he was still on the job. The next morning Murray was back on the job but at 1130 hours he went to the toilet shack and died there. I saw Murray beaten and I also saw him immediately after he had died. This incident occured in April, 1943. The guard that beat Murray was about five feet, seven or eight inches, tall and was of a bigger than average build. He was dark complected and had cropped hair. He wore neither glasses nor a moustache. I cannot recall any further details of this guard.

(9) That a chap called Chaboyer, a French-Canadian from Manitoba who served with the Winnipeg Grenadiers, was told by one of the Guards to change the system he was using on a job in the Mine. Chaboyer argued with the Guard and the Guard struck him. In his anger Chaboyer struck the Guard back. Chaboyer was immediately taken to Fukuoka, in September, 1943, where the Headquarters under which the Omine Camp worked, was located. No one heard anything more of Chaboyer until ~~his ashes were received at the Camp in March, 1946.~~

/s/ Brian R.B. Gore
B.R.B. Gore, Captain

/s/ John Fertal
John FERTAL

(10) ~~That I have attached to this affidavit as Exhibit A a photograph~~ of the Guards and Camp Staff of the Omine Camp. I have marked certain persons by numbers and the information I have regarding that person is set out below after his number.

No. 1 was a guard at the Omine Camp.

No. 2 was a Guard Commander called "Air Force", by Allied Prisoners of War, who took part in the beating of several Prisoners. He also was in the habit of making exhausted Prisoners double around the Camp for any minor infraction of regulations.

No. 3 is the Guard who bayonetted Sgt.-Major Shepherd, H.B., of the Royal Rifles of Canada. In 1944 when we were lined up on parade, Sgt.-Major Sheperd asked for a Japanese Medical Sergeant to come and see one of his men who was very ill. His request was refused and some argument arose. This Guard apparently lost his temper and jabbed at Sgt.-Major Sheperd with his rifle and bayonet, hitting him in either the top part of his arm or his breast and making about an inch and a half penetration. Sgt.-Major Sheperd was able to carry on with his work the next day.

No. 4 was an Office Clerk in the Commandant's Office called "Baby Face". We rarely saw him and he had nothing to do with the handling of the Prisoners.

No. 5 was a Guard Corporal but due to the fact that he only came to Omine two weeks before our liberation no one knew anything about him.

No. 6 was the Camp Sergeant and No. 7 was the Camp Commandant, both of whom arrived at the Camp about two months before our liberation. These two, apart from seeing that regulations were abided by, left the Prisoners pretty well to themselves, as did the Guards after their arrival. This Commandant, who replaced the hated Captain Kaneko, did away with Roll Calls and physical training during the middle of the night, setting them for ~~regular hours during the day and evening.~~

/s/ Brian R.B. Gore
B.R.B. Gore, Captain

/s/ John Fertal
John FERTAL

No. 8 was a Guard Commander called "The Brown Bomber". All the Prisoners of War had to move their number tally to a certain spot on a large board corresponding to whichever place in the Camp they were going. It was the Guard Commander's job to check the placement of these tallies against the location of the Prisoner of War. Even the most minor errors in the placing of the tally, due to forgetfullness or carelessness, were punished by beatings in the Guard Room and then a one or two hour period of kneeling on the concrete floor. Pte. Forsberg, Ralph, of the Winnipeg Grenadiers, who comes from Ontario was one of the many punished in this manner. This Guard Commander took an active part in these beatings at the Guard Room.

~~No. 9 was a civilian Interpreter who never did the Prisoners any~~ harm, ~~but on~~ the other hand he never gave any assistance at various times when he could have.

No. 10 was another Guard who was a miserable character. He did not actually beat any Prisoners, although he very often slapped them in the ~~face for no good reason.~~

Sworn before me at the City of Calgary in the Province of Alberta, this 15th day of January, 1946, consisting of five pages, each signed by Deponent.

/s/ John Fertal
H.20798, Private John FERTAL

/s/ Brian R.B. Gore Captain,
Headquarters, Military District No. 13,
A Commissioner for Oaths in and for
the Province of Alberta.

Certified true copy of an original document compared by me and certified this 12th day of August 1946 at the City of Tokyo, Japan.

J D C Boland
(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

(IN THE MATTER OF CANADIAN PRISONERS OF WAR AT HONG-KONG AND VICINITY.)

- A F F I D A V I T -

I, No. E-30584, - Rifleman James Robert JESSOP, Royal Rifles of Canada, C.A., residing at No. 31 Queen St., Edmunston, N. B., a rifleman of the Canadian Army,

BEING DULY SWORN, DOTH, DEPOSE AND SAY :-

1o. I was an electrical helper in civilian life.

2o. I was a rifleman in the Royal Rifles of Canada and took part in the defence of Hong-Kong. On the 25th of December, 1941, on the day of our surrender, I was in Stanley Fort where we remained till the last days of December, 1941, without being bothered by the Japanese. We were then ordered to walk to North Point where I stayed till September, 1942.

3o. ~~I know that, in North Point, 4 or 5 canadian~~ prisoners of war escaped. I don't know myself what disposition was made of these men. I learned, through a British soldier whose name I don't remember, that the escapees had been recovered by the Japanese and brought to Stanley Prison. A Japanese in North Point, called Mr. Gauthier (I don't know how his name was spelled) told us that these men had been recovered and would have a Court-Martial, or something. I don't remember having heard any rifle shots during the night this event took place. I remember that a brother of one of the escapees was severely illtreated in order to find out about the escape. I don't remember the men's names. I didn't see any other beating, or torture, or cruelty during my stay in North Point.

4o. During my stay in North Point, I was employed on the Kaitak Airfield where there was no protection against air-raids and/or bombing.

5o. Medical care was given to us by our own regimental medical officers who did the best they could under the circumstances but did not have the necessary medical supplies ~~and cooperation from the Japanese medical authorities.~~

/s/ James Robert Jessop
(Deponent.)

/s/ Pierre Decary-Major,
Commissioner for the Superior Court,
District of Quebec.

PROSECUTION EXHIBIT
no. 4

JS ~~6c. Collective punishments were meted out by~~ the prisoners for individual offences. These punishments were in the form of cuts in rations, standing up at attention for long periods of time, and special duties.

7c. In September, 1942, together with other prisoners of war, I was transferred to Sham-Shu-Po where I stayed till January, 1943. I saw a lot of bad beatings there. Sometime in October, 1942, we were on a parade when I saw from quite a good distance Major Atkinson being beaten up by a Japanese known as "Kamloops Kid". Major Atkinson was hit with fists, and, when he fell down, he was roughly kicked. I saw Major Atkinson a week after and he seemed pretty well mussed up and could hardly walk.

8c. During my stay in Sham-Shu-Po, I was employed on the Kaitak Airfield where there was no protection against air-raids and/or bombing.

9c. I know that there was quite a lot of beating up, tortures, in Sham-Shu-Po but I don't remember the names of the perpetrators or of the victims.

10c. During my stay in Sham-Shu-Po, I was rund down to the hospital where I was suffering from Pallagria. There was no protection against air-raids and/or bombing, there.

11c. Medical care was given us by our own regimental medical officers who did the best they could under the circumstances but did not have the necessary supplies and cooperation from the Japanese medical officers.

12c. Collective punishments were meted out by all the prisoners for individual offences, in the form of cuts in rations, standing up at attention for long perids of time, and ~~special duties.~~

JS

13c. In January, 1943, together with 265 canadian prisoners of war, I was transferred to Omin, where I stayed till September, 1945.

JS ~~14c. We left Hong-Kong on the 19th January~~, 1943, and we have made the trip on the "Tatuta-Maru"; the trip was pretty bad; it was hot, rations were poor and insufficient both in quantity and quality. The trip lasted four days and we landed at Nagasaki where we were divided up. After we got there, 200 men were made up in a draft and proceeded to Omine; -- this trip was made by train and it took approximately ten hours from Nagasaki to Omine. We proceeded north, turned east and then south again. I remember going through "Harada", "Ita", "Kotojo", "Nogata". There is a small town about half a mile towards the west. There were a lot of beatings there. Major Robertson, R.A.M.C., knows the exact location of this camp through astronomical survey. He had the exact longitude and latitude. There were some buildings for the miners around the camp. The nearest town to the camp was ~~Kawasaki, about half a mile west of Omine.~~

JS

/s/ James Robert Jeason
(Deponent.)

/s/ Pierre Decary - Major.
Commissioner for the Superior Court,
District of Quebec.

~~15o. I know of a Rifleman Murray, Royal Rifles of~~ Canada, who died in most likely the Spring, 1943, or in the fall of 1943, after having been beaten up by a Japanese by the name of "Puss-in-boots", whose name was "Takamia". He was quite sick and wouldn't walk and, instead of carrying a basketful he carried a half basket; they slapped him; and kicked him, and he died from these beatings and sickness. He was also beaten by a Japanese known as "Kawaharada". These two were civilian guards. They have been after Murray over a long period of time until he died from those treatments. The medical orderly would have the exact date of his death.

16o. There is also a Pte. McKinley, who was also beaten up for a long period of time by these Japanese guards: "Takamia", or (Puss-in-boots), and Kawaharada. He died in 1944 as a result of these beatings.

17o. Rifleman Coule was also very often beaten up by "Puss-in-boots" and Kawaharada, but he didn't die.

18o. The Camp Commandant, at that time, knew about this. I forgot what his name was but I could identify him if I saw him or his picture.

19o. During the fall of 1944, around 10.00 or 10.30 hours, the Camp Commandant "Kaniko" beat up some of the prisoners: Courier, A., was one, because his mess-tin was empty. He has also beaten up other prisoners of war.

20o. In August, 1944, approximately, Pte. Chaboyer, of the Winipeg Grenadiers, took a poke at a Japanese know as "Boge Sam". He was court-martialed, sentenced to civil imprisonment. In June, 1945, his ashes were returned to the camp together with his clothes. That is all we ever heard about him. A lot of prisoners were threatened with the same treatment.

21o. I know that Pte. Harris, of the Winipeg Grenadiers, was often beaten up by a Japanese known as "The Air Force Kid", whose name was "Takahashi".

22o. I know that a Pte. McBeath was slapped and punched by a Japanese called "Murakami".

23o. I know that Pte. Cliff Robinso was once badly beaten up by Sergeant Uchida.

24o. Rifleman Walsh was also beaten up badly by a Japanese known as "The Brown Bomber".

25o. I heard from Corporal Burns that, at one time, he was forced to stand at attention, his face to the wall, for 32 hours, without clothes, during a cold weather. This punishment ~~would have been ordered by Capt. Kaniko on or about the 7th of March.~~

/s/ James Robert Jasson
(Deponent.)

/s/ Pierre Denary-Major.
Commissioner for the Superior Court,
District of Quebec.

~~26c. Sgt. Savignac told me that he had had the same treatment, on or about the same time.~~

27c. C.S.M. Ebdon also told me that he also got the same treatment on or about the same time.

28c. L/Sgt. Ross and Pte. Parks also received the same treatment as Corporal Burns.

29c. I heard that C.S.M. Shepherd, Royal Rifles of Canada, was once struck by a bayonet on the shoulder by a Japanese called "Bayonet Kid". I saw C.S.M. Shepherd when ~~he was treated for that wound.~~

30c. During the time I stayed in Omine, I was quite often beaten up and struck by the Japanese called "The brown bomber". He used sticks, fists. That happened quite often. ~~I was also beaten up by a Japanese known as "The gunsto"; I forget his Japanese name but I know that his father was employed~~ in the Japanese Embassy in London. He beat me up quite often with his fists and sticks.

31c. I was also beaten up by a Japanese called: "Okamoto" whom we called "the ape". He used his fists and sticks. The last week before our liberation, I was beaten up by a Japanese guard whose name I don't know; he was a new man. He was a Corporal, about 5' 10" tall. He was in charge of what they call: "Shota". He weighed about 150 pounds, — 140 to 150 pounds, wore no glasses, was having a dark black hair. The only thing that could distinguish him anyplace is that he looks a smart soldier.

32.. During my stay in Omine, I was employed in the coal mines where the conditions of work were very poor and very bad; we were driven, pushed and kicked. There was no adequate protection against air-raids and /or bombing.

33c. Medical care was given to us by our own regimental medical officers who did the best they could under the circumstances but did not have the necessary medical supplies and cooperation from the Japanese medical authorities. I had pneumonia during the fall of 1944 and they couldn't treat me properly because they had no medical supplies.

34c. Collective punishments were meted out by the prisoners for individual offences; these punishments being in the form of cuts in rations, special duties, and standing up at attention for long periods of time.

35c. The huts were not too bad; they had no floor, the roof was not bad and was not leaking. The water supply was ~~fair. The kitchen facilities were not adequate, being too small.~~

/s/ James Robert Jassop
(Deponent.)

/s/ Pierre Decary-Major.
Commissioner for the Superior Court,
District of Quebec.

JS

~~Sanitation was poor, filthy and dirty. We didn't have~~ enough water to keep it reasonably clean. Up to the last eight months rations were poor, consisting of rice, turnips-tops, potatoes, but in insufficient quantity and quality. The food we got was barely sufficient to keep us alive.

36o. I know that sometime in May 1943, 225 or 230 Red Cross parcels came to camp. When the distribution was made in August only we only got 7 parcels for 8 men. The rest was appropriated by the Japanese. We saw them eating Red Cross food, and we saw the Japanese guards wearing Red Cross boots. All the time that parcels came in, we saw the Japanese smoking cigarettes or pipes.

37o. I think that a Japanese civilian guard named "Hatamoto", also know as "Shisua", who was employed in the mines by a civilian organisation, made my life miserable as well as the life of others, driving me around, pushing and kicking me, pulling every dirty trick he could possible dream of, and that, ~~all the time I was in Omine.~~

JS

38o. In the Spring of 1944, Ralph Forsberg, a Winipeg Grenadier, had an accident and broke his back; he was put in the hospital and, when he came out, he was employed in the kitchens. A Japanese known as "Bayonet Kid", whose name possibly is "Mitsui", and "the brown bomber" used to beat him quite severely and quite often. That is when he came out of the hospital in December, 1944.

IN WITNESS WHEREOF I HAVE SIGNED.

/s/ James Robert Jessop
(Deponent.)
No. E-30584, - Rfm. J. R. JESSOP,
Royal Rifles of Canada, C.A.

SWORN TO BEFORE ME,
AT QUEBEC, P. Q., this
18th day of January, 1946;
consisting of 5 pages, each
signed by the Deponent.

- Major,

/s/ Pierre Decary
(Pierre DECARY) - Major,
Commissioner for the Superior Court,
District of Quebec.

Certified true copy of an original document
compared by me and certified this 12th day
of August 1946 at the City of Tokyo, Japan.

J. D. C. Boland
(J D C Boland) Capt. Canadian Army
Member of Canadian War Crimes Liaison Detachment

DEPOSITION

CANADA
PROVINCE OF MANITOBA
TO WIT:

In the matter of personnel held Prisoner of War by the Japanese and in the matter of the Deposition of H.6238, L/Cpl. Joseph Frederick TRASIEWICK, Winnipeg Grenadiers, C.A.

I, No. H.6238, L/Cpl. Joseph Frederick TRASIEWICK, a member of His Majesty's Canadian Army, make oath and say:

1. I am No. H.6238, L/Cpl. Joseph Frederick TRASIEWICK. I reside at 431 Agnes Street, in the City of Winnipeg, in the Province of Manitoba. I am a member of His Majesty's Canadian Army, and at all times pertinent hereto a member of the Winnipeg Grenadiers, C.A . In civilian life I was employed in an hotel.

2. I was a member of "D" Company, Winnipeg Grenadiers, and took part in the defence of Hong Kong. I was captured near Aberdeen Reservoir on the 25th of December, 1941. After being captured I spent considerable time in prison camps in the Hong Kong, Kowloon area, until being sent to Omine Camp in Japan on the 19th of January, 1943.

3. While at Camp Omine I observed and suffered several brutalities. On one occasion, without provocation, I was kicked in the testicles by a Japanese known as the "Black Bastard", also known as the "Brown Bomber". ~~On another occasion I saw a Japanese known as the "Bayonet Kid" attempt to bayonet C.S.M.~~ Shepherd, R.R.C. This Jap's proper name was Mitsui. He was in charge of a parade one morning when Shepherd picked up Private Cox of the Winnipeg Grenadiers, who had fainted on parade. Mitsui became so enraged that he ran into the Guard Room, picked up a rifle, affixed a bayonet to it and made several thrusts at C.S.M. Shepherd. Shepherd ducked and thereby saved his life because Mitsui would have killed him. Shepherd did, however, receive one bayonet wound through the muscle of his left upper arm.

/s/ J. F. Trasiewick

4. Another beating I know of was that of the Sergeants and Sergeant-Majors. Some of our senior N.C.O.'s including Sgts. Parkes and Davignon, R.R.C. and Cauldwell and Windsor, Winnipeg Grenadiers, were caught looking at a map. They were brought into the C.O.'s office. I was outside the building and I heard the sound of the beatings going on inside the office. I then saw them come out and saw that they were all bruised and battered. They were then made to stand at attention for a long period of time. The C.O. who administered this beating was Lieut. Kaniko.

/s/CHJ

5. Another incident which happened about this time was the beating of Pte. Hobson, W.R.C., who received same from a Japanese corporal whose name I do not know. This corporal used a 2 x 4 to beat Hobson with. His whole body was bruised and he was knocked unconscious. Hobson needed medical care and was unable to work for several days after this.

PROSECUTION
EXHIBIT
no 151

6. Another Jap who slapped everybody in the Camp, including myself, was the "Air Force Kid". Although I never saw him participate in any bad beatings he was always slapping someone.

C.H. Johnson

7. I identify Exhibit "A" as a true photographic representation of the following Japanese:

Figure (1) in Exhibit "A" - Black Bastard
" (2) " " "" - Mitsui (Bayonet Kid)
~~" (3) " " " Air Force Kid~~

Seal:
CLARENCE HOWARD JOHNSON
NOTARY PUBLIC
MANITOBA

8. Descriptions:

"Black Bastard" (Brown Bomber)
Age - 25 years old.
Height - 5'8" tall.
Weighed about 160 lbs, good condition.
Spoke no English,
No moustache or glasses.
Particularly brutal.
Dark Skinned
Figure #1 in Exhibit "A".

~~[illegible]~~
Age - 30 years old.
Height - 5'5" tall.
Weighed 170 lbs, fairly husky.
Spoke some English.
No scars, moustache or glasses.
Has protruding teeth.
Good condition.
Figure #2 in Exhibit "A".

"Kaniko":
Age - 35 to 40 years old.
Height - 5' 10½" tall.
Weighed 175 lbs, husky.
Spoke some English.
Slight moustache - Camp Commandant during worst period (Winter of 1943, through winter of 1944).
Took part in beatings personally.

"Ushida":
Age - 30 years old.
Height - 5'[illegible]" tall.
Weighed [illegible]5 lbs.
Myopic protruding eyes.
Sergeant - wore glasses (Horn rimmed).
Spoke good English.
Heavy drinker - said to be a hop-head.
Had buck teeth.
Was in the Regular Army.

"Air Force Kid"
Age - 30 years old.
Height - 5'4" tall.
Weighed 140 lbs, good condition.
Very mean all the time - slapped people on slightest provocation.
Fairly light skinned.
Spoke broken English.
No glasses or moustache.
Buck teeth.
Had a bullet wound in left or right side.
Figure #3 in Exhibit "A".

Except as herein stated I do not at this time recollect any further information of atrocities or incidents of mistreatment of Allied Prisoners of War

SWORN before me at the City of Winnipeg)
s/ in the Province of Manitoba, this 1st)
HJ day of ~~February~~ MARCH, 1946. Consisting of)
two pages, each signed by the Deponent.).../s/.J.T..Trasiewick...
(H.6238, L/Cpl. J.F. Trasiewick)
Winnipeg Grenadiers,C.

Seal:
CLARENCE HOWARD JOHNSON
NOTARY PUBLIC
MANITOBA

../s/.C..H..Johnson.....
(A Notary Public in and for the Province of Manitoba.)

Certified true copy of an orginal document compared by me and certified this 8th day of July 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt Canadian Arm
Member of Canadian War Crimes Liaison Detachmen

(Photo attached to original)

DOMINION OF CANADA.
PROVINCE OF NEW BRUNSWICK
COUNTY OF RESTIGOUCHE

IN THE MATTER OF DEPOSITIONS BY A CANADIAN [illegible] REPATRIATED FROM JAPANESE CONTROL.

TO WIT:-

I, B-30475, Rfn. Thomas Raymond HENRY, No. 7 District Depot, (Home), formerly a member of the Royal Rifles of Canada (C.A.), soldier of the Canadian Army (Active) make oath and say the following:

That I am B-30475, Rfn. Thomas Raymond Henry, formerly of the Royal Rifles of Canada, (C.A.), and was a prisoner of war of the Japanese army from 25 Dec 41 until the cessation of hostilities between the Japanese and the Allied Nations on 15 Aug 45.

~~That I was taken prisoner at Stanley Fort, Hong Kong. I~~ arrived at Hong Kong in November of 1941 and after being taken prisoner on 25 Dec 1941 I continued to be interned in North Point Prison Camp until September, 1942. The only recollection of any atrocities happening during this period was sometime during the first part of May, 1942, when one Cpl. Porter of "D" Coy., Royal Rifles of Canada, whose home I think is in Niagara, was taken out of the Camp and kept out for a week and when he returned to this Camp he was very weak. Cpl. Porter told myself, Lt.-Col. Holmes and Major Parker in the Camp that he was kept kneeling at Stanley Prison almost continually for approximately one week and was fed only very small quantities of rice and little water. This is the only atrocity I recollect during my stay at North Point Camp. Col. Tsunanaga was in charge of the prison camp at Hong Kong at that time and as far as I know he was the officer who ordered Cpl. Porter to be taken out of camp.

In September, 1942, I was transferred to Shamshipo, Kowloon, ~~and was stationed at that Camp until January, 1943. In October,~~

/s/ J.C. Von Horne Capt

/s/ Rfn. T.R. Henry

PROSECUTION EXHIBIT no. 6

~~[illegible] after 5 or 6 prisoners, whose name I do not know, in the~~

[illegible] ied of diphtheria in one night, the Japanese doctors beat the Canadian orderlies and doctors. Major Crawford of the [illegible]nipeg Grenadiers was the only Doctor I remember being beaten I do not know the names of the other orderlies or other ~~[illegible] who beat up Major Crawford and Allied orderlies.~~

In January, 1943, I was transferred to Ormine P.O.W. Camp [illegible] was stationed there until the cessation of hostilities.

~~Within a few days after I arrived at this Camp the Japanese~~ [illegible]rds, whose names I do not know, endeavoured to buy our cloth- [illegible] shirts, pants, tunics, boots, from us in return for items [illegible]tai[illegible] in Red Cross Parcels which had been sent to us. I did [illegible] sell any of my clothes to them but certain items from Red [illegible]s supplies were given to all members of the Camp about one [illegible]th later.

[illegible] 14 March, 1943, I was personally beaten up during my [illegible]t [illegible]y from work at the Coal Mines by a Jap L/Cpl., whose name [illegible]o not know, but whose description was; height, 5 ft. 3 or 4 [illegible]hes, heavy set, black hair, color of eyes unknown. He was [illegible]n to us at the Camp as "The Bulldog". I was hit about the head [illegible]th a bamboo pole for about one hour. I was cut in two places, [illegible]s of whcih cuts still remain in my head.

In connection with the incident concerning the tieing up [illegible]P.O.W's in a Coal Mine and attaching explosives to them, I re- [illegible] that the P.O.W.'s tied up, belonged to another work party, [illegible] number was six, as far as I can remember. I heard of this [illegible]ident through the English P.O.W.'s in that party. Sgt.-Maj. [illegible]ot, 2nd Bn. Loyals, was in charge of that P.O.W. party and [illegible] only information I have is what was told to me by Sgt.-Maj. [illegible]fot. I don't know the name of the Japanese Party Leader who ~~[illegible] responsible for this atrocity. As far as I recollect, this~~

/s/ J.C. Van Horne. /s/ Rfn. T.R. Henry

~~Japanese Party Leader was brought up in office by the Japanese~~

superiors but I am unaware of disciplinary action taken although /s/JCVH (Jap)/s/T.R.H.
Sgt. Parkes, W. R., Royal Rifles of Canada, told me that he was simply reprimanded and released and continued to be Party Leader.

8. In June, 1943, Rfn. Murray, Royal Rifles of Canada, who at that time was working in my party, was found dead and I saw him in this state at approximately noon, the exact date I do not remember. A Japanese Medical Officer, whose name I do not know was responsible for forcing Rfn. Murray to work while he was seriously ill.

9. I have examined Appendix "A" which is a photograph of the Japanese personnel who were guarding Camp Ormine and I identify the second man from the left of the second row who is known as "Air Force Kid". I do not know his real name but this Japanese was supposed to have been a former member of the Japanese Air Force, hence the name, "Air Force Kid". This Japanese was a Corporal of the guard from December, 1943, until the end of the war. He punched me in the mouth at least once a week for a period of three months during the summer of 1944 and after that period he occasionally hit me upon looking at me. To my knowledge, I had not committed any breach of discipline but this Japanese guard wanted me to pluck my eyebrows out at the bridge of my nose and I refused to do it. This Japanese guard was continually hitting some P.O.W. in the Camp. I recall him hitting Pte. Harris of the Winnipeg Grenadiers very frequently in much the same manner as he was hitting me. I did not take particular notice of these batterings at the time since this Japanese Corporal had the habit of hitting anybody he felt like.

10. Around the 1st of January, 1944, Sgt. H. B. Shepherd was in ~~charge of our work party which was No. 2. In the morning at about~~

/s/ Jas. VanHorne Capt /s/ Rfn T. R. Henry

0550 [illegible] of the Winnipeg Grenadiers, passed out on parade as we were about to leave for work. Sgt. Shepherd ordered two men to take Cox to the Medical Orderly Room. I do not know the names of the men. While these three men were absent, a Jap Corporal of the Guard, who was known to us as "Smiler", and who is identified in Appendix "A" as the third man from the left in the second row of the photograph, enquired from Sgt. Shepherd as to where the three men were. Shepherd said that Cox had taken sick and he had ordered two men to take him to M.D.R. "Smiler" ordered Shepherd to go and get them back, bring them back to the parade ground. Shepherd went to the M.D.R. and brought back the two men who had escorted Cox to the Medical Orderly Room. The guard, "Smiler" became enraged at this and endeavoured to strike Sgt. Shepherd with a hardwood stick, at which Sgt. Shepherd jumped at the guard Corporal and struck him in an endeavour to parry the blows of the Jap guard. The Jap guard ran back to the guard room and brought back his rifle with bayonet attached and made a rush for Shepherd and drove the bayonet through his leftforearm. I was [illegible] JS

11. Rfn. Bob Jessop, Royal Rifles of Canada, and Sgt. D. Abbott of the 2nd 20th Bn., Australian Army, in July, 1945, while they were leaving their rooms were punched in the face by a Jap who is known as the "Brown Bomber" and who is the second man from the right of the third row as shown in Appendix "A" attached. This Japanese guard was continually beating up anybody at random. Whenever news was received that a certain island had been captured by the Allies, this Jap guard would line 4 or 5 P.O.W.'s up and beat them in revenge. Among those beaten up, as far as I can recall, were Rfn. Jessop of the Royal Rifles and Sgt. Abbott, Australian Army, and G18634, Pte. Walsh, J. E., and one E. McBeath, No. 7 District Depot, formerly of the Carleton & York.

12. In the [illegible] JS

[illegible]

~~the Camp to carry the prisoner and were brought back a few days~~ later, both very weak, and the Sgt.-Major had dysentery.

13. As far as I can remember, these were the only atrocities ~~of which I am personally aware, which interest by the Japanese~~

Sworn to, before me, at the
City of Saint John,
Province of New Brunswick,
this 14th day of December,
A.D. 1945.

/s/ T. R. Henry
(Deponent)

/s/ J.C. Van Horne
A commissioner for taking
Affidavits to be read in the
Supreme Court of the
Province of New Brunswick.

A/A.J.A.G., H. D. No. 7.

Certified true copy of an original document compared by me and certified this 16 day of August 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

CANADA
PROVINCE OF BRITISH COLUMBIA } TO WIT:
COUNTY OF VANCOUVER

SEAL: ALMOND MARCUS GRIMMETT
NOTARY PUBLIC
BRITISH COLUMBIA

I, No. H6653, Sergeant Joseph Firmin LEGROS, presently residing at Suite 1 - 1179 Granville Street, in the City of Vancouver, in the Province of British Columbia, make oath and say:

1. THAT I am H6653 Sergeant Joseph Firmin LEGROS, and that I joined the Winnipeg Grenadiers, Canadian Army, Active Force, in September 1939 and proceeded to Hong Kong, arriving there on the 16th day of November 1941. I was taken prisoner on the 25th day of December 1941. ~~I was first held prisoner in Sham Shui Po Camp, reaching there on the first day of December~~ 1941 and stayed there until the 23rd day of January 1942. During this time nothing unusual occurred either to myself or to other prisoners.

2. From Sham-Shui-Po I was taken to North Point Camp where I remained until September, 1942. On the night of August 19, 1942 four Winnipeg Grenadiers escaped from the camp. These men were Sgt. Payne, L/Cpl Brezinski, Ptes Adams and and Ellis. The following night about 2300 hours the whole camp was paraded on the parade square and forced to stand there until approximately 0500 hours the next morning, in a pouring rain. During this time the officer prisoners of war were mistreated by the Japanese officers and guards. There was so much slapping going on and general confusion that I cannot recall the names of the prisoners struck. Several of the prisoners of war collapsed on the parade square, due to strain and fatigue; I was one of those persons who collapsed. I, along with about a dozen others, was taken into the medical inspection hut and just left there until the parade was over. I cannot name any of the persons who were with me in the MIR although I think Sgt Maybury of the Winnipeg Grenadiers was there. He is now in Winnipeg. This is the only incident that I can remember during this stage of my imprisonment.

3. The hospital in this camp was very inadequate. It was formerly a warehouse about 30 by 40 feet dimensions, roof leaking in many places. In this room the dysentry cases among prisoners were kept, 40 to 50 at this time. The patients were on stretchers, no plumbing facilities and no medical treatment at all. Up to September 1942 I was in this so-called hospital five times for dysentry and received no treatment except no food and epsom salts, when available. One Winnipeg Grenadier, Pte "Rocky" Smith, died of dysentry during this time.

4. In September 1942 I was taken from this hospital to Bowen Road Hospital, where I remained until October 30th, 1942. I was treated and cured at this hospital by British and Canadian Medical Staff. During this time nothing unusual occurred.

5. I was then taken to Sham-Shui-Po Camp where I stayed until January the 19th, 1943. During this time a diptheirie epidemic broke out and approximately five or six prisoners of war died every day. At the beginning of the epidemic there were no medical supplies available for treatment and finally when the epidemic became critical in early November the Japanese had some sort of serum flown into the camp. This serum eliminated the disease. Our Medical Officer in charge of the hospital was Major Crawford, RCAMC, and he should be ~~able to give more details.~~

/s/AMGrimmett /s/ JFLegros

PROSECUTION EXHIBIT

SEAL: ARNOLD MARCUS GRIMMETT
A NOTARY PUBLIC BRITISH
COLUMBIA

6. ~~During my stay in Shen-Shui-Po Captain Morris~~ is reported his company as being on full strength on roll call when actually one Grenadier named Pte Halliday, and a Royal Rifles Pte, whose name I do not know, were late. As a result of this report Capt Morris and a other Canadian officer from the Rifles were beaten up by the Kamloops Kid. The Kamloops Kid punched and kicked both officers and knocked them down and kicked them while they were lying on the ground. This lasted about 10 minutes. I saw Capt Morris shortly after the beating and his face was all swollen. Both officers were taken to the Medical Inspection Room and treated by the Canadians.

7. From Shen-Shui-Po I was taken to Camp Omine, where I remained until liberated on the 22nd day of September, 1945. The first two years in this camp I was employed shaft building in the coal mines and after that coal mining for a short period and the last four months sinking new shafts. During this time discipline in the camp was very stiff and food went from bad to worse, as time went by, until at the end we were living on nothing but rice and vegetable tops in diminishing quantities.

8. In this camp on one parade I, along with five others, was taken out of parade by a Japanese guard called the Bayonet Kid for failing to have our identification numbers on our chests. The Bayonet Kid was so named as he was the one who stabbed CSM Sheppard of the Royal Rifles with his bayonet. The six of us were lined up and the Bayonet Kid proceeded to punch and slap us in the face for about ten minutes. He apparently was not satisfied with this and he took off his belt with a large buckle on it and and swung the buckle and at our heads. He struck me in the left temple with the buckle and I was knocked partially unconscious. He hit all the others about the head and face with the buckle and all of us ended up on the ground. I cannot name the prisoners with me as they were Royal Rifles and British.

9. While working in the mines a lot of the prisoners were having trouble with their foot and the Japanese, in order to ~~to~~ toughen up our foot forced us to run around the camp twice in our bare feet on cinders a total distance of about 500 yards. Those who lagged behind were compelled to run around the camp another time and during that time were prodded with bamboo sticks by the guards. I cannot name any of the Japanese who acted as either officers or guards in the camp, other than one Sgt named Euchida. He drank a lot and in his drunken moods beat up many of the prisoners for no reason at all. One person that I saw him strike while he had been drinking was ~~Pte Deasy of the Winnipeg Grenadiers.~~

10. THAT Now produced and shown to me and marked as Exhibit "A" to this my affidavit is a photograph of the camp staff at Omeni Camp, Kyushu Island, Japan. In the said photograph I recognize the Japanese guard we called the Brown Bomber, and is marked "X" in the said Exhibit "A". I have seen the Brown Bomber strike lots of prisoners whom I cannot recall by name. ~~Another one I recognize in the guard above referred to as the Bayonet Kid, and is marked "Z" on the said Exhibit "A".~~ ~~The other guard~~ I recognize is one we called the Air Force Kid, and he is marked "Y" on the said Exhibit "A". I have seen him strike dozens of prisoners, but ~~cannot name them.~~

/s/ AMGrimmett /s/ J.F.Legros

SEAL: ALMOND MARCUS GRIMMETT
NOTARY PUBLIC
BRITISH COLUMBIA

JS
JFL

~~[illegible] THAT Captain [illegible] was Camp Commandant at~~ Omine and his treatment was very severe. Working below in the mines we were only permitted to wear cotton shorts and undershirt and as this was from November to March it was quite cold, zero at times. We used to smuggle extra clothing down to the mine and pass it on from shift to shift and conceal it down in the mine when we were out. When the new Camp Commandant came he approved wearing of some ~~additional clothing.~~

JS
JFL

SWORN to before me at the City of Vancouver, in the Province of British Columbia, this fourth 11th day of January, A D 1946, consisting of three (3) pages, each page signed by the deponent

/s/JFL
/s/AMG

/s/ J.F. Legros

/s/ A. M. Grimmett
A Notary Public in and for the
Province of British Columbia

SEAL: ALMOND MARCUS GRIMMETT
NOTARY PUBLIC
BRITISH COLUMBIA

Certified true copy of an orginal document compared by me and certified this 15 day of [illegible] 1946 at the City of Tokyo, Japan

(J.D.C.Boland) Captain, Canadian Army
Member of Canadian War Crimes Liaison Detachment

3

A F F I D A V I T

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C A N A D A

PROVINCE OF QUEBEC

TO WIT:

(In the matter of Canadian Prisoners of War at Hong-Kong and Vicinity.)

I, E-30547, Maurice DAVIGNON, residing at Valder, Abitibi County, in the Province of Quebec, a N.C.O. in the Canadian Army, make oath and says-

1- In civil life, I was employed as a miner at the Sullivan Gold Mines at Valder, Abitibi, P.Q.

2- I was a sergeant in Royal Rifles of Canada and I participate in the defence of Hong-Kong. On the 25th December 1941, the day of the surrender, I was at Stanley Fort with Headquarters Battalion under the command of Colonel (now Brigadier) Home.

3- A few days after the surrender, we marched down to North Point where I stayed until September 1942. I wasthen transferred to Sham Shui Po and remained there until January 1943 when I sailed for Japan. In Japan I was interned at Omine, Kawasaki, in the District of Fukuoka where I stayed until the liberation in September 1946.

~~4- During my internment in North Point, Sham Shui Po and Japan,~~ I did not witness any killing or execution of prisoners of War.

5- In Omine the conditions in the camp were not too bad but we were forced to work whether we were sick or not. During the first period of my internment at Omine, I was employed as cook, interpreter, undertaker, etc.

6- To my personal knowledge, many of our boys died from complete exhaustion, malnutrition and overwork. Several were so exhausted that they died in the camp 2 or 3 days after having been carried out to the camp from the mine, especially:

E-30439	CQMS.	Lorne MacDONALD
E-29981	Rfn.	Sterling McKINLEY
E-30176	Rfn.	Donald E. WOOD.

7- In the case of A-23153, Rfn. Geo. W. MURRAY, this man, to my personal knowledge, died of complete exhaustion on the job at the mine. During three months before his death, he was suffering from acute dysentria and though he was very sick, when he refused to work, he was beaten and forced to work until he died. To my personal knowledge, Sgt. Koboyashi, the 2nd I/C of the camp and also Uchida did beat Murray several times during hisillness to ~~force him to go to work.~~

/s/ Maurice D'Davignon Sgt.
DEPONENT

/s/Pierre Gelly, Major
Commissioner of the Superior Court,
District of Quebec.

.....2/

PROSECUTION EXHIBIT

-20.8

95 ~~8- In the case of [illegible], this~~ man died of T.B. due to malnutrition, exposure and hardship. He was kept during his illness in a building where no heat of any kind was provided.

9- During the last period of my internment I was in charge of a group of prisoners working in the mine due to the fact that being a miner myself and having experience in that kind of work. The condition in this mine was intolerable; there was no protection at all and almost every day some of the miners or prisoners employed there were killed. Tons of rocks were falling every day and in many instances I refused to take my men in certain dangerous parts in the mine, because I was convinced that if we went there, we would all be killed. In my opinion and with the experience I have in mining, the Japanese had the necessary material to wall the roofs of these mines and prevent these falls. Through the discussions I had with the civilian boss, it was evident to me that these dangerous conditions of working were intentional on the part of the Japanese authority, because with the material they had it would have been easy to protect the miners.

10- During the Winter of 1944, the conditions were unbearable and we were forced to work with just a cotton frock and pants and a pair of worn out running shoes. Several times when we had built wind-breaks, the Japanese guards forced us to break them down, and these conditions became so acute that we complained to Capt. Kaniko and told him that we would die of exposure if the conditions were not changed, and he told us that he did not care if we all died.

11- During my internment at Omine, I prepared to be buried and I buried all the boys who died there. It was evident by the appearance of the bodies, which were more skeletons, that those men had died through hardship, exposure and complete exhaustion.

12- In the picture attached to the statement, I identify the following persons: (This picture is attached as Exhibit "A".)

a) In the second row, the second from the left, indicated by the figure One, is a japanese guard whose name I cannot remember but whom we nicknamed the "Airforce Kid." This man was a real brute and I saw him beat the prisoners who were sick in the hospital. I particularly remember the case of Johnny KANE who had, at the time, a broken spine leg and ribs, and who was severely beaten by this guard while in the hospital. He hit him with his fist and his rifle butt.

b) The third man in the second row from the left, indicated by the figure Two, was the Commandant of the Guards, named Mitsui. He was the same kind of man as the "Airforce Kid". He took pleasure in beating the ~~prisoners and he is the guard who bayonetted Harold SHEPHERD~~

/s/ Maurice Devignon Sgt.
DEPONENT

/s/ Pierre Gelly, Major.
Commissioner of the Superior Court,
District of Quebec.

.....3/

c) The twelfth man in the third row, indicated by number three is a japanese guard whose name I cannot remember, but whom we nicknamed the "Brown Bomber". This one was the worst of the bunch and he took pleasure in beating and slapping everybody. I saw him beat Jimmy Filed, an English prisoners of war who had his leg amputated a month previously and who was walking with crutches, and the "Bomber Kid" beat him because he had not saluted him properly.

IN WITNESS THEREOF I HAVE SIGNED:

/s/ Maurice D'Avignon, Sgt.
E-30547, Sgt. Maurice D'Avignon.
Royal Rifles of Canada.

SWORN before me at QUEBEC, P.Q.
This twenty-seventh day of March 1946,
consisting of three pages, each
signed by Deponent.

/s/Pierre Gelly major
(P.E. Gelly)-major
Commissioner of the Superior Court,
District of Quebec

Certified true copy of an original document compared by me and certified this 15th day of August 1946 at the City of Tokyo, Japan.

J.H. Dickry
(J.H. Dickry) Capt. Canadian Army

DEPOSITION

CANADA
Province of Manitoba
To Wit:

) In the matter of personnel held
) Prisoner of War by the Japanese and
) in the matter of the Deposition of
) H.6241, Pte. Daniel DUNSEATH,
) Winnipeg Grenadiers, C.A.

I, No. H.6241, Pte. Daniel Dunseath, a member of His Majesty's Canadian Army, make oath and say:

1. I am No. H.6241, Pte. Daniel Dunseath. I reside at 704 Simcoe Street, in the City of Winnipeg, Province of Manitoba. I am a member of His Majesty's Canadian Army and at all times pertinent hereto a member of the Winnipeg Grenadiers, C.A.

2. ~~I was taken Prisoner on Christmas Day, 1941.~~ I was in hospital, the Queen Mary Hospital at the time of the surrender and on the 19th of January, 1942, I was taken to Sham Shui Po. On the 23rd of January, 1942, I left Sham Shui Po for North Point where we remained until we returned to Sham Shui Po on the 26th of September, 1942. On the 19th of January, 1943, I left on the first draft for Japan. We landed at Nagasaki and the next day we arrived at Omine Camp where I remained until liberated.

CLARENCE HOWARD JOHNSON
NOTARY
(SEAL)
PUBLIC
MANITOBA

3. The first Camp Commandant at Omine was a young man between 32 and 35 years of age, about 5'5" in height and would weigh approximately 135 lbs. At times he wore glasses and he was always clean shaven. He had a very sneaky look and was given to prowling around at night to see for himself. He was at the Camp for about a year but I honestly don't recall his name.

4. The second Commandant was at the Camp only about three weeks. He was very good to the prisoners within his limitations and we were sorry to see him leave. He was about 55 years of age, 5'8" in height and weighed around 150 lbs. He spoke a little English. He wore glasses and was clean shaven. I don't recall his name either.

5. The third Commandant was Captain Kanoko. Sometimes he was clean shaven - sometimes he grew a mustache. He was about 32 years of age, 5'8" tall and weighed close to 145 lbs. He knew little English though I had the impression that he knew and understood more than he pretended.

6. Lieut. Tanaka succeeded Kanoko. He was tall and slim. He was about 5'9½" tall and weighed about 135 lbs. He was about 35 years of age. He did not wear a mustache and was very dark complexioned. He looked sufficiently like an Indian to be one. He wore glasses from time to time. He spoke a bit of English. The figure in the picture marked "1" and attached as Exhibit "A" to this my affidavit is Lieutenant Tanaka.

7. I recall the beating of an English soldier in the kitchen of Omine Camp in the month of December, 1944. Although I know the boy well I cannot recall his ~~name at this time. He was about 30 years of age and he had told me he was married. He had been stationed at~~

/s/ C. H. Johnson

D. Dunseath.

PROSECUTION EXHIBIT
no. 9

~~Singapore. He was a very quiet chap and seldom indulged~~ in conversation with anyone. He was about 5'6" tall, and weighed around 130 lbs. at the time. He was fair complexioned and his hair was blonde. He wore a blonde moustache and he did not wear glasses. He had one or probably two tatoo marks on his arm - I don't recall which arm.

8. On the day he was beaten he was working in the kitchen when the Japanese, nick-named the "Bayonet Kid" and marked with the Figure "X" in the photograph marked Exhibit "A" and attached to this my affidavit, came into the kitchen. The Englishlad was working at the cupboard and apparently did not see the Japanese Commandant pass by outside because he did not salute him. The Bayonet Kid mentioned his failure to salute to the lad and then proceeded to beat him with his fists and then with the butt of his rifle in the head and stomach. He knocked him down several times and kicked him as he lay. The last time he was knocked down the "Kid" picked up a large stone and throw it at the English lad's head. It missed his head and hit his arm. The beating commenced in the kitchen, carried on down the hallway and ended up outside. The beating was so bad that if it had lasted a minute longer I felt I would have to intervene.

CLARENCE HOWARD JOHNSON
NOTARY (SEAL) PUBLIC MANITOBA

9. There were other beatings at the mine and at the Camp which I heard about but didn't witness. This was due to the fact that we were on shift work. There were numerous slapping which I witnessed. These varied in ~~severity but were so common place that you ignored them.~~

10. The "Brown Bomber" was one of the guards. He carried on a "War of Nerves". He never left us alone. If you were sleeping you could be sure he would wake you up on the most trivial of excuses. He took every occasion to indulge in slappings. He was a man 28 or 29 year of age, 5'5" in height and 145 lbs. in weight. He was a husky chap with a very brown skin, hence his name. He did not speak English. He was clean shaven and did not wear glasses. The figure marked "3" in the picture marked Exhibit "A" and attached to this my Affidavit is the person referred to as the Brown Bomber.

~~11. I spent a year as a cook in the kitchen at Oryama.~~ As time went on the ration situation got worse because as the number of prisoners increased the rations were cut. The main rations issued were rice- vegetable tops - very occasionally a piece of meat or fish and towards the end beans. These rations were supplemented by the prisoners themselves by the addition of snakes, rats and even dogs and cats. Snake parties went out daily and it was not uncommon to have 25 snakes to steam. All these animals were steamed and were eaten with the approval of the Medical and Japanese staff. Bulk Sugar and cocoa was received in Camp from the Red Cross but when it was given to us it was of little use. Rats had got into the sugar and the best we could do was clean it and use if for baking. The cocoa was not issued until it was mouldy and we were instructed to mix it with flour and make chocolate buns. We did this, but hungry as the boys were they couldn't ~~eat the buns. See Red Cross parcels were issued.~~

C. H. Johnson

D. Dunseath .

J5 ~~[illegible] from the kitchen. There were~~ no ~~bulk [illegible]~~ supplies at this camp.

12. Except as herein ~~stated I do~~ not at this time recollect any further information of ~~atrocities~~ or ~~incidents of mistreatment of Allied Prisoners of War.~~ J8

SWORN before me at the City of Winnipeg)
/s/ in the Province of Manitoba, this 11th)
CHJ day of ~~March~~ APRIL, 1946. Consisting of three)
pages, eached signed by the Deponent.)

.....D. Dunseath.....
(H.6241, Pte. Daniel Dunseath)
Winnipeg Grenadiers, C.A.

....C.H. Johnson.....
(A Notary Public in and for the
Privince of Manitoba).

CLARENCE HOWARD JOHNSON
NOTARY
(SEAL)
PUBLIC
MANITOBA

Certified true copy of an original document compared by me and certified this 16th day of June 1946 at the City of Tokyo, Japan.

J D C Boland
(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

CANADA

PROVINCE OF QUEBEC

TO WIT:-

In the matter of Canadian Prisoners of War in Hong-Kong and vicinity.

-AFFIDAVIT-

I, E-29839, Corporal Walter Gordon BILLSON, of the City of Sherbrooke, Province of Quebec, residing at 16 Wellington Street in said town, a soldier of the Canadian Army, make oath and say:-

In civil life I was a weaver by trade.

I was a member of HQ Coy, Royal Rifles of Canada, and took part in the defence of Hong-Kong. I was a member of the garrison of Fort Stanley, Hong-Kong, when it was surrendered on 25 December 1941. I was moved then to North Point.

The following is a chronology of my imprisonment:

North Point Camp	Dec 41 -	Sep 42
Sham Shui Po	Sep 42 -	Jan 43
Omine Coal Mine	Jan 43 -	Aug 45

JS JM

~~While at North Point and at Sham Shui Po,~~ I was not beaten but I saw and heard of a good many beatings of my ~~fellow-prisoners~~, including Major Atkinson, RRC, Captain Morris, RRC, ~~Captain~~ Greene, RN, Major Crawford, RCAMC. These beatings were administered by the guard INOYA (Kamploop Kid) and Captain Sato, medical officer ~~at Hong-Kong~~.

JS JM

/S/ W. G. Billson

(Deponent)

/S/ J. Alfred Crowe

Justice of Peace in and for the District of Quebec.

...../2.....

PROSECUTION EXHIBIT no. 10

~~At Camp Camp 3 we employed in the Coal~~ Mines. I was beaten on a few occasions by guards known ~~as~~ THE PANSY and THE APE.

Many of my comrades were beaten badly while at this Camp. A Rflmn Murray, WO, was beaten so often and so badly by the Jap medical sergeant , whose name I do not know, that as a result of this he died while on a work party. Apte Chaboyer, D., WOC, had an argument with a guard in the mines one day and the Camp Commandant, Captain Kenako ordered him away and a few days later his ashes were returned to the Camp. CSM SHEpherd was bayonetted on parade by a guard known as the BAYONET KID (also known ~~as Yamamoto) who was a guard corporal and who was afterwards placed in jail.~~ Many others of my comrades were beaten at this Camp. Two guards known as the BAMBOO KID and the BROWN BOMBER participated in brutal beatings; the beatings were administered with fists, sticks, tools, rifle butts, straps, or anything else they had handy, and many of our troops required medical attention and hospitalization after.

~~CAPTAIN KANAKO : Age about 40;~~
6' tall
weight: 170 lbs; real husky.
dark - had small moustache;
spoke very little English.
His brutality seemd to increase as time went on. Was officially responsible for the deaths of Rflmn Murray and Pte Chaboyer, and occasionally administered beatings himself.

THE PANSY :
Age: about 30
Height: 5' 4"
Weight: 135 lbs.
Very good looking - fair complexion - effeminate - used perfume - reported to be homosexual - neatly dressed -
Spoke no English - periodically brutal.

THE APE :
Age: around 30
Height: 5' 8"
Weight: 130 - 140 lbs
Quite heavy-built - rather fair complexion and had pimpled skin.
~~spoke no English - no glasses - no moustache~~

/S/ W. G. Billson
(Deponent)

/S/ J. Alfred Crowe
Justice of Peace in and for the
District of Quebec.

..../3....

~~[illegible] : Age: about 40~~
Height: 5' 4"
~~Weight: 125 lbs.~~
~~Dark features - spoke no English.~~
~~Was particularly brutal in that he was always looking for an excuse for beating the prisoners.~~

BROWN BOMBER : Age: about 28
Height: 5' 4"
Weight: 135 lbs.
Very dark complexion - thick lips -
No glasses - no moustache
Spoke no English.
Always looking for trouble with the prisoners and was particularly brutal to them when he found it.

IN WITNESS WHEREOF I HAVE SIGNED.

/S/ W. G. Billson
(Walter Gordon BILLSON)
E-29839, Cpl.,
Royal Rifles of Canada, C.A.

SWORN before me at QUEBEC, P. Que.,
this 22nd day of January 1946,
consisting of three pages, each
signed by the Deponent.

/S/ J. Alfred Crowe
(J.A. CROWE) - Major,
A.J.A G., MD No.5,
Justice of Peace in and for the
District of Quebec.

Certified true copy of an original document compared by me and certified this 15th day of May 1946 at the City of Tokyo, Japan.

(J.D.C. Boland) Capt, Canadian Army
Member of Canadian War Crimes Liaison Detachment

WAR CRIMES.

Affidavit TX 2950 Sgt. Denis. H. SCANLON.

1 I am TX 2950 Sgt. Denis. H. SCANLON, a former Prisoner of War held in FUKUOKA P.W. Camp No. 5, also known as OMUTA PW Camp.

2 I identify No. 1 ANDO KAZUO (Black Bomber) and No. 2 ATANO (Pansy) in the photograph produced to me.

3 FOOD.

Cooked rice was issued in a box 4" X 4" X 2½" filled level with the top. This box would contain the amount that would fill an army pannicon. In lieu of rice, stew was issued consisting of sweet potato tops and horse radish, salted and flavoured with Soya sauce. Meals in the Mine were the same ration and we sometimes received small doughy buns.

4 SNAKES.

Snakes were collected by Punishment who were unable to work in the mine. Stews were made from the snakes and served up as meals and eaten by me.

5 RATS

I have never known rats to be eaten by men in the Camp.

6 WORKING CONDITIONS.

I worked on the coal face at No. 2 level. Conditions were primitive and the timbering was very poor, and the roof was not planked in. The first ten days we were there one man was killed and another had his leg cut off. Cavings in were frequent and it was dangerous to work in the mine. No illtreatment occured in the mine to my knowledge. I worked in the mine for 10½ hours daily. A half hour was allowed for the lunch period. For identification each man was given a block of wood with a number in Japanese numerals on it. The instructions were that a man entering the mine, latrines etc, must place his numbered block on a board outside before entering. When he left the place he had to remove this block and place it on the board outside the next place he visited. If a man failed to remove his numbered block when leaving, it was immediately collected and taken to the office for him to collect when it was missed by him. ANDO KAZUO (Black Bomber) illtreated all POW's who failed to remove their numbered blocks when leaving the previous place visited.

7 DATES AND NAMES OF VICTIMS.

I am not able to give any dates or names of victims of illtreatment ~~I can give no evidence against the following:~~

TAKAHASHI	(Air Force Kid).
ATANO	(The Pansy).
TAKAM.	(Puss in Boots).

~~Civilian overseer at the mine.~~

Sworn by the Deponent
on the day and year 2 July 46
first before mentioned at
Hobart.
Before me.

/s/ D H. Scanlon.
TX 2950 Sgt. D.H. Scanlon.

/s/ C Church J.P.

PROSECUTION EXHIBIT No. 11

Certified true copy of an original document compared by me and certified this 9th day of September 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt. Canadian Army
Member of Canadian War Crimes Liaison Detachment.

I, Grey Edmiston, of 5 Cranwell Avenue, North Essendon, in the State of Victoria, make oath and say:-

1. Prior to discharge, I was VX 57839 Gnr. Edmiston G. of 2/1 Heavy Battery, and was taken prisoner at TIMOR on 23 Feb 1942.

2. In June 1945, I was moved to OMINE Camp on DYUSHU. Work at this camp consisted of coal mining.

3. Work was done in three shifts, from 7 A.M. to 5 P.M., 5 P.M. to 11-30 P.M., and 10-30 P.M. to 7 A.M., and consisted of mining the coal and filling coal trucks. Hanchos were in charge of mining operations and on occasions meted out beatings to prisoners in the mines, for minor offences.

4. Produced and shown to me at the time of swearing this my affidavit is a group photograph endorsed "A". The Japanese marked with the figure 1, I identify as the "BROWN BOMBER", one of the guards. I never knew his correct name. He was a particularly brutal type and on numerous occasions I witnessed bashings and beatings administered to prisoners for trivial offences, such as, failing to move the tally block on the tally board. Bashings were carried out with his clenched fists. I cannot recall the names of any of the victims, as they included the Dutch, Americans, Canadians and Australians. This treatment continued during the whole period I were at OMINE. /s/ G.E.

5. I also identify the Japanese marked with the figures 15, 19, and 44. Number 15 was the Camp Commandant, a Lieut. Number 19 was the civilian overseer, and Number 44 was one of the guards. I never knew their names.

6. About the middle of July 45, I received a bashing from the guard marked with the Number 44 in the photograph referred to. This punishment was meted out to me for failing to salute this guard while I was having a wash.

Sworn at Melbourne in the State of Victoria this 19th day of June 1946. /s/ G. Edmiston

Before me /s/ R. . Hitch

A commissioner of the Supreme Court of Victoria for taking affidavits.

Certified a true copy of an original document compared by me and certified this 25th day of November, 1946, at the City of Tokyo, Japan.

(J.H. Dickey) Major
Canadian Army

PROSECUTION EXHIBIT
no. 12

AFFIDAVIT

I, Sydney George Barber of Park St., Seymour, in the State of Victoria, Soldier, make Oath and say:-

That I am SX 20653, W.O. II Barber, S.G. of A.F.V. School Puckapunyal, Victoria.

That I enlisted in the A.I.F. on 25th November 1940 in Adelaide and, while serving as C.S.M. of 8 Div. Amn Sub Park, A.I.F., was taken prisoner at Singapore on 15th February 1942.

~~That as a prisoner of war I was taken to Changi Prison Camp and~~ on or about 25th May 1942 was transferred to a working party camp at Serangoon Rd. The senior Australian officer at this camp was Major Saggers, 2/4 Machine Gun Battalion, and the two working party companies were commanded by Major R.V. Glasgow, 8 Div Amn Sub Park, and Captain F. Wiedersohn, F.S. 8 Div., respectively. The quarters at this camp had originally been two-decker bamboo and attap native refugee barracks, but during the months prior our occupation had housed working buffaloes. The areas on which our men were required to sleep were scattered with fresh manure. We were told next day that ALL men would go to work at Ford Works, Bukit Timah. The senior officers argued for some hours for permission for some men to be kept in camp next day to make quarters livable and prepare kitchens and latrines; but this request was refused. In fact, it was only after further argument that enough men were left incamp to cook; later, seriously ill men were also permitted to remain.

All guards and Japanese in charge of work, with whom we came in contact with while at this camp, were members of the same M.T. Regt. from Osaka whose headquarters were at Ford Works and the adjoining Hume Pipe Works on Bukit Timah Rd., Bukit Timah.

The entire administration of the prisoners in the first months of our stay in this camp was carried out by Lt. SNAGOWA. He appeared to have been given complete authority, in all but the broadest questions of policy, in handling the P.O.W. I have seen ~~Captain Wiedersohn and other officers wrangle for over two days~~

/s/ J.M. Gann

PROSECUTION EXHIBIT no. 13

/s/ Syd G. Barber, WO II

to ~~catch this simian creature in a suitable mood to grant permis~~ ion for three men to remain in camp to attend to the digging of latrines and to attend to the hygiene requirements of 500 troops SNAGOWA also attended all check parades and at the slightest pr ocation took a sadistic glee in bashing men for minor breaches of discipline such as faults in elementary drill. On one occasion I know that he was responsible for the brutal bashing of W.O. I Bert Henley, a battery S.M. of the only Queensland Field Regt to serve in Malaya. I did not see this incident, but I believe that W.O. I McIntosh of the same regiment was one of the witness and that Captain Wiedersohn took particulars. I understand the W.O. Henley was knocked into a gutter at the Ford Works and was beaten with a heavy stick until an officer was called in intervened.

Later an officer of the I.J. . named T.N.K. took over the admini tration of Seragoon Rd. Camp and with came two or three Kempei, including one known to us as LANCE CORPORAL BASTARD. This Jap was exceptionally well built and did not have the usual simian characteristics. He was approximately six feet tall, rather acquiline nose for a Jap, fixed imbecile grin and the habit of walking with a rather springy step, with only the balls of his feet touching the ground, his arms clamped to his sides; giving the impression that he was about to pounce. He also specialised in minor breaches of discipline while on parade. On one occasion a member of the 2/4 M.G. Bn. who is known to W.O. "Snow" Hewby of that Bn. and also to Capt Wiedersohn, was on parade with his working party who were being checked in and searched after their days work. LANCE CORPORAL BASTARD found a bunch of bananas in this man's haversack. Having found his victim for the day, he went no further with the search but dismissed the remainder of the parade and then began to deliver a series of carefully aimed "Hatmakers" with his full force. After three of these blows the man fell to the ground but was ordered to his feet and stood to attention. Three more blows were delivered after each of which the man fell ~~to the ground and was each time ordered to his feet~~

/s/ J.A. Gaan /s/Syd G. Barker, WO II

After the third time the man was unconscious, LANCE CORPORAL BASTARD then delivered two vicious kicks in the ribs and when the man failed to move called for a bucket of water which he threw over him. The man was then lifted to his feet by Jap guards and held up while LANCE CORPORAL BASTARD swung his final and most powerful blow. This man was then dragged into the guard house and kept there for about an hour until Capt. Wiederahn, after returning from a working party, went to the guardhouse and, after speaking to LANCE CORPORAL BASTARD for some time, was able to secure the release of the man.

While at this camp it was a regular assignment of mine to lead a working party which did heavy labouring at a vehicle wrecking yard on Buena Vista Rd., controlled by the Osaka M.T. Regt. One of Japanese in charge of the job was Sgt. NAGANICHI, later promoted to L/Cpl for his fine work on behalf of the I.J.A. The particular work required of his group was to sort out vehicle parts. The heaviest and most difficult work was to carry complete motor or engine blocks (Ford, Chev., Bedford etc.). Ropes were passed around the blocks and long poles passed through the blocks and a number of prisoners manned the pole. Carrying the poles on their shoulders, the men were then made to carry the blocks distances of up to four hundred yards over ground at most times covered with thin slush which covered the ankles. When from sheer exhaustion the blocks had to be lowered, this arrogant guard applied his bamboo stick with no restraint. If we did more than re-arrange the position of the poles he became infuriated and his endless "Hurry up", Hurry up" rose to an hysterical pitch and the lashing grew fiercer. We would usually start the day with twelve men which number would be reduced systematically during the day on various pretexts until at the end of the day, when the men were worn out, only eight or nine would be expected to do the same amount of work. This is not the account of an isolated instance but is the pattern of each day for a period of over three months.

I have heard that three Chinese youths were imprisoned in a house ~~opposite the camp, occupied by N.N.K. and screams coming from this~~

/s/ J.M. Gaan /s/ Syd G. Barber, WO II

~~house were beaten by me on one occasion. I was told by a fellow~~ prisoner that he had seen Japanese soldiers torturing these brut who were tied to posts, by pretending to bayonet them.

The food supplied at this camp consisted of one pannikan of cook ed rice three times a day and, three or four times a week, a pa ikan of thin fish and vegetable stew was issued.

The only medicine issued was at Changi from what remained of our own medical stores.

The Q.M. at this camp was Lieut Bernie O'Sullivan, 2/4 Machine Gun Bn.

On the 8th September 1944 I was transferred to Mogi, Kyushu, and went to work at a Salon copper refinery, in the village of Sogenisaki. Here I made the acquaintance of a civilian named FUJI. I think that I can say only once have I ever seen this Japanese strike a man, and that a severe slap on the face.

But on numerous occasions he has refused my requests to allow a men to rest, and at the end of the long night shifts, in snow, forced men to work extra hours, bringing the total for the shift up to eleven and twelve hours. After the lapse of time the details of his type of persecution grew dim, but those who wer at Salen will long remember FUJI for those extra hours which wa the hardest of all, for the consequent loss of slepp which was so badly needed to prepare one for the next nights work, and fo his "unsatisfactory" reports to guards which called for extra persecution.

The food consisted of one pannikan of cooked grain three times a day. Vegetables issued fairly often were pumpkin and Japanese cabbage.

A small quantity of Japanese drugs and, in January 1945, Red Cr ~~medicine was issued.~~

During April 1945 I was transferred to the Omine coal mines at KAWAGUCHI in Kyushu and here there was a guard known as the BROWN BOMBER. On duty and during his rest periods he would wander around our quarters. Outside each room there was a sort

/s/ J.M. Gaan /s/ Syd B. Barber, WO II

DOMINION OF CANADA
PROVINCE OF NEW BRUNSWICK
COUNTY OF KINGS
TOWN OF SUSSEX

IN THE MATTER OF DEPOSITIONS
BY A CANADIAN X-P.W. REPATRIATED
FROM JAPANESE CONTROL

TO WIT:-

I, G-27223 Rfn. Murray Garnet CARR, No. 7 District Depot, C.A., formerly a member of the Royal Rifles of Canada, C.A., a soldier of the Canadian Army (Active) make oath and say the following:-

1. I was first taken Prisoner of War on Christmas day 1941 at Hong Kong and I was then transferred to North Point Prison Camp on Victoria Island in Hong Kong. I was stationed at this Camp for a period of nine months and was transferred in September 1942 to Camp Shamshipo in Kowloon. I was stationed at this Camp for approximately four months. In January 1943 I was sent to Camp Ormino in Japan Proper. I remained interned at this Prison Camp until the cessation of hostilities.

~~2. On the 20 Dec 41 whilst fighting at Stone Hill~~ in Hong Kong, I received a bullet in my right foot and was sent to St. Stephen Hospital. I was in this hospital on Christmas Day when the Japs entered at approximately 0700 hrs. in the morning. One English soldier whose name I do not know and whose description I can not remember was asleep in the bed next to me and I saw one Jap soldier drive a bayonet through this English soldier thereby killing him. On seeing this I got up from my bed and started to walk down the ward in an endeavour to go to a lower storey. Whilst I was hopping along on one foot I was shot once in the right wrist and once in the right side of my back just above the hip. /s/ W.H. I continued to walk and when I was going down the stairs I tripped on a dead body lying in the stairway and did further damage to my right foot. About 90 of the wounded personnel including two nurses and myself ~~were then crowded into a very small room about 10' X 10' and~~

/s/ J C Van Horne, Capt....

/s/ Murray Garnet Carr....
(Deponent)

PROSECUTION EXHIBIT
no. 14

~~the windows were covered with blankets in an endeavour to suf-~~ focate us. We remained in this room from about 1930 hours 25 Dec 41 until 2100 hours the 26 Dec 41. At 2100 hrs. we were all taken Prisoners of War. At the time I was taken Prisoner I was bleeding from my various wounds and I was sent to Bowan Road Hospital and was retained there until March 1942. This hospital is situated on the same island as North Point Camp, near the Camp.

3. While I was in the hospital no atrocities were committed to my self nor did I see any atrocities committed to other personnel of the allied Armies. Concerning the incident reported above when we were taken prisoner of war I do not recollect nor recall the names or description of any Japs who committed these crimes. Occasionally while I was in the hospital Chinese Personnel would be tortured by being attached to live electric wires and water would be thrown on them to increase the shock. However, I do not know the names or descriptions of any Japanese who committed these crimes nor do I know the names of the Chinese civilians who were tortured in this way.

4. During my stay at Hong Kong in North Point Camp no atrocities were committed on me except that I was made to work with a very sore right wrist. A Japanese Lieut. was in charge of this Camp at that time by the name of Wadadasan.

5. In Sep 42 four Prisoners of War tried to escape. They were from the Winnipeg Grenadiers and I do not know their names. These Prisoners were recaptured and were killed and the entire Camp was made to stand at attention one whole night whilst their bodies were exposed in cold and rain on stretchers.

6. Whilst I was stationed at Camp Shamshipo no atrocities were committed on me. Although I do not remember the date, Major Atkinson, our Brigade Major (I do not know the number of the Brigade) together with two other officers who were ~~from the Winnipeg Grenadiers, whose names I do not know, were~~

/s/ J C Van Horne, Capt

/s/ Murray Garnett Carr
(Deponent)

~~severely beaten up by Jap Guards whose names and descriptions~~

I do not know, when the Brigade Major reported that all were present on parade although two men from his parade were asleep in the hut. I do not recall any other atrocities being committed on Prisoners of War personnel during my stay in this Camp.

7. During my stay in Ormine I was beaten up on three or four different occasion. I do not remember the dates. The Jap Guard who beat me was a Sgt. by the name of "Kabase". He would hit me with his fists in the face and during the nights he would sometimes come around in the huts when we were asleep and rub his sword on the necks of the prisoners and would hit them with his fists. This Jap Guard whose name was "Kabase" was a short individual of medium build with regular Jap features.

8. Another very bad Guard in our Camp at Ormine was Cpl. "Ouchita". This Jap would occasionally get drunk and come in the mess-hall and when the prisoners were lined up he would hit several of them with his fists.

9. I remember on Jap Guard who was known as the "Brown Bomber" who was most vicious in hitting people. He hit me personally on very many occasions during my stay in Ormine, as well as most other prisoners in the camp. ~~Another Guard at Ormine known as the "Air Force Kid" was continually beating up~~ people. He personally hit me with his fist on very many occasions. Sgt. Major Shephard of the Royal Rifles was once bayoneted throught the army by another Jap Guard who was know as ("The Fellow Shep hit".

10. The food throughout my entire internment was very poor consisting of rice, horse-radish and a very small quantity of turnips.

11. I do not recall any other atrocities committed to myself or to other personnel during my entire internment by Japanese.

/s/ J C Van Horne Capt

/s/ Murray Garnett Carr
(Deponent)

12. [redacted] I am now very [redacted]

Sworn to, before me, at the
City of Saint John,
Province of New Brunswick,
this 20th day of December,
A.D. 1945.

/s/ Murray Garnett Carr
(Deponent)

/s/ J C Van Horne, Capt
A commissioner for taking
Affidavits to be read in the
Supreme Court of the
Province of New Brunswick.

Certified true copy of an original document compared
by me and certified this 15 day of August 1946 at the
City of Tokyo, Japan.

(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

Dominion of Canada)
Province of Ontario)
County of York)
)
To Wit:)

In the matter of alleged war crimes committed against Allied P's.

I, C65282, Rfn John Frederick Chard, Royal Rifles of Canada, CA., presently attached to No 2 District Depot, Toronto, Ontario, home address: 226 MacDonell Avenue, Toronto, Ontario, make oath and say as follows:-

1. I enlisted in the Canadian Army on the 7th day of August, 1940 at Cobourg, Ontario, and was allotted regimental number C65282 in the Midland Regiment. In October, 1941, I was taken on strength the Royal Rifles of Canada, having volunteered for an overseas draft. I left on the 23 October 1941 with the Royal Rifles of Canada, my present unit, and arrived in HONG KONG, CHINA, on the 16 November, 1941. On the 25 December 1941, I was taken prisoner by the Japanese at HONG KONG.

2. After my capture I was confined in the following enemy camps and hospitals:-

NORTH POINT 25 December 1941 to 26 September 1942
SHAMSHUIPO 26 September 1942 to January 1943
ORMINE, JAPAN January 1943 to September 1945

3. I have the following information in my possession regarding certain war crimes which I believe should be published for the purpose of aiding the War Crimes Commission in punishing the perpetrators:-

(a) Tortures, beatings or other cruelties

~~At ORMINE Camp, during 1943, I was beaten up by a Japanese Sergeant named USHADA. He beat me with his fists and knocked me down, however he did not kick me. He beat me twice in this manner. The beatings were for some minor infractions of the camp rules. One that I remember was his belief in that I had failed to salute him when he entered the camp recreation hall. This same Sergeant was always punching somebody around, and I think I can be safe in saying that he took a crack at all of the prisoners at some time or other. This Sergeant was one of the Army camp staff when we first arrived at ORMINE and he was later moved. His picture is not among those in the photograph shown to me and more particularly identified here under.~~ I was beaten up twice by a Japanese civilian guard whom we called the "BROWN B' ER", I do not know his real name The beatings consisted of punching in the face , however he did not knock me down. I have seen this same chap beat other prisoners with a stick. Like Sgt USHADA, above mentioned, the "BROWN BOMBER" was always punching some body and he was considered a bad actor. Beatings of the kind above mentioned were often administered and happened so often to so many I cannot recall names of particulars.

(b) Imprisonment under improper conditions

~~At NORTH POINT Camp the conditions were terrible. The roofs of the~~ huts leaked badly and some of the huts had no doors or windows, as a consequence the huts were cold, dark and damp. The huts were badly infested with bed bugs and lice. I had one blanket while at this camp but some of the prisoners had none. The huts were badly over crowded and there were no heating arrangements. Sanitary conditions were non-existant. At first there were no latrines and the prisoners had to use the sea wall. Later latrines were constructed but were inadequate for the number of prisoners.

J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO
(Seal)

/s/.JTShillington.....
(J.T. Shillington) Major.
Notary Public

/s/.John.Chard.....
(John F. Chard)
C65282

PROSECUTION EXHIBIT

~~At SHAMSHUIPO Camp, conditions were very much the same.~~ The huts were dark, cold, damp and dirty. Doors and windows were off most of the huts and here again there were no heating arrangements. Sanitary conditions were better than at NORTH POINT in that the camp was provided with bucket latrines and we had running water for ablutions. This camp was also badly infested with bed bugs and lice. I still had only one blanket at this camp. We slept on community sleeping platforms made of wood.

At ORMINE the conditions were better as the camp was comparatively clean. The only bugs that we had here were fleas and we had plenty of them. The huts were bright and dry, however there were no heating arrangements and were cold in the winter. In these huts we slept on raised wooden platforms with straw matting, known as tatomies. The camp was provided with the usual type of Japanese toilet, consisting of a pit covered over with a building. In the wash room we had running cold water but the camp was provided with steam baths and we could take baths as often as we liked. I had four blankets issued to me in this camp.

(c) Use of prisoners of war on military works and operations

At KAITEK AIRPORT, prisoners from SHAMSHUIPO Camp were forced to work levelling off a mountain by hand to extend the run ways At the same time as the prisoners were working the Japanese Air Force were using the Airport operationally.

(d) Transportation of prisoners of war under improper conditions

I was taken from HONG KONG to JAPAN about January, 1943, in the Japanese ship TATUTA MARU. This was a large ship and one of the best in use for transporting prisoners. In addition to the prisoners on board, a lot of Japanese soldiers and sailors were being transported back to JAPAN. The journey took three days. In the hold in which I was placed I would say that there was at least two hundred prisoners, and there was not enough room for us to lie down and stretch out at one time. The hold was dark, dirty and the air was foul, it was also quite damp. There was no sanitary arrangements in the hold but we had access to a toilet on one of the decks, which seemed to be adequate for our needs. The food on the boat trip consisted of rice three times a day and I think we had sweet potatoes too. As the journey was a relatively fast one, no one in our hold got sick on the voyage. We landed at NAGASAKI and were entrained, the coaches were badly over crowded. The trip was only of a distance of about 75 miles from NAGASAKI to KOWASAKI but it took approximately seventeen hours. Before we entrained we were given six buns and we were fed once on the trip with rice.

(e) Failure to provide prisoners of war with proper medical care, food or quarters.

During the fall of 1943 there was a serious out break of diphtheria at SHAMSHUIPO, as a result of which more than 100 Canadian prisoners died. The Japanese would not supply the necessary serum and medicines, in spite of the fact that our medical officers continually requested same. Afterthe deaths became numerous the Japanese commenced to supply serum and ~~medical supplies but never in adequate quantities.~~

/s/ JTShillington
(J.T. Shillington) Major.
Notary Public
(Seal)
J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

/s/ John Chard
(John F. Chard)
C 65282

~~At ORMINE Camp there was always a shortage of medical supplies~~ and medicines in spite of the efforts of Major ROBERTSON to secure same. Occasionally Red Cross medical supplies would arrive but these were held back by the Japanese. These conditions remained practically the same throughout our whole incarceration at this camp.

The food at NORTH POINT and SHAMSHUIPO was pretty much the same and consisted of rice, soups, vegetables, fish and sometimes meat. However the quantities were always small and were never adequate. At ORMINE Camp the food conditions were worse and the variety was much more limited. Here we were issued with small quantities of rice three times a day and a thin vegetable soup three times a day. On very rare occasions we were given small quantities of fish and on rarer occasions we were given meat. The quantity was considerably under what we received at NORTH POINT and SHAMSHUIPO and at all times we were in a state of starvation. I have eaten rats, mice, cats, dogs and snakes. When I was taken prisoner I weighed 145 pounds and when I was liberated I weighed 110 pounds. The work that we were doing in this camp was restricted to coal mining and the food was not sufficient to keep us fit for that type of work. During the period we were at this camp approximately 20 prisoners died from various causes but the basic reason was malnutrition. I do not remember the names of all who died but I do remember Rfm FITZ-PATRICK and CAMPBELL of the Royal Rifles who were killed during the summer of 1944 in a cave in, in the coal mine in which they were working. They were forced to go directly underneath a recently blasted area in the shaft to clear away the muck. It was an incline shaft and the ceiling caved in on them. The mine foreman who ordered them down was a Japanese civilian whose name I do not know but we called him "THE KID". Both soldiers were killed instantly.

About May 1943, Rfm MURRAY of the Royal Rifles, who had been suffering from dysentry since our arrival in this camp in Jan, died., The Japanese knew he had dysentry but kept him working until he died on the job. Major ROBERTSON, R.A.M.C., our Camp leader, protested to the Japanese Camp Commandant before MURRAY's death. In fact after he died the Japanese wanted Major ROBERTSON, R.A.M.C., to sign a certificate to the effect that MURRAY died from natural causes but Major ROBERTSON refused to do so. /s/ J.C. /s/ JTS

(f) Collective punishment of a group for the offence of others.

At NORTH POINT in 1942 the whole camp was called out on parade after supper one night and was kept standing on parade in the rain until about five the next morning. This punishment, I believe, was given to the whole camp because of the previous escape of three or four Winnipeg Grenadier soldiers whose names I do not know. However I heard that they were subsequently caught and killed by the Japanese.

At ORMINE Camp, on numerous occasions when some petty offence was perpetrated by one or more individuals, the section to which he belonged would be punished by being forced to work over time in the mine. This form of collective punishment happened quite frequently. This form of punishment was never awarded by the Camp Commandant but was invariably awarded by the mine bosses. I can only remember three or four occasions during the whole period of my imprisonment at ORMINE when a proper trial was held and proper charges laid in front of the Camp Commandant. Beatings were given by the camp staff frequently as above mentioned ~~on their own initiative and without any authority.~~ JS

/s/ JTShillington.....
(J.T. Shillington) Major.
Notary Public
(Seal)
J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

/s/ John Chard.....
(John F. Chard)
C 65282

(g) Miscellaneous

~~Attached hereto and marked exhibit "A" is a photograph showing~~ a number of Japanesepersonnel. This photograph was taken towards the end of our imprisonment at this camp, approximately during the summer of 1945 and consequently does not include the Japanese personnel who were in charge of the camp on our arrival. For the most part the personnel in the photograph were fairly decent with one or two exceptions. This was a contrast to the previous camp staff that we had during 1943 and 1944, many of whom were bad actors. I cannot remember any of their names with the exception of Sgt USHADA, above mentioned. On this photograph shown to me I have marked the letters O, X, Y, and Z to indicate my identification of the subjects thereby marked. By the letter "X" I identify one of the camp staff whom we called the BROWN BOMBER. He was one of the worst offenders of the camp for beating up prisoners, as previously mentioned hereinunder. By the letter "O" I identify one of the Japanese staff known to us as the "Air Force chap". He also was prone to beat up the prisoners, though he was not as bad as the Japanese called the BROWN BOMBER. By the letter "Y" I identify the senior Japanese Sergeant in the camp. He was about the best type of Japanese that we ran in to and treated us fairly. I never saw him lay a hand on any prisoner . I do not know his name, we just called him the "Sergeant". By the letter "Z" I identify the last Camp Commandant in this camp prior to our liberation. He also was one of the best types of Japanese that we had during our imprisonment and he always treated the prisoners fairly. I never heard of him laying a hand on any of the prisoners. Complaints that were brought to him were given consideration and he did what he could to alleviate distress but he could not do a great deal as he was under command of Headquarters at FUKUOKA.

In the latter fall of 1943, Pte SHEBOYIER of the Winnipeg Grenadiers, struck one of the civilian mine bosses and knocked him down. He was sent to FUKUOKA Headquarters and tried by a Japanese courtmartial. We later heard that he was sentenced to two years hard labour. About one and a half years after we heard he had died from pneumonia and his ashes were sent back to the camp. However we in the camp were of the belief that ~~he died from mistreatment.~~

Sworn before me at the City of Toronto)
in the County of York)
the 4 of January, 1946)
consisting of 4 pages)
each signed by Deponent)

/s/ John Chard
(John F. Chard)
C 65282

/s/ J.T.Shillington
(J.T.Shillington)
A Notary Public in and for
the Province of Ontario
Dominion of Canada

(Seal)
J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

Certified true copy of an original document compared by me and certified this 15 day of Aug. 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

Affidavit TX 2945 Cpl Leonard J. Bell

On the .2.day of July 1946 TX 2945 Cpl.Leonard J. BELL of 360 Elizabeth Street, Hobart, being duly sworn makes oath and states :-

1. I am TX 2945 ,Cpl.L.J.Bell a former Prisoner of War in Japanese hands held in FUKUOKA Camp No.5 also known as OMUTE P.O.W.Camp.
2. Identification:
   I recognise in the photograph produced, No.1 as ANDOKAZOO (Black Bomber) and No.2 as ATAN (Pansy).
3. Food:-
   Rice was issued cooked and served by our cooks into an Aust. pannican which was filled level with the top. Occassionally soup and flour was served in lieu of rice. The soup about 1/2 pint per man was made from wild vegetables, and the flour was made into small dumplings about half the size of a tennis ball and two were the issue per man.The flour ration was sometimes mixed with water and served as soup.
   Soya bean sauce was issued by our cooks when it was available.
4. Snakes:
   Snakes were caught,cooked and eaten by inmates of the hospital. Meat was never issued as a ration.
5. Rats:
   Rats were caught and eaten by Canadians who arranged for their own cooking.
6. Messing:
   Seating accomodation was provided for in shifts of 100 men at a time on account of shortage of cooking gear and utensils.
7. Quarters:
   Thirteen men were allotted to a room each with two blankets.We slept on the flo floor on grass mats with a bamboo pillow.
8. Ablutions:
   A tank containing about 2,000 gals. of water was provided daily for 1,500 men from the mine to wash themselves. It was a race between the men when they finished ~~xx~~ work to get to the water so that they could get a clean wash.
9. Working Conditions:
   I worked in a coal mine for 8-10 hours per day.It took 2 hours to reach the mine before work could be commenced. The coal face was inadequately timbered and dangerous . The mine caved in every day for about 2½ months. During this period one man was killed and another lost his leg. These accidents could have been avoided if the Japanese had observed safety precautions.Meals were taken down the mine for lunch and eaten during a ten minutes rest. The clothing worn in the mine consisted of a pair of trouser and rubber soles with canvas tops for footwear, which was usually several sized to big.
   We were given a quota of work to do daily, and if produced it was increased for the next shift. The gang overseer when he came along would put his hand on your back and if you were not perspiring you would get illtreated. I saw many a man being illtreated by being struck with anything handy or with fists until the temper cooled down. I was struck on two occassions by ANDOKAZUO (Black Bomber). He hit me very hard with a heavy stick the first time. The second time he hit me with his fist and knocked me out in the place where the photograph was taken.
10. Dates and Victims:
    I am not able to recall any dates as the victims were unknown to me,but I saw many a time,men being kicked,struck with fists,and rifle butts by the guards.
11. TAKAHASHI (Air Force Kid)
    TAKAKI (Puss in Boots)
    Civilian overseer at the mine
    } I am unable to give any evidence against those individuals.

    ATANO (The Pansy). This man never illtreated me but I saw him on several occasions illtreat P O W's.

Sworn by the Deponent on the day and year first mentioned at HOBART

Before me.

/s/ C Church J.P

Sig. L. J. Bell

TX2945 Cpl L.J. Bell

Certified true copy of an original document compared by me and certified this 9th day of September 1946 at the City of Tokyo, Japan.

(J.W.C Rolanc) Capt. Canadian Army
Member of Canadian War Crimes Liaison Detachment

On this twenty ninth day of June, One thousand nine hundred and forty-six, Stanley Evan Davies, Manufacturer, 384 Church Street, Parramatta, in the State of New South Wales, makes oath and says as follows:-

1. As NX30489 Sgt S.E. DAVIES, of 3 Troop, 18 A/Tk I was taken prisoner of war at Timor on 23 Mar 42. I was PW in OMINE Camp, Japan, from 30 Jun 45 until about the end of July.

2. The Australian Commander was Lieut WILLIAMS.

/s/ LS

3. I identify the Japanese marked with the Number 1 (One) in the photograph attached hereto as a civilian guard attached to the camp who was known as "Brown Bomber."

4. ~~Conditions underground on the mine were dangerous~~ because of insufficient timbering. I worked on the construction of a new shaft. There were frequent falls of earth - at least one in every three days. On the coal face there were daily falls of coal. In the shaft we were required to go at least fifteen feet before timbering and on one occasion we went about thirty feet. Timbering of this section was then allowed only because of a fall of earth. During my stay at Omine there were numerous accidents, including one fatality and one loss of a leg through falls of coal. The ground was wet, sometimes we were working in two feet of water throughout the shift. I heard from Australians who claimed to have seen it that five days after peace was declared the whole shaft in which I was working had caved in.

5. Each day we were away from camp for from ten to fourteen hours. Of this time eight hours were spent working, the remainder in travelling to and from camp.

6. A typical daily menu would be as follows: Breakfast - One tablespoon of boiled rice with half a pint of hot water; Lunch - half a pint of cooked rice or two rice/tapioca flour buns, three inches in diameter and an inch deep, and with this one tablespoon of soy-bean; Evening meal - the same as lunch. The light duty men received approximately four-fifths of the working men's rations. No-duty men received less still.

/s/ LS

7. The light-duty men were allowed out of camp to collect edible weeds and snakes, frogs, winkles and anything else which could be eaten. I have seen Canadians preparing rats for cooking. The weeds went to the general camp - the animal food to ~~the hospital patients.~~

8. The "Brown Bomber" was a civilian guard. He is described as follows: Build - thick set; age approximately 30 yrs; height approximately 5'3".

/s/ L Shifreen JP. /s/ S E Davies

PROSECUTION EXHIBIT

no. 17

9. Almost daily the "BrownBomber" beat someone. In many cases the PW being beaten would have no idea of the reason for the beating. On one occasion a British soldier, failed to notice the approach of "Brown Bomber" owing to having his back towards him. "Brown Bomber" walked up to the PW and without warning began to hit him with a thick hardwood stick which he carried for this purpose. "Brown Bomber" continued the beating until the PW collapsed. After this he proceeded to kick him and deliver a few more blows with the stick. The PW was incapable of walking unassisted and was badly bruised on all visible parts of the body. When I and another Englishman went to help the PW after his punishment I was hit by Brown Bomber across the back with the stick.

SWORN by the abovenamed deponent,)
Stanley Evan Davies, at Sydney,)
this twenty ninth day of June,) /s/ S E Davies
One thousand nine hundred and)
forty-six

BEFORE ME /s/ L Shifreen JP.

Certified true copy of an original document compared
by me and certified this 9th day of September 1946
at the City of Tokyo, Japan.

(J D C Boland) Capt. Canadian Army
Member of Canadian War Crimes Liaison Detachment

STATUTORY DECLARATION

I, Gelvin James Kitto, 2 Adelaide Road North Brighton in the State of South Australia, Plasterer, make oath and say as follows:

1. That I was formerly SX 10847 Cpl G.J. Kitto, 8th Australian Division Ammunition Sub Park, and I was taken Prisoner of War by the Japanese at Singapore on 15th February 1942.

2. ~~That after capture I spent some~~ 14 months at Area Park on Singapore Island. About the middle of March 1943 I was sent to Thailand. From then until 1 July 1944 I spent varying periods at camps in Thailand and in Burma. On 1 July 1944 I embarked for Japan and after a long trip under very bad conditions I arrived in Japan on 8th September 1944, after landing we went to Saganeseki and for the next nine months I was put to work as a Laborer in a ~~Japan refinery.~~ In June 1945 I was sent to Omine Prisoner of War camp where I remained until I released about the 23rd of August 194

3. ~~That Omine P.W. Camp was used to supply labour for the Omin~~ Coal Mines. There were three shifts. The morning shift would leave camp about 0530 hours and would arrive back at camp sometime after 1600 hours, the afternoon shift would leave 1300 hours and return about 2359 hours, while the night shift would leave about 2100 hours and arrive back in camp about 0800 hours in the morning. Working conditions in the mine were very bad and there was always risk of accident because there was no margin of safety. We were permitted only two men to do timbering with the result that falls of coal were frequent and there were continual casualties; for the first week alone that I was there three men were killed in the Omine Mines from accidents while broken limbs were almost a daily occurence. The civilian overseers were particularly brutal. We use to call the overseer controlling a shift Shoti or Shoti Joes and the overseer controlling a shift Bunti Joes. The shaft we worked in was called Kornie a particularly dangerous section which has been reopened after 18 years. Our Shoti Joe and Bunti Joe were particularly brutal and always on the look out for excuse to administer bashings. They use to sneak up behind men working and would touch their backs if the backs were not lathered in sweat they would administer a bashing because they would say men were loafing. Some of the men were not in good health found it difficult to perspire and so suffered ~~continual bashings.~~

/s/ R.A. Jacob /s/ GJ Kitto

PROSECUTION EXHIBIT

4. As ~~far as the camp conditions were~~ concerned the worst part was the food. For the period I was in the camp the ration was restricted almost entirely to rice and the ration consisted of a mugfull of boiled rice for each of three meals. Occasionally we would have an addition a little potato water or spinach water or perhaps a small portion of salted Daikon, a sort of reddish. Since this vegetable issue would be 20 or 30 lbs weight for 200 men the individual issue was very small. During the time I was in the camp there was never a meat issue. The only possible exception was that on one occasion we were given a supply of horse bones which was almost devoid of any flesh. A small party of men was sent out each day to catch snakes. These were kept as a luxury for the sick. Occasionally some of the prisoners would catch a rat and eat it but rats were not plentiful, I never tested it. There were others in the camp who tried to balance their diet by eating frogs but there were not many of these available either.

5. That considerable supplies of American Red Cross rations were received at the camp; these were stored in a special locked room and were used by the Japanese. I often saw empty tins of Spam, Salmon, Jam, Butter, Milk and Bully Beef in the rubbish bins outside the Japanese Guards' Quarters. The Japanese Guards usually smoked American cigarettes. Only on one occasion was there a Red Cross issue made to prisoners and then one parcel was given between six men.

6. That I look at a group photo of Japanese and I state that this is a photograph of guard personnel and overseers who were at Mine F.". camp during the period June to August 1945. Each Japanese in the photography is marked numerically and of them I make positive identification of the following:- Number One. The Bomber. A solidly built, dark complexioned guard, also know as the Basher and a particularly dangerous man.

Number Two. Pansy. He had been discharged from the regular Army but still wore epaulettes. He did clerical work in the camp.

Number Ten. Called "White Cap. A Guard whose stature was average but was thin and small built. His features were sharp. He was liable to sudden outbursts and would then attack anybody without apparent

/s/ R.F. Jacob /s/G.J. Kitto

reason. He was dangerous.

Number Twelve. Air Force. He acted as an N.C.O. and use to give orders to the guards. He did orderly duties and would wear a sword. He had a bad reputation for brutality.

Number Fifteen. Omine Camp Commandant. He was not unreasonable.

Number Nineteen. Camp interpreter. He was popular with everyone and always worked for the prisoners.

7. That the other faces in the photograph are familiar to me but I am either unable to recall the nick names and description or else I had very little contact with them. Both the Shoti Joe and Bunti Joe who were in charge of my party are missing from the photograph. Both were brutal men.

8. That each shift was checked prior to marching to the mines. This parade was called by ringing a bell and was supervised by a guard. When the Bomber number one in the photograph had this parade he use to beat whoever was last. One evening I think in July 1945 at about 2200 hours I was last to the Bomber's parade. He swung his rifle at me and the butt struck my ankle a heavy blow. For some days I could scarcely walk, I was lame for about a month and I still suffer from weakness in the ankle as a result.

9. That the Japanese in this camp had a rule that all prisoners must salute all Japanese when passing irrespective of rank. About a day after I arrived at Omine Camp I saw an Englishman on crutches proceeding down a corridor just outside the prisoners' Mess room when Air Force came suddenly round a corner. Before the Englishman had time to salute him, and I think he would because not to do so was inviting trouble, Air Force knocked him to the ground and commenced to give him a severe beating. I did not remain because this would have brought the same to me.

10. Although his reputation was bad I did not see any brutality committed by Zensy. He seemed rather to work behind the scenes and was thought to be the one who planned many of the unreasonable orders and indignities.

11. That both the Shoti and Bunti Joe of my mine party were notorious. They would administer severe beatings for failure to sweat as mentioned in paragraph three. I was beaten by them three or four times a week while I worked in the mine. Also notorious

Over this ~~was the assistant to the Bunti~~ Joe whome we ~~called the~~ Hatterer. He is not in the photograph. Our Shoti and Bunti Joe would frequently postpone our ten minute lunch break after the finish of the shift. We would have to leave the rice at the bottom of the shaft in bad air and it frequently went sour by the time we were allowed to eat it. Sometimes this sour rice would be quite unfit to eat and many of the men got gastric trouble and dysentery from eating rice at a delayed lunch. W.O. II Barber and Sgt Higgants were both in my shift and can confirm the statements in this paragraph.

2. That Cpl. Jack Swinton 2/3rd Motor Ambulance Convoy of New South Wales was in Omine Camp for a longer period than I was and has first hand knowledge of the incidents and conditions mentioned in ~~this affidavit.~~

3. That I know the facts deposed to herein of my own knowledge except where otherwise appears.

SWORN at ADELAIDE this 1st day
of JULY 1946 before me

/s/ G.J. Kitto

/s/ R.B. Jacob
JUSTICE OF THE PEACE in and for the
State of South Australia.

Certified a true copy of an original document compared by me and certified this 25th day of November, 1946, at the City of Tokyo, Japan.

J.E. Dickey
(J.E. Dickey) Major
Canadian Army

Reports Control Symbol WDSCA-2

239

WAR CRIMES TRIAL STATUS REPORT

[redacted]
(Reporting Office)

File Number T-107 Date of Report 20 February 1947

Title of case [redacted]

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

Yokohama, Honshu, Japan

25 Sept 46 - 11 Feb 47

(Over)

Inclosure 2 to WD Letter (AGAM-P[illegible] 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

[illegible], Takeo - Guilty - 15 years imprisonment at hard labor

SATO, Natsuyasu - Guilty - 40 years imprisonment at hard labor

---

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Note:

YOSHIDA, Masato } Severed from charges.
OKUDA, Nyoichi }

---

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

---

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T-107 Date of Report 30 September 1946

Title of case U.S. vs TAKAKASHI, Takeo et al

5 Nov.

PART A

1. Names and Nationalities of Accused

TAKAKASHI, Takeo - Japanese
YOSHIDA, Masato - Japanese
SATO, Katsuyasu - Japanese
OKUDA, Kyoichi - Japanese

been added transferred from T-68
transferred from T-88

2. Nature, Place and Date of Offense

Between 3 September 1943 and 15 August 1945 the accused all members of the personnel of the Tokyo Prisoners of War Camp 5-B, Niigata, Honshu, Japan, did willfully and unlawfully beat, abuse and torture numerous American and Allied Prisoners of War. In some cases the mistreatments and trotures are alleged to have contributed to the deaths of prisoners interned at the sidd camp.

3. Names and Nationalities of Victims

AMERICAN: Gerald K. Titman (deceased); Sgt Edward Warren; Sgt Jackson M. Moore.

CANADIAN: B. C. Harrison (deceased); Marren Renwell (deceased); Ernest Heuft (deceased); L. Sausen (deceased); D. L. Sword (deceased) Rfn Angus J. Jacquard (deceased); Pvt R. J. Colvin (deceased); Pvt Joseph Farey (deceased); Pvt H. B. Jones (deceased); Pvt B. P. Olafsen (deceased); Rfn Emille Mazerolle (deceased); Pvt Charles Ryman (deceased); Sgt James Martin (deceased); Rfn Harold Gibbons (deceased); Rfn Leo J. Bottie (deceased);

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan - 25 September 1946

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSG, The Pentagon, Washington 25, D. C.

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Canadian:

Pvt George R McLaughlin (deceased)
Rfn Gerald Smeddin (deceased)
Rfn James G Court
Sgt Roland D'Amours
Rfn Reginald Haley (deceased)
Pvt B. C. Moore (deceased)
Pvt J.Caruso
Rfn Lawrence Pirlotte
Rfn William Harvey Gagne
Rfn Arthur Hilton Hunter
Pvt William Rankine Maltman
Sgt Gordon Douglas McLellan
Pvt Thomas Jarvie
Sgt Victor Joseph Wyatt
Pvt Thomas A McBride
Rfn Levi J Poirer
Rfn David Syvret (deceased)
Sgt Ernest Robert James Neal
Pvt Clifford Edwin Settee
Cpl Floyd C Cameron
Pvt John Sellars
Cpl John L Campbell
Rfn James Mortimer (deceased)
Rfn Harold A Smith
Sgt Calvin Pope (deceased)
Rfn Gabriel Guitard (deceased)
Pte Albert Boulding (deceased)
Cpl John Moffat Gee (deceased)
Sgt Edward Philips (deceased)
Sgt James Martin (deceased)
Sgt Daniel Mackenzie
Pvt Harry E Steen
Pte Mike Katchen
Cpl Thomas P McCarron
Rfn George Chanell
Sgt Jackson N Moore
R R Wheeler
Robert Manchester
Lloyd C Boull
G H Douette
Ernest Arthur Dayton
J A Hunt
Herbert Wallace
Frederick Joseph Lavallee
Pte McLaughlin
F T Caruso (deceased)
C S Woodward
S C Street
Alfred William Speir
Joseph John Welesuk
Joseph Axel Winberg
Thomas Lorne Ward
Fred Willett
Joseph Parenteau
G F Young
Allan H. MacRae (deceased)
Robert McLeod (deceased)
W E Clarke
James G Court
Frank Hicks
Paul J Hickey
Joseph Marcelais
Gordon Douglas McLellan
G E Murray
John Smith
Clarence Stewart
Glenford Mann

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

~~LEGAL SECTION, GHQ, SCAP (SCAP)~~
(Reporting Office)

File Number ~~B-107~~ Date of Report ~~30 Sept 46~~

Title of case ~~U.S. vs OKUDA, Ryoichi~~

PART A

1. Names and Nationalities of Accused

OKUDA, Ryoichi - Japanese

2. Nature, Place and Date of Offense

that between 3 September 1944 and 1 April 1944, the accused at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, did willfully and unlawfully, beat, mistreat and abuse numerous Canadian and Allied prisoners of war, in several cases his actions caused the death of a number of prisoners.

3. Names and Nationalities of Victims

CANADIAN: F. Willett; J. Parenteau; Roland D'Amours; G. F. Young; A. MacKee(Dec); R. Haley (dec); R. MacLeod(dec); W. E. Clarke; J. G. Court; Frank Hicks; Paul J. Hickey; Joseph Marcelais; Gordon Douglas McLellan; G. E. Murray; John Smith; Clarence Stewart; G. Mann; R. C. Moore.

4. Probable Place and Date of Trial

YOKOHAMA, HONSHU, JAPAN - 20 October 1946

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P) 000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

---

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

---

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSG, The Pentagon, Washington 25, D. C.

This combined with T-107
See letter for CAB No. 5

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP, (Tokyo)
(Reporting Office)

File Number T - 88 Date of Report 11 Sept 46

Title of case U. S. vs SATO, Katsuyasu

PART A

1. Names and Nationalities of Accused

SATO, Katsuyasu - Japanese

2. Nature, Place and Date of Offense

That between 3 September 1943 and 31 March 1944, at or near Tokyo Area Prisoner of War Branch Camp #5-B, including the Rinko Company Office Building, Niigata, Honshu, Japan, the accused, then a civilian guard serving with the Armed Forces of Japan, did mistreat and abuse numerous Canadians and American Prisoners of War and compelled them to perform arduous labor, in some cases contributing to their death.

3. Names and Nationalities of Victims

Canadians:

Sgt Calvin Pope	Pte Mike Katchen
Rflman Gabriel Guitard	Cpl Thomas P. McCarron
Pte Albert Boulding	Rflman George Chanell
Cpl John M. Gee	R. R. Wheeler
Sgt Edward Philips	Robert Manchester
Sgt James Martin	Lloyd C. Doull
Rflman Leo J. Bottie	G. H. Doucette
Sgt Ernest Robert James Neal	Ernest Arthur Dayton
Victor J. Myatt	William Harvey Gagne

4. Probable Place and Date of Trial

30 October 1946 - Yokohama, Japan

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

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Canadians (Cont.)

J. A. Hunt

Arthur Hilton Hunter

H. Wallace

Frederick Joseph Lavallee

Pte McLaughlin

G. Mann

Clifford Edwin Settee

F. T. Caruso

C. S. Woodward

S. C. Street

Alfred William Speir

Joseph John Wolczuk

Joseph Axel Winberg

Thomas Lorne Ward

American:

Sgt Edward Warren

Sgt Daniel Hackmeier

Pvt Gerald K. Titman

Pvt Harry E. Steen

Sgt Jackson H. Moore

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

2405

LEGAL SECTION, GHQ, SCAP, (TOKYO)
(Reporting Office)

File Number [illegible] Date of Report 20 February 47

Title of case U. S. vs KAIO, [illegible]

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

Yokohama, Honshu, Japan

25 Jan 47 - 5 Feb 47

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46) WDSCA) 21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

GUILTY - 25 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSC, The Pentagon, Washington 25, D. C.

25-83621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

[redacted], GHQ, SCAP (Tokyo)
(Reporting Office)

File Number T-122 Date of Report 24 Oct 46

Title of case U.S. vs KATO, Masayoshi

PART A

1. **Names and Nationalities of Accused**

KATO, Masayoshi - Japanese

2. **Nature, Place and Date of Offense**

That between 16 June 1943 and 11 May 1945, the accused, a Private in the Imperial Japanese Army, did at the Ichioka Hospital and the Yokkaichi Prisoner of War Camp, both in the Osaka Area, Honshu, Japan, beat and mistreat numerous American and Allied Prisoners of War.

3. **Names and Nationalities of Victims**

American:
Vance Wendell Walsh
Sgt John Kristopovis
Pvt Edward Raskiewicz
Pvt Edward Sheehan

Dutch:
Hendrick J. Ritsma
Lt. Everett Manuel Gonies

British:
S/Lt Charles A. Jackson

British Cont.
Thomas Rhodes
Frank Gibbs
Jack H. Hughieson
John J. Quinn
John Welford

4. **Probable Place and Date of Trial**

Yokohama, Honshu, Japan 21 November 1946

PART B

5. **Place and Date of Trial**

WD AGO Form R-5392
21 June 1946

(Over)

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDGS, The Pentagon, Washington 25, D. C.

Supplementary Sheet to (240J)

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number [illegible] Date of Report 16 December 1947

Title of Case U. S. vs Masayoshi KATO

PART A

1. Names and Nationalities of Accused

Japanese: Masayoshi KATO

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 June 46) WDSCA) 21 June 1946

6. Judgement and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General Eighth Army - 23 July 1947

APPROVED

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

5 February 1947 - Sugamo Prison, Tokyo, Japan

5 months confinement remitted.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

(2405)

VOLUMES I & II

RECORD OF TRIAL

(5th Carbon Copy)

In the case of

UNITED STATES

v.

MASAYOSHI KATO

Case Docket No. 124

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama, Japan
January 28 - February 5th, 1947

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate, APO 343

15th March 1947

SUBJECT: Transmittal of record of trial.

TO: Commanding General, Eighth Army, APO 343.

Transmitted herewith is the completed record of trial in the case of United States vs Masayoshi Kato, tried by Military Commission.

JOHN F. ROHEM,
Colonel, Hq. Eighth Army,
President.

Inclosures
Volumes I and II - Record of Trial and Exhibits.

(Military Commission Data Sheet Cont'd)

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
14. Were the interpreters sworn?	✓					
15. Was the accused properly arraigned?	✓					
16. Are there copied or incorporated into the record:						
a. Charges and specifications?	✓					
b. Name, grade and organization of person signing the charges?	✓					
c. Affidavit to the charges and specifications?	✓					
d. Name of the person who administered the oath verifying the charges and his official capacity?	✓					
e. The order of reference for trial?	✓					
17. Does each specification state an offense?						
18. Are the pleas of the accused regularly entered?	✓					
19. Are the findings properly entered?	✓					
20. Was the vote upon each finding in closed session?	✓					
21. Was the vote upon the sentence in closed session?	✓					
22. Did at least two-thirds of the members present at time vote on each finding was taken concur therein?	✓					
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?	✓					
24. Does the evidence sustain the findings of the commission?	✓					
25. Are the findings legal?	✓					
26. Is the sentence legal?	✓					
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?		✓				
28. Is the record properly authenticated?	✓					
29. Does it sufficiently appear that the defense counsel accepts the record as correct?	✓					
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?	✓					

MILITARY COMMISSION DATA SHEET

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?	—					
c. Was accused asked whom he desired as counsel?	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?	—					
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?	—					
b. Was the action of the commission upon challenges regularly and properly taken?	✓					
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?		✓				

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?	—					
c. Was accused asked whom he desired as counsel?	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?	—					
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?	—					
b. Was the action of the commission upon challenges regularly and properly taken?	✓					
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?		✓				

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?						
b. In death cases does the action refer the case to SCAP for final action?						
33. Is clemency recommended by the commission?						

Prosecutor

Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

GENERAL H. MARKS
SUPREME COMMANDER FOR THE ALLIED POWERS
Yokohama

BEFORE A MILITARY COMMISSION CONVENED BY THE COMMANDING GENERAL, UNITED STATES EIGHTH ARMY	UNITED STATES OF AMERICA vs MASAYOSHI KATO

CHARGE

That the following member of the Imperial Japanese Army, with his then known title:

Masayoshi KATO, Private

at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.

SPECIFICATION

1. That between 16 June 1943 and 10 July 1944, at Ichioka Hospital, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat Hendrick J. Ritsma and Lieutenant Everett Manual Conlee, Dutch Prisoners of War, by beating them with fists, belts and slippers and by otherwise abusing them.

2. That between 16 June 1943 and 10 July 1944, at Ichioka Hospital, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat and abuse Surgeon Lieutenant Charles A. Jackson, Seaman Thomas Rhodes, Frank Gibbs, Jack H. Hughieson and Marine John J. Quinn, British Prisoners of War, by beating them.

3. That between 16 June 1943 and 23 November 1943, at Ichioka Hospital, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat John Welford and numerous other British Prisoners of War, by beating them with belts, fists and boots.

4. That between 16 June 1943 and 10 July 1944, at Ichioka Hospital, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat numerous Allied Prisoners of War by beating them with fists, belts, slippers and shoes, and by otherwise abusing them.

5. That in or about March 1945, at Yokkaichi Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, did, willfully and unlawfully, mistreat and abuse Vance Wendell Walsh, an American Prisoner of War, by beating him with a belt, thereby knocking out a tooth.

6. That between 3 February 1945 and 11 May 1945, at Nagoya Sub-Camp Number 5, Nagoya Area, also known as Yokkaichi Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat, torture and abuse Sergeant John Kristopovis, Private Edward Raskiewics and Private Edward Sheehan, American Prisoners of War, by beating them with belts, ropes and clubs and suspending them from ladders by their wrists.

7. That between 3 February 1945 and 11 May 1945 at Nagoya Sub-Camp Number 5, Nagoya Area, also known as Yokkaichi Prisoner of War Camp, Osaka

SPECS. US vs Masayoshi KATO (Cont'd)

Area, Honshu, Japan, the accused, Masayoshi Kato, did, willfully and unlawfully, mistreat and torture numerous Allied Prisoners of War, by beating them with clubs, belts and ropes and by otherwise abusing them.

14 October 1946

/s/ Alva C. Carpenter
ALVA C. CARPENTER
Chief, Legal Section
General Headquarters
Supreme Commander for the Allied Powers

AFFIDAVIT

Before me personally appeared the above named accuser this 14th day of October 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R. Pritchard
Captain, Infantry
Summary Court

A CERTIFIED TRUE COPY
Claude A. Muzzy
CLAUDE A. MUZZY
C.W.O., U.S.A.

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (Oct 46)LS, 15 October 1946, subject: "Trial of Masayoshi KATO".

AG 000.5 (Oct 46)LS 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500, October 1946.

TO: Commanding General, Eighth Army, APO 345.

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (Oct 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Trial of Masayoshi KATO", October 1946, said power is redelegated to you and you are hereby directed to appoint a Military Commission for the trial of the following named person, member of or serving with the Japanese Imperial Forces:

Masayoshi KATO

2. The trial will be held in the City of Yokohama, Honshu, Japan. The trial held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named persons assigned to General Headquarters, Supreme Commander for the Allied Powers, have been made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Mr. Franklin E. Morris, Chief Prosecutor
Mr. Andrew A. Adinolfi, Assistant Prosecutor

By command of General MacARTHUR:

1 Incl: n/c

AG 000.5 (Oct 46)LS

APO 500
October 1946

SUBJECT: Trial of Masayoshi KASO.

TO : Commander-in-Chief,
United States Army Forces, Pacific.

1. It is desired that a Military Commission be appointed for the trial of the following named person, member of or serving with the Imperial Japanese Forces, for the alleged offenses indicated on the attached charge:

Masayoshi KASO

2. The trial will be held in the City of Yokohama, Honshu, Japan. All trials held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

1 Incl:
Chg vs Masayoshi KASO

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (15 Oct 46)IS, dated 15 October 1946, subject: "Trial of Masayoshi Kato".

AG 000.5 (YR) 2d Ind.

HEADQUARTERS EIGHTH ARMY, APO 343.

TO: Colonel John F. Reehm, 07218, FA, President of the Military Commission appointed pursuant to Paragraph 1, Special Orders Number 19, this Headquarters, 23 January 1947, APO 343.

The attached charges against Masayoshi Kato are referred for trial to you as president of the Military Commission appointed by Paragraph 1, Special Orders Number 19, this Headquarters, 23 January 1947, APO 343.

BY COMMAND OF LIEUTENANT GENERAL RICHARDSON:

/S/ Otis M. Lockman

1 Incl:
n/c

A TRUE COPY

F. B. BOWEN
Capt. WAC

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 19

23 January 1947

EXTRACT

1. Appointment of a Military Commission.

Pursuant to authority contained in letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45) LS, Subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals", a Military Commission is hereby appointed to meet at the Yokohama District Court Building, Yokohama, Japan on or about 27 January 1947, to try Masayoshi Kato, and such persons as may be properly brought before it.

DETAIL FOR THE COMMISSION

COL JOHN F ROEHM 07218, FA, Hq Eighth Army, LAW MEMBER
LT COL HALBERT H NEILSON 06774, CAV, 32d MG Co
LT COL JOSEPH A McCUSKER 0126170, INF, Hq Eighth Army
LT COL MARTIN J GRIFFIN, Hq Canadian Army

FOR THE PROSECUTION

Mr Franklin E Morris, Chief Prosecutor
Mr Andrew A Adinolfi, Assistant Prosecutor

ADVISORY COUNSEL FOR THE DEFENSE

Mr Herman M Freundlich
Mr Michail A Braun
Accused are expected to provide individual defense counsel.

The procedure of the Commission will be governed by letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45) LS, Subject: "Regulations Governing Trials of Accused War Criminals", as amended by letter AG 000.5 (27 Dec 46) LS-L, General Headquarters Supreme Commander for the Allied Powers, Subject: "Amendments to Regulations Governing the Trials of Accused War Criminals", 27 December 1946, letter this headquarters, 5 February 1946 AG 000.5 (YO) Subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", as amended by letter this Headquarters, same subject, dated 16 January 1947, file number AG 000.5 (YR) and such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers. The employment of an enlisted civilian court reporter is authorized. (AG 334)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

OFFICIAL:

J. M. GLASGOW
Colonel, AGD
Adjutant General

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

HQ. EIGHTH ARMY
OFFICIAL
ADJUTANT GEN'LS OFFICE

(M. Kato - Case # 124)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45)LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
Commanding General, Sixth Army, APO 442.
Commanding General, Eighth Army, APO 343.
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offences against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offences including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

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(3) Hold public sessions except when otherwise decided by the commission.

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)JS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)IS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

c. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to

submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. Allen

H. W. ALLEN,
Colonel, A.G.D.,
Asst Adjutant General.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
AG 000.5 (27 Dec 46)LS-L 27 December 1946

SUBJECT: Amendments to Regulations Governing the Trials of Accused War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Reference is made to Letter Order, AG 000.5 (5 Dec 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Regulations Governing Trials of Accused War Criminals."

2. The following amendments are directed in Letter Order, referred to in paragraph 1 above:

a. In paragraph 1a, delete the words, "units and organizations."

b. In paragraph 3a, delete in the last sentence thereof, the words "in open court" and add immediately after said last sentence the following: "This fact will be announced by the president of the commission in open court."

c. Delete paragraphs 5d(4) and 5d(5).

d. Delete "(6)" from 5d(6) and substitute therefor "(4)".

e. Delete paragraph 5d(7) and substitute therefor:

"(5) All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured."

f. In paragraph 5g, delete the first sentence and substitute therefor:

"g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, forfeiture of real or personal property, fine, or such other punishment as the commission shall determine to be proper."

6. Add paragraph 7 as follows:

"7 OATHS.

a. Power to Administer Oaths.

Any person, military, naval, civilian, who, by competent authority is assigned the duty of administering, investigating, prosecuting, or defending suspected war criminals subject to trial under these regulations, and while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, or by the convening authority or his designee, to administer oaths with respect to all matters in the execution of such duty."

3. These amendments shall not affect any case in which the accused has been duly arraigned, and, except as amended, all provisions of the subject regulations continue to remain in full force and effect.

BY COMMAND OF GENERAL MACARTHUR:

/s/ John B. Cooley
/t/ JOHN B. COOLEY
Colonel, AGD
Adjutant General

AG 000.5 (6 Dec 45) LS

APO 500
6 December 1945

SUBJECT: Detention, Interrogation and Trial of Suspected Japanese War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Supplementing radio ZA5457, CINCAFPAC ADV. 15 September 1945, all suspected Japanese War Criminals apprehended on order of this headquarters will be held incommunicado, generally, but in order to permit desired interrogation, all properly identified personnel will be permitted to interview and interrogate such suspects as are confined under the control of your headquarters, upon presentation of credentials or a letter from this headquarters, signed by the Adjutant General, in the following form:

The bearer of this letter _____
NAME

accompanied by _____ _____
NAME NAME

_____, is authorized to interview

_____at such appropriate
NAME OF PRISONER (s)

times as may be found necessary.

By Command of General MacARTHUR

2. You are directed to establish suitable facilities exclusively for the confinement, interrogation and safekeeping of war criminal suspects, unfriendly witnesses and persons placed in protective custody in connection with war crimes trials. Such facilities will comply, so far as possible, with the following requirements.

a. A location in or sufficiently near Tokyo to enable ready access by persons charged with the prosecution and defense of war criminals.

b. Quartering and messing facilities for approximately fifteen hundred persons.

c. An arrangement of quarters and messing facilities which will permit segregation of suspects from witnesses; of suspects and witnesses formerly stationed or employed in a camp or involved in an atrocity from all other suspects of the same camp or atrocity; and of prisoners who have been interrogated from those who have not.

d. A minimum of ten adequately equipped interrogation rooms.

e. At least 60 single sound-proofed rooms for the solitary confinement of selected individuals.

f. Adequate facilities for the quartering and messing of approximately 10 Allied Officers whose duties may require them to remain at the enclosure and approximately 50 friendly witnesses in protective custody pending trials.

BASIC: Ltr. GHQ SCAP ADV file AG 000.5 (6 Dec 45) LS. dtd 6 December 1945, subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals". to CO, Eighth Army.

3. All persons now detained as war criminal suspects, unfriendly witnesses or persons in protective custody anywhere within the jurisdiction of this headquarters will be transferred forthwith to said facilities, and all such persons subsequently arrested or placed in protective custody will be confined there.

4. Suspected war criminals will be held in close confinement without access to the press or other media of public information, and without distinction as to rank or position, as befits ordinary criminals. The following special provisions will be applied to war criminal suspects and unfriendly witnesses.

a. They will not be treated as prisoners of war.

b. Quarters, food and privileges will be accorded suspects in keeping with those customarily provided for ordinary criminals, charged with an equally revolting domestic crime.

c. Communications among suspects and witnesses, even within segregated groups, will be prevented as far as possible.

d. Each person will be thoroughly searched and all means of self-destruction will be removed from his quarters and person.

e. Suspects and unfriendly witnesses, after their interrogation, will not be returned to their quarters, but will be assigned new quarters sufficiently removed from the old to prevent communication with those not yet interrogated.

f. Suspects will be segregated from witnesses; and suspects, and witnesses involved in the same atrocity or atrocities at the same camp will be segregated from each other.

g. All possible measures will be taken to prevent the exchange of information between inmates and such civilian personnel as may be employed at the facility.

5. You will be responsible for the appointment of Military Commissions for the trial of suspected Japanese war criminals, with several trials being conducted concurrently.

6. It is contemplated that the trials will commence immediately.

7. The Legal Section of this headquarters will furnish personnel for the investigation and prosecution of cases, but in addition to your responsibility for providing personnel for appointment as members of the Military Commissions including law members, if specified, you will also be responsible for:

a. Providing personnel to serve as defense counsel, reporters, interpreters, translators and court orderlies.

b. The selection, procurement and maintenance of the court rooms where the cases will be tried.

c. The summoning, billeting and transportation of witnesses.

By Command of General MacARTHUR

/s/ H. W. Allen
/t/ H. W. ALLEN
Colonel, A. G. D.,
Asst Adjutant General

(stamp) Mailed 0855 D[redacted]7 '45 Adv.Ech Ag. GHQ

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

AG 000.5 (YO) 5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO: Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as war criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements, affidavits and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any statement, affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of trial present in either the Philippine Islands, the Ryukyus, Japan or Korea.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications, excepting therefrom all testimony relative to the issue of guilt or innocence.

5. In case in which the defense moves for a finding of not guilty after the conclusion of the prosecution's case, and upon the overruling of the motion rests its case without offering evidence in defense, and the court after submission of the case, finds the accused guilty, the court before imposing sentence may permit the defense to offer competent evidence in extenuation or mitigation of the offense alleged, subject to the right of the prosecution to rebut such evidence.

6. Interpreters and Interpretation.

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

(1) The Chief Interpreter will be advised of a complaint during the next court recess.

(2) The Chief Interpreter will investigate the matter and:

(a) Convince the complaining party that no substantial error exists; or

(b) Caution and advise the interpreter if necessary; or

(c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or

(d) Prepare an opinion to be given to the Commission if required.

(3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

b. Counsel are reminded that:

(1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and rearrangement of thought.

(2) Counsel is advised, when working through an interpreter:

(a) To use short, simple questions as free from artifice as if examining a small child.

(b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.

(3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile discussions:

(a) Long questions. (Impossible for interpreter and witness to remember)

(b) Complicated questions. (Dependent clauses confuse both interpreter and witness)

(c) Conditional questions. (Usually beyond comprehension of an oriental witness)

(d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)

(e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No — I saw them")

(f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)

(4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trial.

a. The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.

b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the record the fact that the record has been submitted to him and checked by him prior to authentication.

c. In the event the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

SECTION II: OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commissions of persons, units and organizations accused as war criminals.

[redacted]

Prosecution Staff
Defense Staff
Interpreters
Commission Reporters
Press Representatives
Photographers
Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Bailiff" for the Commission will announce the entrance

of the Members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of accused as read form the caption).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

(Reporters sit down and thereafter are not required to rise until the oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTORS: "The Interpreters will be sworn."

(Interpreters rise, and the Prosecuter facing them repeats the following oath:)

"You (names of Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do."

(Interpreters are then seated.)

PROSECUTOR: "The following Members of the Commission appointed by Paragraph _____, Special Orders No. _____, Headquarters _____, dated _____ (as amended by Paragraph _____, Special Orders No. _____, dated _____) are present."

(The Prosecuter announces by name and rank the Members present.)
"There are no Members absent."
(Or: "Absent, Colonel Jones, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

"Letter Order AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, with the subject being 'Regulations Governing the Trials of Accused War Criminals.'

"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated _____, with the subject being "Trials of _____."

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated _____, with the subject being 'Trials of _____.'

"Paragraph ____ of Special Orders ____, Headquarters Eighth Army, dated ____, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to Challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel _____ for cause.' The Defense then states reasons for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of _____(name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel _____, Colonel _____, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the Court until they shall be published by the proper authority or duly announced by the court, except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do."

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

PRESIDING OFFICER: "The Prosecution will be sworn. You Major _____, Captain _____, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help You God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

DEFENSE: "The Charge and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 000.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel, the proceedings will continue. If accused desires Counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If accused desires Counsel of his own selection and requests that the proceedings be continued until such Counsel be made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charge and Specifications will be read to the accused."

(Prosecutor will read the complete Charge and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of Commission, the Prosecution introduces the Charge and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special Pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "_____ (Naming accused) at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either 'Guilty' or 'Not Guilty'".

(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each specification and to the charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refuses to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of "Not Guilty".

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)

PROSECUTOR: "The Prosecution calls as its first witness:_____."

(Witness presents himself in front of and faces the Presiding Officer, and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

*NOTE: Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to be punished by this Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecuter).

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) to be attached to the record and marked Exhibit ____, (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its Opening Statement."

(The Defense makes its Opening Statement).

DEFENSE COUNSEL: "The Defense calls as its first witness_____."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

(The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the Arguments for the Prosecution and Defense." (Arguments to be conducted as directed by the Commission)

PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgment and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (all of whom remain standing), the Presiding Officer announces the judgment and sentence.) . . .

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

Ward W. Conquest

WARD W. CONQUEST
Colonel, AGD
Adjutant General

RESTRICTED

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

16 January 1947

AG 000.5 (YR)

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.

TO : Presidents of War Crimes Commissions.

Letter, this headquarters, subject, same as above, file number AG 000.5 (YO), dated 5 February 1946, is amended as follows:

Paragraph 2 of Section I is hereby rescinded.

BY COMMAND OF LIEUTENANT GENERAL KECHELBERGER:

/s/ Otis N. Luckman
/t/ OTIS N. LUCKMAN
Capt ...G.D.
Asst Adjutant General

RESTRICTED

CIVILIAN REPORTER CERTIFICATE

15th March, 1947

Case No. 124 U. S. v. Shosyoshi Kato

I, the undersigned, hereby certify, that I reported and transcribed the attached record of trial, that I am a civilian court reporter, in the civil service of, and paid for my said services by, the United States.

Charles Mewell

I N D E X

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TESTIMONY

Prosecution	Direct	Cross	Redirect	Recross	Cross-Examination	Recalled
H. W. Densmore	16	21	45	51, 54	53, 45	
Defense						
Shoichi Araki	76	78				
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HEADQUARTERS - EIGHTH ARMY

Yokohama Court House
Yokohama, Japan
Tuesday, January 28, 1947

PROCEEDS OF A MILITARY COMMISSION

which convened at Yokohama, Japan, pursuant to Paragraph 1, Special Order Number 19, Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 343, dated 23 January 1947.

The Commission met at the Yokohama District Court House at 0900 hours, 28 January 1947.

PRESIDENT: The Commission will be in session.

Before beginning I want to announce to both prosecution and defense that one Member of the Commission will be here in about fifteen minutes. There seems to have been some error in notifying him. It will be necessary to have him here before there are any challenges of the Commission.

The Commission is in session and is ready to hear any matter that will be brought before it.

PROSECUTION: The prosecution is ready to proceed with the trial of the United States versus Masayoshi Kato. The accused is present together with defense counsel. The prosecution is ready to proceed.

PRESIDENT: You may proceed.

PROSECUTION: Will the reporter be sworn.

Whereupon Charles Morrell was then sworn as reporter.

PROSECUTION: The interpreters will be sworn.

Saso Ito and Majima Makai were sworn as interpreters.

PROSECUTION: The following members of the Commission, appointed by Paragraph 1, Special Orders Number 19, Headquarters Eighth Army, of 23 January 1947, are present:

COL. JOHN F. ROSEN, 07216, Hq. Eighth Army
LT. COL. HALBERT H. NEILSON, 06774, Cav. 3rd Mg. Co.
LT. COL. JOSEPH A. McCUSKER, 0126170, Inf., Hq. Eighth Army
LT. COL. MARTIN J. GRIFFIN, Hq. Canadian Army, LAW MEMBER

LA. Col. Halbert H. Neilson is now absent but will be here presently.

FOR THE PROSECUTION

MR. FRANKLIN E. MORRIS, Chief Prosecutor
MR. ANDREW A. ADINOLFI, Assistant Prosecutor

ADVISORY COUNSEL FOR THE DEFENSE

MR. HERMAN M. FREUNDLICH
MR. MICHAIL A. BRAUN
The accused are also represented by Japanese counsel Mr. Ikuo Kakehara.

PROSECUTION: The prosecution submits for incorporation into the record of these proceedings, the following documents:

The Special Order Number 19, dated 26 January 1947, entitled "Appointment of a Military Commission".
Letter Order AG 000.5 (5 December 1946) subject: Regulations Governing the Trials of Accused War Criminals; together with amendments thereto dated 27 December 1947.

We also submit for incorporation into the record:

Letter: GHQ, SCAP, AG 000.5 (15 October 1946) LS to Commander in Chief, USAFP; also letter from GHQ, USAFP, APO 500, to Commanding General, Eighth Army, dated 15 October 1946.
Letter: Headquarters Eighth Army to Colonel John F. Rochm, dated 15 October 1946, subject: Trial of Masatoshi Kato.

PRESIDENT: There being no objection, the orders will be received and incorporated into the record of these proceedings.

The Commission will recess for ten minutes at this time.

The Commission then took a recess until 0930 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

The record will show that Lt. Colonel Halbert H. Neilson, member, is now present.

Does the prosecution desire to challenge any member of the Commission for cause?

PROSECUTION: No. The prosecution is satisfied with the Commission.

PRESIDENT: Does the defense desire to challenge any member of this Commission for cause?

DEFENSE: The defense has no challenge.

PROSECUTION: The prosecution is ready to proceed with the arraignment of Masayoshi Kato.

PRESIDENT: The Commission will be sworn.

(The members of the Commission were sworn.)

PRESIDENT: The Commission is in session and ready to proceed with the hearing.

PROSECUTION: May it please the court, at this time may I present to the court and to the defense counsel Captain Voss, lawyer and representative of the Dutch Government, who is sitting in with us.

Will the accused rise for the reading of the charge and specifications.

(The charge and specifications excepting Specification No. 6 were read to the accused.)

PRESIDENT: Does the accused desire to have the charge and specifications as they now stand translated to him?

DEFENSE: Will the interpreter ask that.

PRESIDENT: When were these read or translated to him?

DEFENSE: About two weeks ago.

PRESIDENT: Then you had better translate the charge and specifications to him.

(Interpreter reads charge and specifications, excepting Specification No. 6, in the Japanese language to the accused.)

PRESIDENT: Do you move to incorporate the charge and specifications?

A Yes. I move to incorporate them.

DEFENSE: At this point we would like to make our objections to these various specifications.

The first objection is to the words "and otherwise abusing them". The motion is to strike from Specification No. 1 the last five words on the ground that these words are inserted merely to prejudice the accused in

DEFENSE: The charge and specifications in this case were received by defense counsel and the accused has been apprised of them and advised of his rights under letter order of 5 December 1945, AG 000.5 LS GEN, SCAP entitled "Regulations Governing the Trials of Accused War Criminals", heretofore introduced into the record of these proceeds.

PRESIDENT: When does the accused desire to introduce as defense counsel?

DEFENSE: He desires to introduce Mr. Ikuo Kakehara.

PRESIDENT: The charge and specifications will be read to the accused.

PROSECUTION: May it please the Commission, before reading the charges and specifications I want to make one motion. I want to move that I be permitted to strike from the charges and specifications Specification Number 6.

PRESIDENT: The motion is to strike Specification No. 6.

DEFENSE: If the Commission please, before ruling on that motion, we would like to have an off the record conference with the Commission and prosecution on that specification.

(Off the record conference)

PRESIDENT: Any objections by any member of the Commission to striking Specification No. 6?

The motion is granted and Specification 6 will be stricken.

that they do not amplify or explain to him and enable him to meet any specific acts. The acts which are alleged to constitute the crime are stated and these words are merely added to it.

PRESIDENT: To which specification are you referring?

DEFENSE: Specification No. 1, sir, "and by otherwise abusing them".

The attention of the Commission is called to Specification No. 2 where the wording is different and "abused" is defined when the specification continues to state what the abuse was. Specification No. 1 as an alleged crime is stated and the conclusion is "and by otherwise abusing them".

It is the contention of the defense that these last five words are merely inserted to prejudice the minds of the Commission against the accused. The prosecution has introduced into evidence Letter Order of SCAP, 5 December 1945, Paragraph 5, Section B, Sub Section, of which states, "the accused is entitled to have each specification clearly worded so as to apprise the accused of each offense charged."

It is submitted that an offense is charged before these five words are stated. These last five words are merely prejudicial to the accused.

PRESIDENT: It appears to me that the prosecution's evidence may tend to show that the prisoners were abused otherwise than by beating them with fists, belts and slippers. We cannot tell that in advance.

DEFENSE: But the accused is entitled to know what he is to meet and what this "abuse" means.

PRESIDENT: Has the prosecution any comments on the objection?

PROSECUTION: Yes. We expect to definitely prove there were other abuses. The affidavits have been served on the defense. They are apprised of what other abuse is because they have had occasion to read each any every affidavit. I submit it is proper language and we will prove it.

PRESIDENT: Does the prosecution contend then that there will be no evidence of abuse not otherwise stated introduced other than that with which they are now cognizant.

PRESIDENT: Unless there is an objection by some member of the Commission, the motion of the defense to strike the words "and by otherwise abusing them" is overruled.

DEFENSE: Defense moves to strike out of Specification No. 1 the words "with others" appearing on the third line, on the ground that only Masayoshi Nate is on trial here. There is no one else involved and for that reason we are only representing Masayoshi Nate and only know what applies to him, insofar as Nate is concerned. Therefore, we ask that these two words be stricken.

PRESIDENT: Does the prosecution give any reason why these words should remain in the specification?

PROSECUTION: In reply, may it please the Commission, in some of these beatings the defendant was with one or two medical orderlies. If that is stricken

then counsel is going to want to tie it down to how much of the beating was administered by the defendant and how much by the others. We shall certainly urge that that is not a material fact at all. If two men jointly beat a man they are both guilty. That "with others" has been in all the different specifications and I see no reason why it should not be there. The affidavits have been served on defense counsel and they are familiar with every affidavit we have.

DEFENSE: If that be the case, why are not the others charged as conspirators. We believe we are in the position to state that many of the affidavits charged the accused as a perpetrator by implication. If it is necessary to prove the case against Kato by using other persons then we should have a specification as co-conspirators with a common intent. Otherwise, what the defense ought to be granted "with others" - we know definitely, "with others"; we do not know who they are so far as the specification is concerned and if the prosecution's case should be given credence then all the individuals mentioned will have in their specifications "with others" which would be like trying the same man over again.

PRESIDENT: The motion will be considered. Are there any others?

DEFENSE: There is one more motion with reference to specification 1, to make the date of any alleged violation more specific. The prosecution has attempted in specification no. 1 to charge the accused with acts occurring during the period that the accused was stationed at a certain place. There is no attempt made to apprise the accused of any specific incident or any specific crime he is supposed to have committed. It has merely stated that between two dates, 16 June 1943 and 10 July 1944, and leaves every minute of every hour of every day over the entire period to see if you can search your minds to find if you did commit a crime in that period.

I submit this is not a specific allegation that MCM requires in order to enable an accused to meet the charge.

PRESIDENT: It has been the experience of this Commission that prisoners of war very infrequently kept diaries during the year indicated. They perhaps had no idea when they would be liberated and it is too much to expect that they could name a specific date. This Commission is a fact finding Commission and I am sure can be depended upon to determine whether that offense occurred on some date between those two.

That motion to specify a given date is denied.

DEFENSE: On Specification 2, if the Commission please, the same objection to the words "with others" is now made. The same objection to the dates will hold true.

PRESIDENT: The objection to the date is denied. Objection to the words "with others" will be considered by the Commission.

DEFENSE: If that will be a blanket consideration it will not be made again by the defense.

May the record show that.

PRESIDENT: In how many specifications?

DEFENSE: Two, three, and four. It will be for specifications two, three, and four.

PRESIDENT: The Commission will be closed.

The Commission then took a recess until 1000 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

The motion of the defense to strike the words "with others" in specifications one, two, three and four is denied.

DEFENSE: Defense objects to specification no. 5 on an additional ground, - to the words "numerous other British prisoners of war". We cannot be expected to defend all names that we don't know and, incidentally, in many specifications they are not given as they are not given here.

PROSECUTION: I don't want to appear argumentative or technical. The rules are definite here that if counsel has any preliminary motions to make to the jurisdiction of the court to these charges and specifications both prosecution and defense will furnish opposing counsel notice of any preliminary motions made to the Commission. This matter has been in the hands of defense counsel for two weeks and I submit that these motions are out of order. They are technical and should be denied. The motion to strike Specification No. 6 is in quite a different category.

Didn't I discuss it with you and agree to it? We spent quite a long time preparing it and going over it.

DEFENSE: We did not make complaint about that. We spent much time considering it and had quite a good defense.

PRESIDENT: It has been the experience of this Commission that the words "numerous other prisoners of war" has no adverse effects on the rights of the accused. It is incumbent on the prosecution to prove that numerous other prisoners of war were beaten and the defense has the same affidavits that will be presented to the Commission in their fact finding work. Subject to objection by any member of the Commission, the motion is denied.

DEFENSE: I wish to move that the entire specification 4 be stricken on the grounds that this specification does not state any offense which the accused can possibly meet. It consists solely of generalities and does not allege any specific offense.

In addition to that, if any offense is proved in specifications 1, 2 and 3, the accused must be guilty of 4 the way 4 is worded. Hence, the accused would be made subject to punishment under two specifications for the same offense if 4 is permitted to remain.

PRESIDENT: The same remark may be made. If, in addition to the named prisoners of war there were additional Allied prisoners of war beaten with fists, belts and shoes, the Commission can be depended upon to find the accused not guilty under either one or the other specifications.

DEFENSE: How are we of the defense going to meet that, not having any knowledge of what evidence will be led?

PRESIDENT: Let us make the position of this Commission here clear. It is a fact finding Commission and not an American or any other type of jury. We want all the evidence presented as you can depend on this Commission to examine that evidence carefully. The quality of the affidavits is carefully considered by each member of the Commission independently and also in deliberations by all members jointly.

DEFENSE: Then, if the Commission please, does that hold true for Specification 7 which as you will see from reading this is covered by 6? Notice the same wording.

PRESIDENT: Since I have not read 6 because it was stricken -

DEFENSE: 'Raids, rapes and clubs', next to the last line. That is in 6. In 7, 'raids, rapes and clubs'. May the record show that I make the same objection to 7 as we made to 4 with the additional fact that it is protected in our belief in 6 which has been stricken.

PROSECUTION: Six has been stricken from the record and is not for consideration. I submit 7 should stand on its own. If we cannot prove it, they are not guilty. I submit we can. If we cannot prove it in these words then we cannot prove him guilty and the defendant will be found not guilty.

Six and seven are distinct specifications.

PRESIDENT: Not hearing any of the evidence of the prosecution and in view of his disagreement in striking seven and subject to the objection of members of the Commission, the specification will remain.

DEFENSE: We also object to Specification 4 as we did to No. 1 'and by otherwise abusing them', and to the use of the word 'abusing' them as in No. 3.

PRESIDENT: All objections are overruled.

DEFENSE: We also object on the ground that no names are specified and thereby the accused cannot be apprised as to what he is supposed to have done; and also on the ground that the dates are vague which again does not permit the accused to meet the evidence.

PRESIDENT: The Commission has already ruled on that and I see no difference between the statement of the defense at this time and when the motion was denied.

The charges and specifications are received and will be incorporated in the record. Are there any special pleas by the defense?

DEFENSE: There are no special pleas.

PRESIDENT: Will the accused stand.

(Accused stands.)

PRESIDENT: Shangyoshi Kato, at this time the Commission will hear your plea to the charge and specifications which have been read to you. You may plea either guilty or not guilty. How do you plea to Specification 1?

DEFENSE: Not guilty as charged.

PRESIDENT: Does he understand?

DEFENSE: Off the record.

(Off the record discussion)

ACCUSED: Not guilty.

PRESIDENT: To Specification 2?

ACCUSED: Not guilty.

PRESIDENT: To Specification 3?

ACCUSED: Not guilty.

PRESIDENT: To Specification 4?

ACCUSED: Not guilty.

PRESIDENT: To Specification 5?

ACCUSED: Not guilty.

PRESIDENT: To Specification 7?

ACCUSED: Not guilty.

PRESIDENT: To the charge?

ACCUSED: Not guilty.

PRESIDENT: Will the prosecution make its opening statement.

PROSECUTION: Members of the Commission and defense counsel: I am not going to make a long opening statement because I do not think it is necessary.

There are six specifications here alleging the beating and mistreatment at the hands of Mr. Kato. We expect to prove beyond all reasonable doubt that Mr. Kato, between the 16th of June, 1943, and the 18th of July, 1944, was a medical orderly at Ichioka hospital; that from March 1945 to about May, 1945, he was a medical orderly at Yokkaichi prison camp which was later known as Nagoya Number Five.

We expect to prove to you by the affidavits submitted here of fourteen prisoners of war that while Mr. Kato was a medical orderly at Ichioka, he, together with one or two of the other medical orderlies, or maybe three of them, seriously beat American, British, and Dutch prisoners of war.

We expect to show you and will urge and take this position, that this being a hospital, every patient there was a sick patient. That is why he was in the hospital and we are taking the position that a moderate beating of a sick man is just as serious and cruel a hardship as a severe beating of a well man.

We expect to prove to you that on each one of these occasions when Kato mistreated these sick men in that prison camp the reason for mistreatment was brought about by Kato's own conduct.

We will show you the doctor was beaten by the orderlies because he complained to higher authority that Kato and his friends had stolen food belonging to the sick patients. He will show you on one other occasion in the Yokohama prison camp that Kato's friend wanted a cigarette and the prisoner would not give it to him. He became irritated and beat the prisoners.

By Specification No. 4 we expect to show you definitely the names of four or five men that were definitely and positively beaten.

Now, the reason we did not set them up, the evidence will show that this case was prepared and sent to the Eighth Army. Since then other affidavits came in. We did not have the names in these affidavits at the time it was prepared. We have these names here now and will prove under Specification 4 the different names of the men beaten as counsel strongly objected. We had the affidavits and if we prove what we have outlined to you namely, that Kato and others beat the sick prisoners of war on different occasions and numerous ones, not only one or two, but numerous ones - if we prove beyond a reasonable doubt that these beatings were given, then we are going to ask for a conviction and penalty just as severe as that administered by Kato to these sick prisoners of war.

I wish to offer as Prosecution's Exhibit No. 1 the statement or affidavit of Major John F. Ackeroyd.

PRESIDENT: Objections by the defense?

DEFENSE: If the Commission please, the defense requests that the record show an objection to this one and all that will follow on the ground that it is something that the accused cannot be confronted with in the presence of an individual that cannot be cross examined, and the witness, of course, not being here he cannot do it. It is in fact hearsay. May the record so show.

PRESIDENT: The record will so show and it will show also that the objection is overruled.

DEFENSE: Then we will make our objection to each affidavit as it comes before us.

PRESIDENT: No specific objection other than a general objection to this.

DEFENSE: Oh no. As it goes along there will be certain objections we will wish to make.

PRESIDENT: Inasmuch as I am law member and each member must get a copy he can hardly read and consider it unless you make the objections and get a ruling at the present time.

DEFENSE: Paragraph 5 of Major Ackeroyd's affidavit. It is the defense's contention that it is merely inflammatory. He is not charged with the condition of the sick. He is not charged with the erection of the hospital or the camp or the compound.

PROSECUTION: Let me answer that by saying this, members of the Commission: We are not charging him with the operation of the camp or with the conditions there. I claim that is material to show the conditions under which the sick prisoners of war were compelled to live and that, coupled with the

treatment, has some bearing on this case.

If these were well prisoners of war I would say strike it out. But these were sick prisoners of war and I left it in to show that that was the situation when they were tortured.

PRESIDENT: Objection sustained. Paragraph five will be stricken.

DEFENSE: In paragraph 11, the Commission will note the words in the second line "it appeared...". I fail to see how that is relevant.

PROSECUTION: I have no objection to striking it.

PRESIDENT: Paragraph 11 will be stricken.

DEFENSE: Paragraph 12 "all the staff except Okano and Kitimura beat the prisoners constantly".

PROSECUTION: I object to that.

DEFENSE: "Okano and Kitimura apparently" - strike that. The defense objects particularly to the word "apparently".

PROSECUTION: I will strike out from "Okano and Kitimura" if you want that out.

DEFENSE: Our objection is to the whole paragraph. However, if the Commission wishes to leave it in and considers it as previously stated we agreed to that.

PRESIDENT: Paragraph 13 will remain and will be considered generally in connection with other evidence produced.

DEFENSE: Paragraph 14, the Commission will note that Major Ankersgyd does not state in that paragraph that he was in all the beatings. It is therefore on its face hearsay.

PRESIDENT: You say he does not say he was.

DEFENSE: No sir.

PRESIDENT: He did not say that he did not see.

DEFENSE: By any reasonable doubt, if the Commission please -

PRESIDENT: Well, that should be left to the Commission.

DEFENSE: The same under 16.

PRESIDENT: Objection overruled.

DEFENSE: The same in 26.

PRESIDENT: Objection overruled.

DEFENSE: The same in 27.

PRESIDENT: Overruled.

DEFENSE: And the same in 28. They do not pertain to the accused.

PRESIDENT: Overruled. If they do not, the Commission will determine.

Just a moment. I will ask the Commission members to strike paragraph five and paragraph eleven before the prosecutor reads it.

(Document referred to was produced and marked Prosecution Exhibit No. 1 for identification and was received in evidence.)

(Prosecution Exhibit No. 1, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: May I interrupt here to say that this applies to Specifications 4 and 1.

PRESIDENT: Four and one. Yes.

I wish to announce at this time that in asking to which specifications these affidavits refer, the Commission is not bound to consider them only in connection with those specifications. It will consider the evidence in respect of any specification to which it applies.

DEFENSE: If the Commission please, may the defense know the date of this affidavit.

PROSECUTION: I do not believe it is on the affidavit.

DEFENSE: It is not in our copies.

PROSECUTION: We have an original carbon copy signed by Ashcroft but the date does not appear on the original copy.

DEFENSE: There is no date on this exhibit excepting the year 1946. We contend this is not a proper affidavit.

PRESIDENT: The Commission is not concerned with technicalities. If you disputed the fact that it was sworn to, you might object. The fact that it has no date except 1946 is purely a technical point and this Commission is not concerned with technicalities. The affidavit will be accepted as Prosecution Exhibit No. 1.

PROSECUTION: I wish to offer in evidence at this time as Prosecution Exhibit No. 2 a form affidavit signed by N. J. Ritema dated the 9th of September 1945.

PRESIDENT: The general objection to accepting all affidavits by the defense on the ground that the affidavits cannot be cross examined upon is noted and is overruled. Are there any specific objections to Prosecution Exhibit No. 2?

DEFENSE: The defense wishes to ask the prosecution if this is the only affidavit which will be submitted by this affiant.

PROSECUTION: The defense evidently knows that it is not. There are two of them. The prosecution is going to read two affidavits from one affiant in the record. Since we have copies of the affidavits and know what they contend, both affidavits refer to the same incident.

PRESIDENT: If there is nothing additional in this affidavit that does not appear in the other affidavit of the same affiant then the Commission will consider not receiving one or the other of these affidavits as being repetitious.

DEFENSE: The second affidavit is a lengthier document.

PROSECUTION: Then I withdraw the offer of Exhibit 2.

PRESIDENT: Prosecution Exhibit 2 is withdrawn.

PROSECUTION: I still feel, however, that I should have the right to introduce both if I filed both of them.

PRESIDENT: We do not introduce the same witness twice for the same evidence.

DEFENSE: In one, it is a brief form signed about the day of liberation. The latter, in June 1946, which statement was taken by the Dutch Government.

PRESIDENT: You may use it as rebuttal in case you think you need it but this Commission has experience in a previous case in accepting numerous affidavits which merely confused the Commission. If there is anything that appears in the other which may be accepted but if not Prosecution Exhibit will be withdrawn.

PROSECUTION: I wish to offer in evidence Prosecution Exhibit No. 2, affidavit of H. J. Pitman dated 10 June 1946. This applies to Specification No. 1.

PRESIDENT: Have you numbered your affidavits or did you not previously number them?

PROSECUTION: No I did not previously.

PRESIDENT: Then let us refer to exhibit 3. The usual general objection to this made by the defense is noted. Are there any specific objections?

DEFENSE: In regard to conditions, to lodgings, "each bay was bed-bug ridden in winter and in summer time many a man sought refuge in the small garden outside from the many fleas and lice," a little below the drawing, the third line down.

PRESIDENT: Objection sustained. That will be stricken as irrelevant.

DEFENSE: On the third page with reference to "treatment", the affidavit is confusing in that the affiant states that "he had to report that bay at night roll call to Jap guard".

PRESIDENT: I cannot follow you if you do not tell me where you are reading.

DEFENSE: The prosecution has stricken the first two paragraphs on page 2. The next paragraph is headed "treatment". In that paragraph the affiant says "I has to report that bay at night roll call to Jap guard", and the reference to Sato as being in charge does not state whether Sato and the Jap guard are the same. As a result it becomes confusing as to the persons present.

PRESIDENT: You are objecting to the first paragraph beside the word "treatment"?

DEFENSE: That is right sir.

PRESIDENT: Let me read it and I can follow your objection.

Objection overruled.

DEFENSE: In the same paragraph, we object to the last sentence, "one of the doctors was slapped by Kato". The affidavit does not say who. It might be hearsay or a rumor and it is a conclusion not based on any facts and there is no foundation laid for the admission of such a statement.

PRESIDENT: Objection overruled.

DEFENSE: We object to the next paragraph on the ground that the affiant is stating his opinion and conclusions without any facts being stated as a ground for them. These statements in general are inflammatory and prejudicial to the accused. The affiant does not state specific incidents which would justify any such conclusions on his part. They are merely conclusions, not facts.

PROSECUTION: I say it is material and proper and should remain. The man was there and saw what was going on.

PRESIDENT: The objection is overruled.

DEFENSE: The last sentence on that page is a conclusion and a conjecture and an opinion of the witness. Again the defense is asking for the facts which would justify him reaching the conclusion rather than stating his opinion. Of course, this goes to the basic sort of trouble with affidavits. We do not have the witness.

PROSECUTION: I submit it is material. He has stated enough facts to warrant his conclusions. He saw the conditions.

PRESIDENT: It may have probative value. The objection is overruled.

DEFENSE: The same objection as to conclusions that apply to the next two sentences on page three.

PRESIDENT: Page three, the first sentence?

DEFENSE: These are conclusions based on opinions of the witness.

PRESIDENT: That statement at the top will be stricken.

PROSECUTION: I have no objections. That is the first sentence on the top of page three.

DEFENSE: The second sentence is also objected to.

PROSECUTION: I think that is material, at least to have Mr. Kato in the camp. You will concede that he was at Ichigan hospital during this period. If you will, I will strike that out.

DEFENSE: Yes.

PROSECUTION: Let the record show the defense concedes that the defendant was at Ashiaka hospital during this period and I will strike that out.

PRESIDENT: The Commission will leave the sentence in in order to aid us since it will not have a record available at that time to show the accused was there. It cannot possibly have any particular influence on the rights of the accused so it will remain.

Before proceeding to read, let me have the Commission members correct their copies of Prosecution Exhibit No. 3.

On page 1, under the diagram, strike the sentence reading 'each bay... floor and liner', the complete sentence.

Strike on page 3 the entire first sentence beginning 'Bands'.

(Document referred to was produced and marked Prosecution Exhibit No. 3 for identification and was received in evidence.)

(Prosecution exhibit No. 3, excepting the parts stricken, was read by the prosecution.)

PROSECUTION: That exhibit applies to specification 1 and specification 4, if I did not state that to the Commission. The first paragraph in terms, the last sentence, refers to the slagging of a doctor which comes under these specifications.

PRESIDENT: In order to save time and not repeat it will again be noted that there is a general objection to affidavits which is noted and overruled. That will apply to all future affidavits and only specific objections will be received by the Commission.

DEFENSE: If the Commission please, in order to save time, the defense is willing to make this blanket objection which the president, as law member, may consider as he goes along.

Any immaterial or irrelevant matter we ask to have stricken such as about the hospital which you allowed to be stricken, any medical conclusions, where there is no foundation for them, - where he says a man had gangrene or edema - those medical opinions we will note our objections as we go along.

PRESIDENT: I don't want the defense to put a burden on the Commission. I have not seen these affidavits before and you have. If you have objections bring them up so that we can deal with them. If you have objections to Prosecution Exhibit No. 4 the prosecution should give you a copy of the one he is about to introduce each time.

PROSECUTION: I wish to offer in evidence at this time Prosecution Exhibit No. 4 which is a statement of V. S. Naish. I have stricken from that affidavit the second paragraph from the bottom because that applied to the specification that was stricken from the charge, namely No. 6, so I ask that be stricken from the affidavit because that specification has been removed.

PRESIDENT: Beginning 'one evening in May 1945' and ending 'worst beatings on these men'?

PROSECUTION: That is right.

DEFENSE: The defense requests that either the Commission take cognizance of what is in that paragraph as the defense will make a point of that later on, or that it be allowed in.

PRESIDENT: If the defense objects to striking that paragraph, it will remain in the affidavit. I cannot see what use the defense desires to make of it, but if you desire to have it remain in, it will remain in the affidavit.

Any other specific objections?

DEFENSE: I have heard a statement of the prosecution that it is a "statement".

PROSECUTION: It is an affidavit or sworn statement.

DEFENSE: If the Commission will take notice of the second page, we would like to know who is John Goodwin Lesko. The fact that we have here "state of California" could very well be put on by any person over in the United States.

PRESIDENT: That is quite right. It does not show the authenticity of this man on my copy to take oaths.

PROSECUTION: That is right, but I still insist that it is admissible as a statement.

PRESIDENT: The Commission will accept it as a sworn statement.

DEFENSE: It is quite all right with defense under SAP rules. We make no objection to it on that score.

PRESIDENT: Any other specific objections to this?

DEFENSE: None, sir.

PROSECUTION: Do you want the second paragraph deleted and read into the record?

PRESIDENT: Mark it Prosecution Exhibit No. 4 please, and make the record show it is a sworn statement.

PROSECUTION: All right.

(Document referred to was produced and marked Prosecution Exhibit No. 4 for identification and was received in evidence.)

(Prosecution Exhibit No. 4 was read by the prosecution.)

PROSECUTION: This applies to specifications 5 and 7.

May I ask if the Commission plans on a recess because I want to call a live witness.

DEFENSE: No. At this time.

PROSECUTION: He is in the other court room.

PRESIDENT: If you desire we can recess at this time for ten minutes.

DEFENSE: This witness, of course, will have to be cross examined. We would like to have that all in one afternoon so as not to have a break in the continuity of that testimony.

PRESIDENT: You may ask for continuance after the witness has been examined by the prosecutor.

DEFENSE: Then may we have if the rest of the affidavits up to the time of the usual adjournment will then go in.

PRESIDENT: Is there any reason why the prosecution should not comply with that request?

PROSECUTION: No. In the first instance, I do not think the defense should attempt to tell the prosecution how he should conduct his case; and the second main reason is that the live witness' evidence pertains to the very thing we have here and I thought I should put his testimony in with this affidavit. It will take me not over ten minutes and that will give us fifty minutes.

The Commission then took a recess until 1100 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

PROSECUTION: We would like to call as witness Corporal Dammore.

HAROLD W. DAMMORE

A witness called by the prosecution was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Prosecution:

Q What is your full name?
A Harold W. Dammore.

Q And are you now a member of the United States Army?
A I am.

Q For how long?
A 1½ years.

Q And what are you doing in Japan at the present time?
A I came over here, reenlisted for three years, and having found out that I was a prisoner of war, I am assigned to the Legal Section as a witness for the prosecution.

Q Were you ever confined in Yokohichi prison camp?
A I was.

Q From what date to what date?
September 4, 1944 to September 4, 1945.

Q Did you ever know the medical orderly at Yokohichi prison camp by the name of Ando?
A I did.

Q Do you see the defendant Ando in the court room?
A I do.

Q Will you point him out to this Commission?
A It is he sitting right there.

PROSECUTION: May the record show that the witness identified the defendant Ando.

DEFENSE: Just a minute, may I ask when the interpretation will take place because, if the Commission please, the accused' family is here.

PRESIDENT: It better begin here. The reporter might indicate that the prisoner has been identified and all future questions will be interpreted.

PROSECUTION: Witness, did you ever know a prisoner at Yokohichi prison camp named V. N. Walsh?

A I did.

Q Where did Walsh sleep with reference to your bed or bunk?
A He slept next to me in the same bay.

Q Now witness, will you very briefly describe the layout of Kobinichi prison camp with reference to the buildings.

A Coming in from the factory to the main gate was the fence running this way (indicating), the fence coming into the entrance of the camp. On the left was a guardhouse and then there was a space of about 25 feet from the guardhouse to the camp headquarters. In the buildings on your left, coming in the gate there was our kitchen, the Japanese guard room and the storeroom.

On your right coming in the gate were the prisoner of war barracks. There was approximately a space between the Japanese headquarters and the prisoner of war camp of fifteen feet. The building on the right coming into the camp was the quarters of the prisoners of war.

PRESIDENT: Do you want anything further said to the accused other than the description of the camp? Just tell him that this merely involves a description of the layout of the camp.

INTERP.: He is telling him that.

PROSECUTION: Then do you understand witness, that as you enter the compound surrounded by a large board fence, immediately to the left of the gate was the guardhouse?

A That is right.

Q About 25 feet from the guardhouse on the left side of this compound was another large building.

A That is true.

Q In this large building, I think it is west of the guardhouse, what was the first building there?
A The first building right there was the Japanese headquarters.

PRESIDENT: I will have to ask that the prosecutor draw a rough sketch for the witness so it can be shown to the accused. Evidently this has some importance and I am certain I cannot follow it and the accused cannot follow it.

PROSECUTION: Witness, do you recall about when Mr. Kato came into Kokubichi prison camp?

A I don't know the exact date but I think it was sometime in the winter or early part of 1945.

Q Did you ever personally witness any mistreatment or beating administered to V. H. Walsh?
A I did.

Q And who administered it?

PRESIDENT: When you have finished translating, if you will look at the prosecutor, he will know you are finished.

PROSECUTION: Who administered that beating?

A Kato.

Q Do you recall about what time of the day that beating happened?
A It was in the evening around six o'clock.

Q Was it light or dark at that time?
A It was in the spring of the year and it was still light.

Q Do you recall about how long Kato remained at the camp?

DEFENSE: I want to object at this time. We still have no date as to when this alleged beating took place.

PROSECUTION: Can you give us any idea of the approximate date, witness?

A It was around the latter part of April.

Q 1945?
A Yes, 1945.

Q Will you describe to this Commission just exactly what you witnessed in connection with the mistreatment of V. H. Walsh by Kato.
A It was on a Wednesday and the Japanese had set aside certain days that we were allowed to play cards after the evening work had been finished. We were allowed to play cards. There were four men. Two men I remember who were beat by Kato at this time. These four men were playing cards and a Japanese stick guard, that is a civilian guard, not a gunsho, was coming up along the line and at that time we were allowed to smoke and we were only allowed to smoke when we were in the barracks and up to eight o'clock at night. This stick guard stopped and asked them for a cigarette. Naturally, they refused it so he got pretty

wall, he was very angry and he walked away so the men continued playing cards and shortly he came back with Kato and as soon as Kato came we were called to attention and he started singing off something in Japanese and he slapped him about three or four times on the left side of the bay. He stayed in there about five minutes and took them over to Japanese headquarters and at headquarters it seemed they could not find an interpreter at the camp at that time so the more they had to wait around it seemed the madder Kato got.

He was wearing a little belt similar to our garrison belt and he took it off and wrapped it around his wrist with the six inches of the buckle hanging out and he started to swing it wild, any place he could hit them and this went on for approximately ten minutes. After that he had them standing at attention and as soon as they took these four men out of the bay, we walked on outside in the area between our building and the Japanese headquarters and were standing there. The compound was just so small that everything that went on as soon as a man was in trouble, every man knew about it.

Q How far were you standing away from Kato and Walsh and these three other prisoners you claimed he beat with the belt?
A About as far - approximately fifteen feet.

Q Were there any other prisoners of war with you at the time of this beating?
A Yes. At the time they came in the bay there were approximately fifteen men in the bay and approximately five of us walked out into the compound where we could see what was going to happen to the four men they took out.

Q How long did this beating last with the garrison belt?
A I don't know just the exact length but approximately ten minutes.

Q Where did the beating take place, in the guardhouse or in front of the guardhouse?
A In the Japanese headquarters.

Q How could you see this beating if it was in the Japanese headquarters?
A As I said, it is approximately fifteen feet and in the whole section of the Japanese headquarters, the windows were the width of the windows - approximately the width of these two windows (indicating) and there was a short wooden space between them of about one foot and then another big window and you could see right into the office.

Q In feet, how wide would you say the window was?
A About four or five feet.

Q And was the place where the beating happened on the ground floor or the first floor?
A Yes sir, on the main floor.

Q Were you standing on the ground in the compound there?
A I was.

Q Now, after you witnessed this beating for about ten minutes, what did you say happened to the four men?
A They were brought out from the Japanese headquarters by Kato and were taken to the civilian guard's, that is, the stick guard's guardhouse, over in our barracks and these men were placed at attention along the wall beside the civilian guard's guardhouse and with orders that

any time an allied prisoner passed that way he was to strike these poor men and hit them; and we were forced to go past these prisoners because it was on the way to the latrine.

Q Do you know Mato's rank at the time he was at Yokkwichi?
A I believe he was a two star private or, in other words, what the Japanese called a nitched.

Q Do you know what duties Mato was fulfilling that day?
A I believe he was NCO of the Day.

Q Did you see him performing these duties at different times?
A I did.

Q Do you know who ordered these men to stand at attention?
A Well, at the time Mato was the only regular Japanese army soldier in the camp.

DEFENSE: I move to strike out that answer. It is not responsive to the question. The question was, 'do you know who ordered these men to stand at attention'?

PROSECUTION: He should be allowed to finish.

DEFENSE: Then he should confine himself to answering the question.

PROSECUTION: Do you know?

A Mato could have been the only one.

DEFENSE: I move to strike that out as not responsive.

PRESIDENT: Objection overruled.

Q Why do you say Mato could have been the only one?
A Because at the time the other Japanese guards were not connected with us in any way than to guard the compound. Mato was the only Japanese soldier in the camp at that time and his duties as NCO of the Day called for it. He was the ranking man in the camp.

Q Did you personally see any American prisoner of war strike V. W. Walsh and these other three American prisoners as they passed going down to the latrine?
A I did.

Q Do you know who gave the orders ordering the American prisoners of war to slap Wendell Walsh and three other prisoners of war as they stood at attention?
A As I stated before it could have been only one man, Mato.

DEFENSE: I again move to strike that answer as being based on opinion and on conclusion and no basis on any facts known to the witness.

PRESIDENT: It has probative value. The objection is overruled. You can cross examine later.

Q After seeing Wendell Walsh and these two men standing at attention and receiving the beating, when did you next see Wendell Walsh?
A It was about 10:30 that evening.

Q Where did you see him?
A In the bay.

Q When you were in the bay, do you mean in the bay or the bed next to yours?
A Yes. In the bed where I slept. He slept in the bed next to me.

Q Will you tell the Commission whether or not you observed any marks, damage or permanent injury to Kendall Walsh?
A Yes. When Walsh came into the bay he got into his bed he had a patch over his mouth and there was one tooth missing - a large tooth in the front. Later, when the bandage was taken off there was a big scar from the corner of his nose to the middle of his mouth and he has this scar to this day.

Q As you observed Kendall Walsh and these three other American soldiers standing at attention, could you observe the marks or blood or scars on his face at that time?
A I saw the blood on Walsh's face and the marks on the side of Ellenberger. He was the first man on the lineup, but the other two men I could not see.

Q Witness, you have talked to me about this incident before haven't you? You have often talked to me:
A Yes.

Q and about this incident?
A Yes.

Q Have you also talked to defense counsel and told them about the incident?
A Yes.

Q Did you tell defense counsel and me substantially what you told this Commission?

DEFENSE: I object to that question.

Q Is what you have related to us the truth?
A It is.

PRESIDENT: There being no objection at this time the Commission will recess.

The Commission then took a recess until 1330 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

PROSECUTION: The witness is advised that he is still under oath.

CROSS EXAMINATION

Questions by Defense:

Q Corporal, as you testified and, correct me if this is wrong, you were there from the 4th of September 1944 to the same date of the same month 1945:
A That is correct.

Q That you slept next to Walsh?
A That is right.

DEFENSE: There is no translation.

Perhaps we had better have interpretation.

Q Now Corporal, would you again, please, describe the setting of the incident telling again the width of the windows of the headquarters where this beating in this alleged building took place and where you were and the other prisoners of war that were with you?
A The windows were approximately four to five feet wide. They stood up off the ground approximately 2½ to 3 feet. We were standing right in front of the windows of our bay and from where we stood we could look directly over to the Japanese office which was directly opposite, 15 feet from where we were standing.

Q Were the windows all closed?
A They were.

Q Was it one window of that length?
A The window was divided into three sections or two sections, so they could slide them back and forth for ventilation.

Q Did the windows take the place of that side of the building? In other words, as you look over there you will notice there is a part of the building separating these two windows from the other two. Instead of being like that, did you say the windows took up that side of the building?
A They took up about four or five feet long. Then there was a strip about six inches wide and another window. Almost the whole side was windows.

Q Were there any shades on the windows?
A I don't think I ever saw a shade in Japan.

Q How high off the ground was the lowest portion of the windows?
A About 2½ to 3 feet.

Q Was there an air raid at the camp?
A Yes.

Q Were there many air raids during the time you were there?
A There were.

Q Had there been air raids prior to this incident?
A I believe so.

Q Now, calling your attention to the start of this alleged incident, you said that you, and correct me if I am wrong, - you and three others were playing cards?
A Myself and others.

Q Was it -
A Walsh and I and two others.

Q You do not remember who else?
A Sollenberger and the staff sergeant, I think.

Q Did this card playing take place in the barracks?
A In the bay in the barracks.

Q Did you see this cigarette refusal matter go on?
A I did.

Q And how long after that did the person you said was Sato appear?
A Approximately two or three minutes after that.

Q I believe you said that card playing was allowed?
A That evening. That is true. There were certain times set aside for card playing.

PRESIDENT: Keep your voice up, please Corporal. Up here there are times when we cannot hear your voice.

SENEKA: All right sir.

DEFENSE: Was this one of the evenings or times it was allowed?

A It was.

Q What day did this occur?
A It was on a Wednesday.

Q And how does your recollection indicate to you that it was on a Wednesday?
A Well, because there were several men sitting there and if it had been on a Sunday we could have drawn razors through the day. There were only certain days we could play cards or draw razors during the shift and as soon as you drew a razor you had to return it and I know it could not have been on Saturday because we went to work the next day and there were some Sundays they gave us off.

Q When one looked into the Japanese headquarters could one see that it was divided?
A He could.

Q How far away from the place were you and the other five prisoners of war standing looking into the Japanese headquarters? Did the other incident take place standing in front of the guardhouse?

A This happened standing in front of the guardhouse so near the building and the scene was approximately fifty feet down from our bay.

Q When you or any other prisoner of war were in the bay you described, would it be possible then to see into the Japanese headquarters?

A It would be from our bay.

Q You have described in a manner on that diagram a place where NCO's had their quarters?

A That is true.

Q Could you see into that place from your bay?

A I could not.

Q Do you know if there was anybody in those quarters at the time they were required to stand at attention in or near the guardhouse?

A I do not know for sure, but if there would have been, more than likely I never seen it fail when something happened that all in the camp would come running out to see what it was.

Q. Did you say, Corporal, that it was standard operating procedure, so to speak, for that to happen?
A. For that to happen?

Q. For everybody to come running out.
A. That is true the majority of the time.

Q. Where did this bull incident take place?
A. Inside of the Japanese headquarters.

Q. Outside?
A. Inside of the headquarters office.

Q. And how long after the incident were the men lined up at the place where you stated the other prisoners of war were to strike them as they went up?
A. Approximately three hours.

Q. Did you see Walsh after what occurred in the headquarters and before he was in the number of men who was made to stand up at that place?
A. When Kato started bringing them out of the office, we went into our hog and the next time I saw Walsh they were lined up in front of the civilian guard house.

Q. I believe you stated you saw blood on Walsh's face?
A. That is true.

Q. And that it was at 16:30 when you saw the blister on his lip?
A. That is true.

Q. Besides seeing Sellenberger in addition to Walsh, is there anything else that you saw?
A. No.

Q. Now, Corporal, do you, since you recall Kato quite well, remember when he left Kotomichi?
A. It was, I think, around the last of May or the first of June.

Q. Was there an incident that took place during an air raid which set that particular air raid off by itself?
A. There was.

Q. Was there any other air raid accompanied by similar occurrences?
A. No.

Q. Now, Corporal, you testified in another case just recently did you not?
A. That is true.

Q. What is the name of the case?
A. The Shinjo case.

Q. Did it involve the same camp?
A. It did.

Q. And did it involve an air raid?
A. It did.

Q. And did it involve an air raid either during which or after which sake had been stolen or alleged to have been stolen?

A I heard that was the rumor around the camp. We were not officially notified of what happened.

Q Do you recall whether this air raid which is coupled with that rumor about which you spoke happened before or after Kato left Tokimichi?

A After there was this air raid about which there was this rumor, another incident took place that was quite important to the individuals concerned.

PROSECUTION: Now, may it please the court, it so happened that I tried that case. There are no allegations in this information regarding Kato after that incident. Now, I submit for counsel to go into the question of the testimony of what happened at an air raid sometime in June or July when we are not charging Kato with anything is going on a fishing expedition and should not be allowed.

The record of the testimony is the best evidence, but it has no bearing on this trial. He could go into that and the evidence of all the others.

The charge in this case is that he witnessed the Walsh beating sometime before the air raid at the end of June. I submit, to go back earlier that June to something that had nothing to do with this accused, because Kato left before that air raid, is improper.

DEFENSE: This witness was there between 4 September 1944 and 1945. That is the same day, the same month. I am merely testing his memory and I also want to call attention to the fact that in this incident he connects the paragraph pertaining to an air raid during which some sake is stolen, is in evidence.

PROSECUTION: Is that paragraph in the other case?

DEFENSE: That is right.

PROSECUTION: Is there anything in that ~~setting~~ 7.8 your man had anything to do with?

DEFENSE: It is in the specification so I can test his memory.

PRESIDENT: I see no connection between a test of memory or something that happened later and the incident alleged in these specifications, unless you are testing the witness' credibility. Further questioning upon that line is disallowed as being irrelevant to the issues in this case.

DEFENSE: If the Commission please, that is exactly what we are trying to do which, as you say, is all right.

PROSECUTION: Counsel, you are at tempting to question his credibility because some witness in some statement referred to an air raid. He has told you when the air raid was. The record of the other trial is in evidence and you know it.

DEFENSE: That record is not written up which is why we do not have it.

PROSECUTION: Do you intend to produce it in case statements are made which do not agree with the record.

DEFENSE: If we had to produce it we would have to produce it ourselves.

PROSECUTION: I see no purpose in examining this witness on a later air raid unless it is an attempt to prove he is confused about these incidents and this is the incident alleged in every trial. I cannot follow this at all.

DEFENSE: May I ask if the prosecution will stipulate that the accused was not there after a certain date.

PROSECUTION: I stipulated that this morning and we agreed he was there on the date alleged in the specification which says between 3 February 1945 and, I believe, May 1945. We will stipulate your man left Kokinichi sometime in May 1945.

DEFENSE: And that the air raid in this affidavit took place after.

PROSECUTION: I don't know what air raid is referred to.

PRESIDENT: Have we reached any air raid that the Commission is cognizant of?

DEFENSE: Oh yes. In Saich's affidavit.

PRESIDENT: Well, he is not testifying as to that incident in any way.

DEFENSE: Accepting so far as I am asking him to give me information since Saich is not available.

PRESIDENT: We will try the man who committed that beating. As law member I rule the evidence being introduced at this time is irrelevant to this case.

DEFENSE: How many days a week did you work at the factory?

PRESIDENT: You will have to speak fairly loud because the bulldozer outside is very loud.

WITNESS: There were no set days that we worked. We were officially supposed to get every Sunday or every other Sunday off. If there was an air raid and we had to miss a certain amount of work everyday, we usually had to make it up on Sundays or holidays allowed us.

Q Did you work at the factory on Wednesdays?
A We did.

Q Until what hour did you work?
A Approximately 4:30.

Q Did you work until 4:30 on the day this alleged incident took place?
A I believe we did.

Q When was bedtime at your camp?
A After tinko, which was 8:00; we were supposed to go to bed.

Q Did you go to bed at 8:00 that night.
A I did not.

DEFENSE: If we had to produce it we would have to produce it ourselves.

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A After tinko, which was 8:00; we were supposed to go to bed.

Q Did you go to bed at 8:00 that night.
A I did not.

Q Why didn't you?
A I said we were supposed to go to bed. I didn't say we did go to bed.

Q Were you violating the regulations of the camp?
A That was one regulation they did not enforce.

Q Was it your policy to find out what regulations would not be enforced so you could violate them.

PROSECUTION: I submit that is an improper question.

PRESIDENT: Objection sustained.

INTERR: At what time did you go to bed that night?

A About nine o'clock.

Q Until nine o'clock that night where were you?
A After taps I remained in my bed.

Q Was it light outside?
A When?

Q Was it light outside after eight o'clock at night?
A No. It was starting to get dark then. It was almost dark.

Q After eight o'clock were you able to see what was going on outside?
A No.

Q At what time did Walsh come in?
A About 9:30 or 10:30 rather.

Q Were you awake at that time?
A I was.

Q At what time did you wake up in the morning?
A At the same time, usually about 5:30. In the wintertime around six o'clock.

Q At the time that this alleged incident took place at what hour in the morning were you supposed to wake up?

PRO-REVISION: Just a moment, I am going to object to that as being irrelevant or incompetent as to what time he was supposed to wake up in the morning.

DEFENSE: We are going right at the issue which is in question. We are checking the witness' credibility or things he is said to have seen and conversations he is supposed to have had.

PRO-REVISION: The question as to what time you were supposed to have waked up is an improper question.

PRO-REVISION: I cannot see what bearing it has on the case. I don't want to deprive the defense of a chance to ask these questions.

PROSECUTION: May it please the Commission, it has been stipulated on the record that Kato was at the prison camp at the time charged in the specifications. They have never claimed but that was stipulated on the record that the man sitting there was Kato. They pleaded to be not guilty to the charges and specifications. This prisoner of war has positively identified that man as Kato and the man who beat Walsh.

I cannot for the life of me understand this question, that that is Kato and he was in the prison camp.

PRESIDENT: I think the defense has the right to question the identification of the accused at the time of the incident since there were other Japanese who might have committed the incident if it occurred. However, I see no reason for going on too long on that line.

PROSECUTION: The point I was trying to make is whether this man knew he was Kato or he didn't. The defendant has admitted he is Kato.

PRESIDENT: It is possible, however, that someone in that camp beat Walsh. If it was not Kato I presume that is the reason for the question.

DEFENSE: Will you please read the question to the witness.

(Question repeated.)

A At that time we did not know an awful lot of Japanese but the doctors and others had pronounced it Kay-To. Now the Japanese pronounced it, it was near enough to know it was Kay-To.

DEFENSE: Prisoners who put in a hard day's work at the factory generally are trying to get as much sleep as they can, sir.

PRESIDENT: That is so far-fetched the objection of the prosecution is sustained.

DEFENSE: What name did the prisoners at Yokkaichi use in referring to the accused?

A His name is Kato. As far as I recall they had no nickname for him at Yokkaichi.

Q Did Kato tell you his name?
A No. He did not.

Q How did you find out his name was Kato?
A Well, there was only a medical corporal and medical orderly in the hospital and during sick call you came in contact with one or the other of them.

Q And when you came in contact with him did you read his name or did someone tell you his name?
A Well, our American doctor told me what his name was. He heard him being addressed as ~~Kato's son~~ many times.
F.E.M. "KATO SAN"

Q Did you hear the Japanese refer to him as Kato?
A I have.

Q Now, did you hear him referred to as Kay-To or Kah-To?

Q The prosecutor referred to you having a conversation with me in reference to this case. Do you recall that?
A That is true.

Q The first conversation took place approximately two weeks ago at the place in this courthouse at the close of the hinje case. Is that right?
A That is true.

Q Do you remember my asking you at that time if you remembered anyone at Yokkaichi prison camp by the name of Masayoshi Ma-To or Mah-To?
A I do.

Q Do you remember what your answer was?
A I do.

Q Will you please tell us what that answer was?
A I said at that time I could not recall him because there were so many names of all those Japanese coming up; and later when I thought about it, I placed him.

Q But at that time you told me you had no recollection of that name. Is that right?
A That is true.

Q Thereafter, I arranged for an appointment for you to go to Sugamo prison to see the accused. Do you recall that?
A That is true.

Q And then on the morning of the date of appointment I came to see you at the Legal Section in Tokyo?
A That is true.

Q We had another conversation. Is that right?
A That is true.

Q And at that time you said it was unnecessary to go as you now remembered the accused.
A That is true.

Q Now, what I want to know is what took place in the intervening time that brought to your mind the name of this accused.
A Well, at the time I first spoke to you about it, I had no idea I was going to be on this trial and after I found out the trial was coming up shortly I got to thinking about it and I can truthfully swear that I have never read an affidavit in this case.

Q Were you one of the four men who was playing cards that day?
A I was not.

Q Do you know a Sergeant Yamazaki?
A If I had a picture of him I may know him but I do not recall a man in Yokkaichi by that name.

Q How many Japanese soldiers were in camp that night?
A At the time of this incident the only soldiers of the camp personnel was Kato there. No other soldiers of the camp personnel were there.

Q Did you say that Kato was a nitchei?

PRESIDENT: What is that?

DEFENSE: I am using the word the Corporal used, a nitchei.

Q Do you know what the lowest rank in the Japanese army is?
A The lowest I ever seen was a one star private.

Q And what is he called?
A Yhchei.

Q Are you sure it is not the reverse?

PRESIDENT: What has that to do with the case? I rule that type of question as being irrelevant and I don't want to clutter up this record with thousands of unnecessary words. Please stick to the issue.

DEFENSE: When did Kato come to Yahmichi?

PROSECUTION: Just a moment. May it please the court, I will object to that for two reasons. He has already testified to his knowledge when he did come; and in the second place, our counsel has already cross examined this witness. It is the first time in my practice in law where two counsel cross examined a witness. One counsel takes him over and then the other. I say this witness has answered to the best of his knowledge when Kato came to Yahmichi and they have stipulated.

PRESIDENT: This Commission is unorthodox in its rules and we cannot object to both defense lawyers cross questioning along the same line if they think it serves the purpose of defending the accused. The witness has made statements derogatory to say the least of the accused. Therefore, the defense may in its own way attempt to discredit that

testimony.

(Question repeated)

PRESIDENT: The witness will answer.

WITNESS: It was in the winter around the latter part of January or the early part of February.

Q Was Kato involved in any incident to your knowledge in Yokohama other than the incident to which you have testified?
A Not that I know of.

Q If I am correct, you testified before that whenever the incidents took place all the boys would come running to see what was going on. Is that true?
A That is true.

Q Do you know whether Walsh and the three men who were allegedly punished that day were accused of having taken something from the factory that day?
A I know for certain the three men, or four men, that none of the four men worked on the same detail. And if they would have been accused of taking anything in the factory, they would have, when they brought them in - they would not have let them go into the barracks and draw the cards out and play cards. They would have apprehended them

as they came in the gate.

Q When Walsh returned that night at about 10:30 - is that right?
A That is true.

Q He had a conversation with you. Is that right?
A Well, it was not much of a conversation. We talked for a short while. He could not talk very much because the upper lip was all swollen and the side of his face.

Q Did he tell you he had gone to the dental office?
A We had no dentist in our office at that time; but all four men had been taken over to our dispensary.

DEFENSE: That is all sir.

REDIRECT EXAMINATION

Questions by the prosecution:

Q Witness, when you talked to Mr. Braun, the defense counsel, a couple of weeks ago, did you tell him about the Walsh incident?
A I did. That was the last time I talked to him on the appointment we had in the Meiji Building.

Q The first time he talked to you was it the day you got [illegible] testifying in the Shinjo case?
A That is true.

Q Corporal Pensmore, did you ever go to Sugamo and positively identify Shinjo?
A I did.

Q Was that Shinjo? No. Kato. Did you personally talk to Mr. Kato through the interpreter of the Walsh incident?

DEFENSE: I object unless the date is specified.

PROSECUTION: Approximately two months ago when this case was being discussed, did you through the interpreter, when you accompanied me to Sugamo talk to the accused about the Walsh beating?

A I did.

Q Witness, how long had you known Wendell Walsh?
A Since the latter part of March 1942.

Q Have you been in prison camp with him for some time, like two years?

DEFENSE: It is my thought that this is redirect examination and should be confined to matters brought out in cross examination. Is that the understanding of the prosecution?

PROSECUTION: That is my thought.

DEFENSE: Then I don't see the value of that question referring to cross examination.

PROSECUTOR: Your cross dealth with whether he saw the beating and whether he was home in time to see it and redirect would clear that up.

PRESIDENT: I thought cross examination would have a couple of questions to ask. It is a little irregular. The Commission usually has a number of questions.

PROSECUTOR: It was my understanding that the Commission asked the questions after the prosecution and defense.

PRESIDENT: No. Not this Commission. The Commission asks additional questions if matters are not cleared up. The Commission are the people that are concerned in this case, the people that have to determine the issue. They may clear up your questions for you. If not, you will get an opportunity to question the witness.

EXAMINATION BY COMMISSION

Questions by Members:

Q You said that on the evening of this incident you and about four others ran out to where you could see it.
A There we could get a better view of it.

PRESIDENT: Still in the barracks or in the street?

A No sir. The space between Japanese headquarters and our building.

Q At this point let us see the rough diagram.

DEFENSE: This is off the record.

(Off the record discussion)

PROSEC: I have been at Yokohama and you understand it from his explanations.

PRESIDENT: If you will just rest a moment and let the Commission have the floor for awhile - at the present time the members of the Commission must determine the guilt or innocence of the accused. The Commission would like to know what you want to know provided it is relevant.

Corporal, will you take that diagram and bring it up here, please. Members of the Commission, if you would like to see this, please gather around. You referred to a place where the men were made to stand at attention.

A Down through the center of these barracks there the prisoners of war slept there is a hall way, an alleyway, approximately six to eight feet wide; and at the end, back here, was another similar building, and latrine and a washroom and right in here sits the Japanese civilian guardhouse.

Q In the barracks. Where were they?
A At this end (indicating).

Q The latrine was where?
A Back here sir (indicating).

And the hallway ran here on down.

Q Where was the headquarters here?
A Here sir (indicating).

Q Did these barracks have openings or windows?
A Windows.

Q And how high were the windows in the barracks?
A About the same as in the Japanese headquarters.

Q And where did you sleep?
A Right here sir (indicating).

Q You are all satisfied with the layout?

MAJOR: Yes.

Q All right, will you resume the stand over there. Now, you state that there were about four others who came into the bay to be in a position to see into the headquarters. Hold that a moment. Will you explain why all this conversation went to clear up the matter of the layout of the barracks?

Who were these other men? Do you remember their names?

A No sir. I do not.

Q Do you remember any of them?
A I remember one was a short Englishman who slept right down in the cot next to the window. I do not recall what his name was. There were only a few Americans in that bay at that time.

Q Did any of these men sleep in the same bay with you - that is, that were present when you witnessed this alleged incident?
A Yes sir. They did.

Q How long did you sleep there?
A A good month or half a year. They changed the bays around, sir, due to the type of work you were doing - what type of work you were doing in the factory. They moved English and Dutchmen and a lot of the Englishmen's names I do not recall in the detachment.

Q How many prisoners of war were in this camp?
A At that time there were approximately six hundred men.

Q Roughly, how many of their names do you think you could recall in a few minutes?
A The Americans - quite a few of them, yes sir.

Q Ten, twenty, thirty, fifty? How many?
A Uh, in half an hour I suppose I could recall a hundred to one hundred and fifty of them. The majority of Americans had been with me since 1942.

Q How many Japanese were in the camp including officers, enlisted men and civilian guards?

A I imagine anywhere from twenty to forty sir. I am not positive.

Q Did you have a pretty rough time in the prison camp in which you were detained?
A Yes sir.

Q As a consequence do you have prejudice against the former soldiers of the Japanese army?
A I would not say prejudice, sir. Japanese people as a whole, I like them, only the individuals who treated us as dogs I believe in seeing them punished for what they did to us.

Q If an American buddy of yours was beaten by some Japanese and you could not possibly identify him would you still wish to see that somebody in the Japanese army suffered for that?
A No sir.

Q You said the first time the defense counsel spoke about the incident you could not remember the name of the accused.
A Yes sir.

Q I was not quite clear on how you happened to remember him subsequent to that.
A When I was notified by the prosecution that that case was coming up, I have a list in the back of my billet of all of the men and the trials going on. No affidavits or anything like that. I am slated for ten or twelve of these trials and I looked at my own notes.

Q When were these notes made?
A Since I came over here.

Q What note did you consult that caused you to remember the name of the accused subsequent to the first conference with the defense counsel?
A Sir, I know all the men who are going to be tried from my camp, the men who are in Sugamo. In this case too. In the Shinjo case I had read a few affidavits and that moved me up more than anything so, as these cases came up that I am going to appear on, I sit down and make these notes out and what I seen happen and what I am positive of, I testify to that.

Q In any of the affidavits you read in the previous case was the name of the accused mentioned?
A Not that I remember sir.

Q Do you recall whether any of these affidavits referred to him as being a rough character in the camp?
A No sir.

Q When you went to Sugamo prison with the prosecutor was that the first time you had seen the accused since you left the camp?
A Since I left the camp, yes sir.

Q What was the method of identification employed at that time?
A You mean at Sugamo prison, sir?

Q That is right.
A You went out there with a prosecutor and were put in a small room and you would sit down and you would get a slip to have the guard bring the accused up; and as he came up he came into a room, an MP stood outside the door and he got permission to sit down.

A. He will ask him two or three questions before I lose the train of my thought.

DEFENSE: He cannot remember these.

PRESIDENT: How many Japanese were in the room at the same time as the accused at the time you made the identification.

A Only him, sir.

Q Did you know the accused was being brought in? Did you have his name?
A Yes sir.

Q Is there a chance that one of the other numerous Japanese employed at that camp at that time committed the beating on Walsh that evening instead of the accused?
A No way in the world, sir. No possibility.

Q Then, with an incident so vivid and the accused allegedly perpetrating it How do you account for forgetting his name at the time of the first interview?
A I mentioned his name and later when I went up and looked on my list of men they picked up from Kempeichi prison camp who were there at the time I was there - I am on these trials and I will appear as a witness on these trials - and as soon as I looked at him it came right back to me.

Q How many names were on that list of Japanese accused to be tried in connection with offenses at this camp?
A About nine sir.

Q About nine?
A Yes sir.

Q How were you able to know the specifications to the nine respective accused?
A I don't know what the specifications are but I do know what beatings occurred.

Q That is what I mean by specifications, the various accounts alleged to have been perpetrated by the Japanese. How were you able -
A When I see the man it recalls the thing to me and then I can place him. A lot of these Japanese -

Q When you see the man, or the man's name?
A The man; not the man's name. Some of the men I know by name, some by nicknames.

Q Do I understand you, that you understood the beating of Walsh after you went with the prosecutor to Sugamo?
A I remember the beating of Walsh ever since it happened, but the man that took part in it I identified him as the man.

Q At Sugamo?
A Yes sir.

Q What time did the incident occur?
A About six o'clock in the evening, sir.

Q And at that time you and about four others went to the bay beside that headquarters where you could see through the windows?
A Yes, right through our own bay.

Q Were these your neighbors who came to the windows with you?
A Some men in the bay, some of the Dutch or British, - one of the British boys I do remember but I do not recall his name.

Q Was your floor higher or lower than the floor of the office in the Japanese headquarters?
A Our floor was a dirt floor and the floor in the Japanese headquarters was wood. It was practically six inches higher than our floor.

Q Six inches higher than your floor?
A Yes sir. They had a wood floor.

Q When the air raid occurred that we mentioned here do I understand bombs fell in or about that camp?
A Yes sir.

Q How close to your barracks did any bomb fall in an air raid previous to this incident?
A At that time, they had been bombing an oil refinery, I imagine 1½ miles or two miles from our camp and it was about that time that they came to our camp.

Q So that was the closest that a bomb fell to the barracks prior to this incident and during the time you were at the camp?

PROSECUTION: I wonder, Mr. President, if the witness is clear.

Q I mean prior to the incident and during the time you were in the camp what was the closest a bomb fell?
A Up to the time of this incident was when they were bombing the oil refinery as I said before.

Q Up to a mile or a mile and one-half?
A That is right.

Q How many windows in your barracks were broken by that bombing?
A A few of the windows were shaken out. I could not even say they were from the concussion because they were using a lot of incendiary bombs.

Q How many windows in those Japanese headquarters were broken?
A None that I knew of.

Q None?
A No.

Q You say that the prisoners of war standing at attention in the barracks were struck by allied prisoners of war on their way to the latrine?
A Yes, sir.

Q How many of the prisoners of war struck those men?
A No sir, I don't know.

Q Why did they strike them?
A One of the stick guards in the camp, at the civilian guard shack or guardhouse, called Colonel Stubbs over. That is when I came down and saw Walsh.

He passed that order out to come and kick was standing there.

Q You say one of the guards did that while the accused was standing there?
A The accused was talking first when they called Colonel Stubbs over.

The stick guard could speak a little English. He made Colonel Stubbs understand that these men were to be punished by the allied prisoners as they passed to and from the latrine, and he stationed a stick guard to stand in the doorway and any prisoners who did not strike them, they were struck by the Japanese stick guard who was standing there.

Q Did you imply that the guard was interpreting for the accused to the prisoner of war officer?
A Yes sir. That is the way it went to me. He went up in crowd with Colonel Stubbs.

Q Who?
A The rest of the men in the camp were standing in the hallway.

Q What was your reaction to other allied prisoners striking these men standing at attention just because they had been ordered to do so by the Japanese guards?
A Well, it was this. At that time and after six months, we were prisoners; our kidneys were very weak and he being a medical orderly knew that went on sick call and they had put in complaints to their American doctor about their kidneys.

Q I do not think you understand my question. The prisoners of war were ordered to strike their fellow prisoners of war. You say some of them did. What was your reaction to their striking their fellow prisoners just because they had been so ordered to by the Japanese guards?
A If they did not strike them they would be punished more than if they gave as light a tap as possible on the man's face.

Q Would you then consider that a Japanese was justified to strike one of you in order to avoid being struck himself?
A No, not in cases where he used his own initiative.

Q You will have to speak louder. My ears are not good.
A Not in cases such as times when he used his own initiative.

Q You must answer my question. If a Japanese was instructed to strike a prisoner in lieu of himself, - I am not asking you about the accused.
A I do not get that straight, sir.

Q Let us go over it again. The Allied prisoners of war slapped their fellow prisoners because they were ordered to do so by a Japanese guard. Is that correct?
A That is correct.

Q If they did not slap then they would have been hit.
A Yes.

Q Suppose the Japanese were ordered to strike a prisoner of war and if he did not, he would be struck, do you consider that -

PROSECUTION: It is very unusual for prosecution to object to a question of the president. I will object to that. I think it is an unfair question to ask a witness. In the one case, these American boys were prisoners of war where they could not resist and could not say anything or do anything. The Japanese was free. He was in his own army, not a prisoner; and what effect the beating had on this man as compared to the Japanese is certainly an unfair question because one is a prisoner of war.

PRESIDENT: The objection is overruled and the witness will answer his own question. He is competent to answer. Will you please tell me whether you think the Japanese would be justified if he were assigned that punishment?

A Yes sir. He would.

Q I have one more question to ask you, corporal. The accused is charged in Specification No. 5 with wilfully and unlawfully mistreating and abusing Vance Wendell Walsh, an American prisoner of war by beating him with a belt, knocking out a tooth. Are you positive that the accused is the man in that camp who beat Walsh with a belt on the night you alleged?
A I am, sir. I took an oath to that. I am positive.

Q I know about your oath. I am asking you whether you are absolutely positive before this Commission that this accused did that and no other Japanese in that camp could possibly have committed it.
A I am positive.

Q You are aware that if the accused is found guilty the punishment is severe?
A Yes.

Q And you still say the identification of the accused is positive?
A Yes sir. I am positive.

PRESIDENT: Any other questions by Members of the Commission?

MEMBER: Corporal, I am going to quote from the sworn statement of Vance Wendell Walsh.

A Yes sir.

Q I want you to listen carefully and tell me if this is inaccurate.
A Yes sir.

Q "Kato, who was a dope fiend and was under the influence of dope this particular evening came into the barracks and beat us up with garrison belts".

Is that a correct statement?
A No sir.

Q It is not correct?
A Not in one sense, sir.

Q In what sense is it incorrect?
A The part about him being a dope fiend, I don't know.

Q Where did you say this took place?
A The Japanese headquarters.

Q. Did they come into the barracks?
A. He dragged him a few times and then they took him out to Japanese headquarters.

Q. He infers very clearly it took place in the barracks.
A. No sir. It did not.

Q. So that is inaccurate?
A. That is right.

Q. And he further says, and it is the same incident, because he says 'one of my front teeth was knocked out and two stitches had to be taken in my lip'. Was this the same beating as you had referred to?
A. Yes.

Q. And he says this beating lasted about two hours. Is he correct there?
A. No sir. About ten minutes.

Q. And then 'we were made to stand at attention in front of the guardhouse for another hour'. Is that correct?
A. No sir. Approximately three hours.

PRESIDENT: If there is no objection at this time the Commission will recess for twenty minutes - I mean for fifteen minutes.

The Commission then took a recess until 1520 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

MEMBER: Corporal, how long were you a prisoner of war?

A. Forty months.

Q. At the time of the beating of Ralph how long had you been a prisoner of war in this camp?
A. In that camp, sir?

Q. Yes.
A. About eight months, sir.

Q. Did you know Ralph all that time?
A. Yes sir.

Q. Do you remember when the accused came to the camp? You definitely remember him coming there, do you?
A. Yes.

Q. If I am not correct, correct me. As I understand, you testified that on this evening in question, after one of the civilian guards had been refused a cigarette he disappeared and a few minutes later reappeared with the accused, Kato. Someone called you to attention and you all stood up. Is that correct?
A. Yes sir.

Q At that time, Ito administered slappings to how many men?
A The four men who were playing cards.

Q Did he lay hands on anyone else?
A No sir.

Q Did he slap everybody about the same number of times or did he particularly single out on particular man?
A It seemed he dealt off about the same.

Q How many times did you say he struck each man?
A Two or three times.

Q How long a period of time did that take?
A About a minute or so.

PRESIDENT: Do you want the interpreter to interpret this?

DEFENSE: Our interpreter has already given him the gist of it.

PRESIDENT: That is sufficient because it has been a resume.

MEMBER: Then the accused and a civilian guard immediately took these four men out over to the guardhouse?

A Guardhouse, no sir.

Q I stand corrected?
A Headquarters barracks.

Q Headquarters office?
A Yes sir.

Q And you and three or four of the men immediately followed them?
A There were two entrances to the barracks. We went out around this way and stood right in front of the window in our bay and looked straight into the Japanese headquarters where the officer's desks were.

Q Then, from where you were you could see the accused strike these men with a belt. Is that correct?
A Yes sir.

Q Did he strike all of them?
A Yes sir.

Q How long did the striking extend over?
A Approximately ten minutes, sir.

Q Then they came out of the building. Is that correct?
A When he got through, they stood around there and jabbered and they yelled around there a couple of minutes and then we went on around and came back into the barracks and they brought them in through the side door.

PRESIDENT: Wait just a minute. I know the accused is going to lose this if you ask questions one after another.

Get the last question.

MEMBER: I didn't get the answer. Why did you all go into the barracks?

A When they brought them out they took them into the building the same way they took them out and we came in the same building as we came out of.

Q Did you go into the building before the accused saw you or did they see you go into the building?
A I don't know whether they seen us or not.

Q Did you go back into the building with a view to finding them?
A One way, yes sir.

Q If they had seen you come outside the building, would they have done anything to you?
A Yes and no, sir. They may and they may not have. It just depends.

PRESIDENT: You better let the accused hear some of this now, sir. He is not getting any of it. He will have to stop after the end of each question and answer.

MEMBER: Was it the custom for the other prisoners of war to be allowed to witness any punishment being administered?

A Sir, the majority of the time that the punishment was put on, especially in some of the worst beatings and worst punishments that went on, they usually did it during the hours we were in the camp.
That was the only way we could suppose it was done for our benefit so if we were in the wrong we would be punished the same.

Q From that time on until you next saw Walsh, I take it from your testimony it was two or three hours. Is that correct?
A No sir.

Q When did you next see him?
A About five or ten minutes after that, sir.

Q Where was he then?
A That is when he had been lined up in front of the civilian guardhouse and they called Colonel Stubbs, our camp commander, and he was notified to notify the rest of the camp about us hitting the prisoners as we went up to the latrine.

Q What time was that?
A About 6:30 sir.

Q How long did they stay in that position, lined up?
A Approximately three hours, sir.

Q In other words, they stood in that position until about 9:30 or 10 o'clock. How do you know how long they stood in that position if you went to bed at 8:30?
A It was approximately 10:30 when Walsh crawled in the cot beside me and it was between that time that he had been given medical treatment and returned to the barracks.

Q Do you know whether Walsh lost a tooth in this beating?

A Yes. I knew up to the evening that happened that Walsh had all the teeth in front of his mouth and when he crawled in beside me he picked up his lip and showed me the tooth was missing and he was holding the tooth in his hand.

Q Did he at that time or any later time tell you about the incident of how he lost the tooth?
A He tried to talk to me then. He could not do much talking due to the swelling of his lip and the side of his face and he discussed it with me quite a few times after that.

Q Did he explain to you how he had lost that tooth and how it had been knocked out during the beating and how he still happened to have it in his hand three hours later.

DEFENSE: Isn't this hearsay if the answer was given?

PRESIDENT: This commission will accept hearsay when it comes directly from the prisoners concerned. The witness will answer.

A The way Walsh told it to me, the tooth was just hanging from his mouth and when he went over there Doctor Hinkley took it out of his mouth.

Q From your conversation with Walsh and your observations at the time and your opinion, did the men who were forced to strike him pull their punches as much as possible?
A Yes sir.

Q Do you think that your opinion and knowledge of the facts and circumstances of Walsh that this tooth could have been knocked out by the slaps the men administered?
A I do not believe so.

Q Other than the scar which you have described as remembering from this incident how long a time was it before Walsh recovered his appearance from this punishment?
A Well, I don't know just the exact time, sir, but after a week or so the swelling went down on it and after that you did not take notice of things very much.

Q Do you recall specifically whether these other three men showed evidence of having received punishment similar to Walsh?
A Sellenberger, who slept in my bay, had one big mark down the side of his face.

Q You have no recollection of any other appearance on the other men?
A The other two men I did not know so well and I did not notice them as often as I did these two.

MEMBER: Corporal, how could you see this evidence of beating including the missing tooth at that time of night when the officer came to bed?

A He slept in the bay right next to me and there were ten more sleeping in the second. They were not like American beds, but a rice straw mat flush with the floor and Walsh lay right down beside me head to head, not head to toe. He was beside me and that was the first thing that stood up like a sore thumb.

Q What time was that?
A About 10:30 I imagine.

Q What was the source of light that you could see a man even though you were sleeping next to him?
A As I said, Japanese headquarters were directly across from us and the lights were on for all Japanese headquarters. We had trouble with that every night - lights shining over into our bay.

MEMBER: Is it right, corporal, that you were personally present in the hallway and saw the instructions being passed by Ahto through to the other man who slugged him?

A Yes sir.

Q And were those instructions translated into English?
A When Ahto was talking with the stick guard who was there, he did not speak a fluent English but enough that Colonel Stubbs and us men - and Colonel Stubbs passed the word on to us of what was expected.

Q Did you all clear out of the way then?
A No sir. We were approximately ten feet from them.

Q In view of what you say, is there any need for us to rely upon the fact that Ahto was the only man in camp who could have issued those instructions; or is it quite clear that he issued them in your presence?
A That, and the statement I made before to the effect that some of the other regular Japanese soldiers permanently attached to our camp made their appearance at the time of this beating.

MEMBER: From where you were in this bay, could you see those men lined up at the other end of the barracks?
A Not in the bay, sir. In the hallway.

Q What time did you go to bed?
A As I stated before, approximately 9:30, sir.

Q Were you in a position from the time those men were lined up so that you could see them all the time until 9:30?
A No sir.

Q He also told you how many allied prisoners of war hit him that evening?
A No sir.

Q Did he tell you that the beating by the accused was the cause of him losing a tooth?
A Yes sir.

Q Did he say he was hit with the buckle of the belt?
A He said it must have been the buckle for I didn't think leather -

Q Not what you think. I am asking you what was told you, Corporal.
A I cannot plainly say.

Q You just answer my question. My question was, did Walsh tell you he was hit with a buckle? I don't want your idea.
A No sir.

Q Have you seen Walsh since you were released from that camp?
A Yes sir.

Q Where did you see him?
A In the states.

Q California?
A No sir.

Q Did he ever tell you he had made a statement about this incident?
A I knew that all prisoners of war made statements.

Q You are not answering my question. If you answer my questions we will get ahead faster.
A No sir. Not on this specific case.

PRESIDENT: Any other questions by the defense?

MEMBER: Corporal, did you actually see the action that took place inside that office?
A Yes sir.

Q Will you briefly describe what you saw?
A Well, as I came in, Kato lined them up. The desk was sitting over here. The desk was right back in the corner of the room and he walked over and leaned against the desk and these men were lined up in front of him and he started lining off something, I can't say.

Q Will you line up four men including the two prosecutors and interpreters as they were lined up.
A These four men, like this, and he started sounding off, waving his hands and telling them this and that and they were the garrison belts, similar to our old army garrison belts, and he took this belt off and wrapped it around his hand and with six inches, he swung this belt this way (indicating) - and way he could, with these men standing at attention. That is just the way they were.

Q Thank you.
A Yes sir.

Q And that man with the belt that actually did the striking was the accused?
A Yes sir.

Q You are sure of that?
A Positive.

PRESIDENT: Any further questions?

FURTHER CROSS EXAMINATION

Questions by Defense:

Q Did you say that Sellemberger was one of the four men involved in that incident?
A That is true.

Q Do you think that Sellemberger considered it of sufficient importance to remember it?

PROSECUTION: Now, how could this witness possibly state whether Sellenberger -

DEFENSE: The witness has been giving his opinion on everything.

PROSECUTION: It is not a proper question.

PRESIDENT: It is not a proper question to ask the accused. He says the man was present and was a participant in this incident. What he thinks of whether it was of sufficient importance to be remembered is not relevant to the case. It may be commented on later.

DEFENSE: If Sellenberger were to have made an affidavit regarding atrocities at this camp, would he have included in this incident, as such an atrocity -

PRESIDENT: The objection that is about to be made is about to be sustained. He cannot testify as to what he would include in that affidavit. This witness is not competent to testify as to what another man would include in an affidavit.

DEFENSE: That is all, sir.

FURTHER REDIRECT EXAMINATION

Questions by the Prosecution:

Q In answer to some questions by, I believe, Colonel McCusker regarding the Walsh affidavit wherein Walsh stated he was beaten in the barracks, you state he was beaten in headquarters. The colonel asked you if Walsh was mistaken. You said you thought he was.
A Yes.

Q Now, referring to the two buildings that you had described in that compound what did the prisoners of war call this building?
A They were barracks, both of the buildings were barracks. They say the prisoner of war barracks. This was the headquarters and this was the barracks of the gonsuke and the Japanese NCO's and our kitchen. He must have meant to refer to the prisoner standing at attention after he had been beaten with the belt. The way the Colonel read it I understood he meant the complete punishment.

Q Well, you had no way of knowing what Mr. Walsh meant when he referred to the beating in the barracks or the two hour beating.
A No sir.

DEFENSE: If the Commission please, this answer just given is what my question was intended to draw out by reference to Sellenberger.

PRESIDENT: Yes. It is a different question asked by the prosecutor. The prosecutor is trying to determine what Sellenberger meant. Your question was trying to find out why he did not say something in the affidavit. If you don't see the difference I don't think it is necessary to point it out further.

EXAMINATION BY COMMISSION

Questions by Members:

Q In what barracks did this take place?
A In the building, the prisoner of war quarters.

Q Is that where the accused was?
A No sir.

PRESIDENT: Any further questions?

PROSECUTION: No further questions.

MEMBER: The card game was not going on in the headquarters building was it?

A No sir.

PRESIDENT: Any other questions?

DEFENSE: None sir.

PRESIDENT: The witness is excused.

PROSECUTION: I would like to offer in evidence at this time Exhibit No. 5 which applies to Specification No. 3. I might state I do not have the original copy of this affidavit because it is a British affidavit and the British affidavits are usually retained for their files. If there is any question about it I will have to borrow it but I offer it in evidence at this time.

PRESIDENT: Where is the original of this?

PROSECUTION: The notation on my copy is that the original is with the British Section. That is the notation on the only copy that I have and this one I am introducing is from that copy.

PRESIDENT: This is a true copy of something that is a copy, apparently.

PROSECUTION: That is correct, a certified true copy.

PRESIDENT: The defense may properly object to it.

DEFENSE: We must, if the Commission please, and if I may say this and try to be helpful, if this cannot be left over until another day -

PRESIDENT: I do not believe the Commission can accept mimeographed statements, the original of which is unknown so, this no. 5 will be held until more is learned of the original.

PROSECUTION: Then, in view of that, I would like to make a motion that we adjourn so that I can get back to the office and get the original.

PRESIDENT: No objections?

The Commission will adjourn at this time until 0900 hours tomorrow.

The Commission then at 1600 hours on Tuesday, January 28, 1947, adjourned to meet at 0900 hours on Wednesday, January 29.

Franklin E. Morris
Chief Prosecutor
Herman M. Freundlich
Chief Advisory Counsel

John F. Roehm

JOHN F. ROEHM, COLONEL, MC.,
President.

Yokohama Court House
Yokohama, Japan
Wednesday, January 29, 1947

The Commission met, pursuant to adjournment, at 0900 hours, all the personnel of the Commission, prosecution and defense, who were present at the close of the previous session in this case, being present.

The accused, the interpreters and the reporter were also present.

PRESIDENT: The Commission will be in session.

PROSECUTION: At the time we adjourned yesterday afternoon, it was adjourned in order that I might attempt to secure the original affidavit of John Walford which we supposed to be in the [illegible] files. It was there and I was successful in securing that affidavit and I present to defense counsel the original affidavit instead of the copy and offer it in evidence as Prosecution Exhibit No. 5.

DEFENSE: No objection.

PROSECUTION: This affidavit, members of the Commission, applies to specification No. 5.

(Document referred to was produced and marked Prosecution Exhibit No. 5 for identification and was received in evidence.)

(Prosecution Exhibit No. 5 was read by the Prosecution.)

PROSECUTION: I would like to make a motion at this time that we be allowed to withdraw all the original affidavits and substitute therefor a certified copy. That motion is granted, I assume, on the record?

PRESIDENT: Yes. That is granted.

PROSECUTION: I wish at this time to offer in evidence prosecutor's Exhibit No. 6 which is the original affidavit of Gardner C. Soney. This applies to Specification No. 5 which is the Walsh incident.

DEFENSE: This third paragraph which says:

"At this camp, there was a Japanese private, a medical corpsman, who made a practice of beating prisoners with a belt."

the Defense contends there is no foundation for the "practice of beating prisoners with a belt". That is a foundation for this affidavit. It is begging the whole question.

PROSECUTION: This prisoner was there.

DEFENSE: The defense does not doubt that the man was there, but where a man makes a practice of beating his wife, or a prisoner of war, there must be a foundation laid for it.

PROSECUTION: I think a prisoner can tell what a medical orderly did.

DEFENSE: If the Commission will take notice, Kato's name is not mentioned. There is no foundation for his description of that. If the Commission wishes to see if the prisoner's eyes are bloodshot or wishes to ask if they were bloodshot at the time -

PRESIDENT: At this time the objection is overruled. If it has any bearing on the case it will be considered in due time. It is before the Commission and the Commission reserves the right to read anything presented to it.

(Document referred to was produced and marked Prosecution Exhibit 6 for identification and was received in evidence.)

(Prosecution Exhibit 6 was read by the Prosecution.)

PROSECUTION: I now wish to offer in evidence, prosecution exhibit No. 7 which is the perpetuation of testimony of David A. Granger and this is the original statement or affidavit signed by David A. Granger.

PRESIDENT: Are there any specific objections?

DEFENSE: None, sir.

PRESIDENT: The affidavit will be read and entered as Prosecution Exhibit No. 7.

(Document referred to was produced and marked Prosecution Exhibit 7 for identification and was received in evidence.)

DEFENSE: If the Commission please, may the first name of this Kato be pronounced correctly?

PROSECUTION: Alright, "Tat Sao" Kato.

(Prosecution Exhibit No. 7, excepting those parts stricken, was read by the Prosecution.)

PRESIDENT: Have these affidavits recently been read to the accused and been translated to him?

DEFENSE: They have been translated to him by Mr. Kakehara and the interpreters I have had with me at Sugamo at various times.

PRESIDENT: And does he know what is contained therein as they are being read here?

DEFENSE: That I would not say. He does not read or speak English.

PRESIDENT: You have an interpreter. Has he interpreted the several affidavits to him so that by saying, This is the affidavit of David Granger, the accused may know what is in that affidavit?

PROSECUTION: It might be proper at this time to ask the accused if he wishes these affidavits translated to him, for the purpose of the record.

PRESIDENT: Will you ask the accused if he wants these affidavits that are being read to the Commission translated to him or is he familiar with the contents and knows that the affidavit of such and such a person is being read?

ACCUSED: I know the contents. It is not necessary to have a translation.

PROSECUTION: I now wish to offer in evidence prosecutor's exhibit No. 8 which is the perpetuation of testimony of Burton Verona King. This applies to Specification 4 and the other applies to Specification 4.

I might ask of my own accord for the President or Law Member to glance through that affidavit. There are some things I did not cross out. They are quite broad.

PRESIDENT: You may ask that they be read into the record subject to objection by the defense and ruling by the Law Member of this Commission.

DEFENSE: The specific objections?

PRESIDENT: The specific objections at this time. Yes.

DEFENSE: The answer on page 2, starting from the word "Upon".

PRESIDENT: Which line?

DEFENSE: The first line and ending with the last word of that paragraph on page 3. If the Commission will notice, it has nothing to do with the defendant.

PRESIDENT: The entire answer down to the stricken part on page 5?

DEFENSE: Yes, sir.

PRESIDENT: I will have to read it.

DEFENSE: There is a different objection to the middle part.

PRESIDENT: Does the prosecution intend to connect the incident in this answer with any given camp? I find no reference.

PROSECUTION: No. I have no objection to that being stricken.

PRESIDENT: The complete answer will be stricken.

PROSECUTION: When you say the complete answer, you mean the complete paragraph?

PRESIDENT: It starts, "Upon our arrival in Japan" and ends with "I know that Red Cross supplies containing medicines and bandages were deprived us by the Japanese."

PROSECUTION: The answer is completed on page 5.

PRESIDENT: I am only on page 2 and page 3 at present.

PROSECUTION: I have no objection to that.

DEFENSE: And does that mean on page 3, if the Commission please, down to the words "were deprived us by the Japanese"?

PRESIDENT: Yes. That is all stricken. Apparently that answer is continued.

DEFENSE: The continuation has been stricken by the prosecution prior to its receipt by us.

PROSECUTION: That is right down to the last paragraph on page 4.

DEFENSE: Now, if the Commission is ready to receive the objection to the last paragraph, paragraph 5 on page 4 -

PRESIDENT: Yes.

DEFENSE: From the words 'when the' to the word "provocation" is objected to because it does not pertain to the accused.

PRESIDENT: That is correct. That will be stricken.

PROSECUTION: We have no objection.

DEFENSE: And the first paragraph on page 5 where the affiant says:

"I was not one of the fellows, but I was beaten and slapped around while eating my ration of rice."

That has nothing to do with the accused.

PROSECUTION: I think that is proper for whatever value the Commission wants to place on it. It should be left in there.

PRESIDENT: It is pertinent. It simply states he was not one of the people involved in that particular incident but the rest of the sentence depends on the first part. It is overruled.

DEFENSE: Then,

"Dr. Jackson was aware of these conditions and attempted to get word to Colonel Murata, in charge of Osaka Area, but with no results."

PROSECUTION: I think it is proper. There is evidence of that before and there is evidence that the doctor complained about this mistreatment and it is substantiated by the other affidavits that he did.

PRESIDENT: The objection is sustained. The part beginning, "Dr. Jackson was aware of these conditions" -

PROSECUTION: May I repeat, Mr. President, I do not mean to be argumentative but when you follow that sentence I think it is very material because there has been other affidavits and will be affidavits of the beating of Dr. Jackson.

PRESIDENT: No person is mentioned in this statement about the beating of Dr. Jackson.

PROSECUTION: We expect to follow that up with affidavits referring to this same matter and this witness states he received treatment.

PRESIDENT: You do intend to refer to beating of Dr. Jackson in later testimony - beating by the accused?

PROSECUTION: Yes. Yes, we absolutely do.

PRESIDENT: That changes the complexion and it will remain.

DEFENSE: Starting from the words, "As a result of these complaints" to "beaten severely." That is a conclusion and does not state that the accused is involved or that the affiant saw the beating.

PRESIDENT: Objection is overruled since the prosecution says he will connect it with the beating.

DEFENSE: Then may a note be made of that in case he does not do so he states?

PRESIDENT: Yes. It is overruled on the understanding that the prosecution does connect it up because if he does not, that would merely be an inflammatory statement.

PROSECUTION: Yes. That is quite right.

PRESIDENT: You spoke originally of having some of the formerly stricken part read in the record. You said you did not agree to the striking of certain things.

PROSECUTION: No. I stated I would like to have the Law Member read it over because I felt some of the things objected to should be stricken out because it helped to paint the picture.

PRESIDENT: And I thought you were referring to some that was stricken being ruled in. I understand.

On page 2, line out the answer "On arrival in Japan". all the way down to the end of the page. On page 3, line out everything thereon. On page 4, in the last paragraph, line out beginning with "When the "Bad Butcher" down to and including the words "without provocation.

PROSECUTION: This applies to Specification No. 4.

(Document referred to was produced and marked Prosecution Exhibit 8 for identification and was received in evidence.)

(PROSECUTION Exhibit No. 8, excepting those parts stricken, was read by the Prosecution.)

PROSECUTION: May it please the President, in crossing out the whole of page 5, there is one thing I want to move to correct. The reason I do is because when I read where this man was stationed, he does not refer to Ichioka Hospital but refers to a camp.

In the paragraph on page 5, the 10th line, where it starts, I want to move that that be reinstated because it shows he was definitely in Ichioka Hospital. He refers to a camp.

PRESIDENT: What sentence do you refer to?

PROSECUTION: That is right here (indicating)

PRESIDENT: That sentence beginning "The Japanese doctor" and ending "outdoor stadium" will be read into the record.

DEFENSE: Just for the record, the Prosecutor has not as yet read the signing and the certification of that affidavit.

(Prosecution reads pages 7 and 8 of Exhibit 8.)

In view of the ruling of the court that I read something in the record in the previous affidavit, the court asked me to connect up. I want to call attention of the court to the fact that the statement of Dr. Jackson connects up what the defense counsel objected to in the previous affidavit, Exhibit 8.

DEFENSE: May I ask the prosecution if he is referring to the affiant's paragraph 3?

PROSECUTION: I am referring to the entire affidavit of Dr. Jackson.

DEFENSE: As I understood it, the other affidavit was introduced with regard to Specification 4. This refers to Specification No. 2 and now, if you are connecting them up as the same one, you have one incident referring to two specifications.

PROSECUTION: When I read Exhibit 8 in the record, you objected to,

"As a result of these complaints, Dr. Jackson was beaten severely."

You objected to that because there had been no testimony. The Court admitted that into the record provided the prosecution could connect it up later. Now I come along with Exhibit 9, which is the affidavit of Dr. Jackson, wherein he personally states he was seriously beaten by the Japanese guards for making the complaint.

PROSECUTION: I now wish to offer in evidence the sworn statement of Surgeon-Lieutenant Charles Anthony Jackson which is Prosecution Exhibit No. 9 and applies to Specifications 2 and 4.

DEFENSE: The objection to this affidavit, if the Commission please, on the part of the defense, is to the last paragraph of the first page.

PRESIDENT: What is the basis of your objection?

DEFENSE: In that case you have connected with a war crime only an implication. We have no objection where there is foundation but if the Commission will notice, first, the accused's name is not mentioned. The only possible way he can be imagined there is in the statement "the Japanese began working themselves into a frenzy".

PRESIDENT: There seems to be a relation with the incident previously mentioned. I don't want to argue the matter at this time before the other Commissioners but I think it has probative value. The objection is overruled. Any other objections?

DEFENSE: No other objections.

(Document referred to was produced and marked Prosecution Exhibit No. 9 for identification and was received in evidence.)

(Prosecution Exhibit No. 9, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: This applies to Specifications 2 and 4.

PRESIDENT: The prosecutor has forgotten what the Law Member said. In sustaining the objection originally on the ground that the incident was not connected with the accused, the prosecutor said he would connect the incident with the accused. Does the prosecutor contend the accused is connected with the incident in affidavit Exhibit 9?

PROSECUTION: Yes, Yes.

PRESIDENT: In what way?

PROSECUTION: "Myself and 5 other prisoners of war were the victims of an assault by members of the Japanese staff in July, 1945. This concerned an unjust punishment by physical violence upon the cook-house staff and myself as a reprisal for having reported to the Japanese authorities the theft of food from our meagre rations."

That is Dr. Jackson talking. That is the beginning of the third paragraph, Exhibit 9.

PRESIDENT: I want to refer the prosecutor to the statement that Dr. Jackson, in Exhibit 8, complains of not getting enough food. Then he goes on to say that 18 men were beaten up and says:

"I was not one of the fellows, but I was beaten and slapped around while eating my ration of rice."

Dr. Jackson was aware of these conditions. There has been nothing said about the theft of anything in that paragraph. What is the connection between Exhibits 8 and 9?

PROSECUTION: 9, which is Dr. Jackson's statement, says, "Able Seaman Rhodes" and refers to the beating he received because of theft of rations.

"Able Seaman Rhodes, R.N., Frank Gilbe a civilian employed by the Admiralty as a telegraphist, Hughesen, R.N., Quinn, Royal Marines, and one other whose name I forget. While we", Dr. Jackson is talking, "While we were lined up outside the Japanese office 3rd Class Private, Gate, 1st Class Pte. Tomitini, and a Japanese Corporal cook, whose name I do not know, came up to us, and after taking off their shoes began a general beating up."

PRESIDENT: I am not questioning the beating, but the incidents. In 8 it refers to a beating given because the Dr. complained that they were not receiving enough food. In 9 it complains about a beating given because of theft of food. They are not identical, nor similar.

PROSECUTION: Well, I have more affidavits on that.

PRESIDENT: Well, I rule that the prosecution has not yet connected the accused with the incident and, therefore, the ruling made previously will remain in abeyance as to the matter of the reference to Dr. Jackson being stricken from Prosecution Exhibit 8.

PROSECUTION: So I can be clear, you mean the President is ruling that the reference to Dr. Jackson in Exhibit 8 has not been connected up with Kato yet?

PRESIDENT: You are misconstruing it, prosecutor.

I cannot make it clearer than I have. The objection to Exhibit 8 is that that beating was because they were not getting enough food. The incident referred to in 9 was the theft of food. Not receiving enough food and the theft of food are two different incidents in my mind. Therefore I say the accused has not yet been connected with the incidents in Prosecution Exhibit 8.

The last paragraph on page 1, Exhibit 9, says that prisoners were beaten. It definitely says they were beaten because of a report they were not getting enough food. There is no mention of the accused in that paragraph.

I do not want to argue the case for the defense but I simply point out that you have not yet connected it up with the incident in Prosecution's Exhibit 8.

PROSECUTION: Very well, Sir.

I offer in evidence, Prosecution Exhibit No. 10, which is a photostat copy of a statement, of an Australian soldier, signed before a Justice of the Peace and applies to Specification 4.

DEFENSE: If the Commission please, I wish to object to paragraph (d) as prejudicial and generally not telling any facts at all. It is just prejudicial to the accused on trial here.

PRESIDENT: The objection is sustained.

DEFENSE: I wish to object to the first sentence in paragraph (e) because there is no connection with the accused and the rest of the affidavit regarding that sentence.

PRESIDENT: Any objection to striking that first sentence by the prosecution. Is it connected in any way with the accused?

PROSECUTION: I have no objection to striking that first sentence.

PRESIDENT: The first sentence pertaining to Lt. Commander Page and ending with "Red Cross parcels" is stricken.

DEFENSE: I wish to object to that part of the following sentence which reads, "and the sight of one eye probably destroyed" for it states a medical conclusion for which no foundation is placed and is subsequently mitigated by a further statement in paragraph (j) showing that the affiant was just making a conclusion.

PROSECUTION: I think paragraph (j) supports the very thing you are objecting to. I submit they are both material.

PRESIDENT: Objection is overruled. It has a bearing on the case even though it may be a conclusion. It is based on his observation of the man. We will take it as a layman's statement.

DEFENSE: I then object to all that follows in paragraph (e) as having no connection with this case - "I was a patient" and ending with "rifle butt."

PRESIDENT: Any objection to striking that?

PROSECUTION: Yes. I think it shows the general condition that existed there. It is true he does not specifically name Kato there.

PRESIDENT: And it does not have any reference to the accused.

PROSECUTION: Well, I will consent to striking it.

PRESIDENT: I fail to see it. The objection is sustained, begins with "I was a patient at one time" and ending with "I was slapped on the face, etc."

DEFENSE: I will object to paragraph (j) up to the part where it states "his face was battered". In other words, the two sentences in the first part of that paragraph have no connection with this accused. What the authorities did when the Red Cross came on a visit has no connection with this accused.

PRESIDENT: The first sentence, while it is not pertinent, it does refer to a visit during which a prisoner that was beaten was removed. We will read it in. The objection is overruled.

DEFENSE: That is all. In connection with this affidavit, again the original apparently is not here. The original is apparently in the Australian Division and is the prosecution submitting that as a statement?

PROSECUTION: I am submitting it as a photostatic copy because the Australians do not like us taking out the original. This is the photostat of the original exhibit.

PRESIDENT: Does it have the signature?

PROSECUTION: Yes. It does. That is as good as the original affidavit.

DEFENSE: We will withdraw that objection, Sir.

PRESIDENT: Paragraphs (b), (c) and (d) are all stricken. Paragraph (h) is stricken.

(Document referred to was produced and marked Prosecution Exhibit 10 for identification and was received in evidence.)

(Prosecution Exhibit 10, excepting those parts stricken, was read by the Prosecution.)

PRESIDENT: If there are no objections at this time, the Commission will recess for fifteen minutes.

The Commission then took a recess until 1030 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

PROSECUTION: I wish to introduce at this time Prosecution Exhibit No. 11

which is a sworn statement of Private Harold Rose Shannon. We have a typed copy of it loaned to us by the Australian Government representative. It refers to Specification No. 4.

DEFENCE: If the Commission please, the defence objects to the beginning of the last paragraph, the first page, starting with the words, 'This hospital' and ending with the words 'invariably stole portions.'

PRESIDENT: Any objection to striking that by the prosecution?

PROSECUTION: Yes. I think that is material to show the condition of those men whom we claim were beaten. The conditions surrounding them, I submitted in my opening statement - the beating of a sick man is more serious than the beating of a well man and I say that is matter to show the conditions under which these sick men were living in hospital.

DEFENCE: If the Commission please, as to what the prosecution has just stated, in the paragraphs or portions of any of the affidavits where it states that the accused beat up routine sick patients and so forth, we have not made an objection. But this is nothing new. It has been ruled on by the Commission before in other affidavits previously introduced.

PRESIDENT: The part will be stricken beginning however only with the sentence starting 'The food ration here was very bad'. The other part could have a bearing on the accused to show the condition of the people in the hospital. 'The food ration here was very bad' and ending with the end of that paragraph.

PROSECUTION: I understand your Honor is striking out the whole paragraph?

PRESIDENT: Leaving in the first sentence, "This hospital was virtually a place..."

DEFENSE: The last of the next paragraph starting with "Invariably, these predictions" and ending with the word "Army", if that can be taken as part of that paragraph.

PRESIDENT: Only the part will be stricken beginning, "Whilst at this hospital" and the reference to the clothing.

DEFENSE: Defense submits that the last paragraph pertains to this other camp or camps.

PROSECUTION: I will strike it out but I do want to go on record as objecting to striking out the sentence the court struck out because I have no objection to "daily due to malnutrition" because this man has not got the responsibility of feeding the prisoners but referring to ill treatment I think it is important in this case.

PRESIDENT: It is not relevant to any specification charged against the accused. The last paragraph the prosecution agrees to strike out beginning "medicines"?

PROSECUTION: Yes.

PRESIDENT: Strike on the bottom of page 1, that part beginning with "The food ration" and the remainder of that paragraph.

Strike the last two sentences of the next paragraph beginning "Whilst at this hospital" and all of the final paragraph.

PROSECUTION: Now, Members of the Commission, I think this is one of the affidavits that when it was served on the defense it had paragraphs 4, 5, 6, 7 and 8 on page 1 all stricken.

DEFENSE: Before the prosecutor reads this affidavit into the record may we know to which Specification it refers?

PROSECUTION: Specification No. 4.

(Document referred to was produced and marked Prosecution Exhibit No. 11 for identification and was received in evidence.)

(Prosecution Exhibit No. 11, excepting those parts stricken, was read by the Prosecution.)

PROSECUTION: I now offer in evidence the perpetuation of testimony of Ferdinand Victor Bosley. This applies to Specifications 1 and 4. I had the original signed by Mr. Bosley.

DEFENSE: The defense has no objection to this entire affidavit.

PRESIDENT: It will be received as Prosecution Exhibit No. 12.

(Document referred to was produced and marked Prosecution Exhibit No. 12 for identification and was received in evidence.)

(Prosecution Exhibit No. 12, excepting those parts stricken, was read by the Prosecution.)

DEFENSE: Sir, in introducing this affidavit, prosecution stated it refers to Specifications 1 and 4. Only one incident has been described. Is it the contention that both 1 and 4 are both based upon one incident?

PROSECUTION: Now, I think that is a matter for argument. I have submitted the matter to the court.

PRESIDENT: It requires no discussion. As stated previously, reference to a specification is merely for convenience in filing these affidavits. The Commission will give due weight to the nature of the testimony.

PROSECUTION: I wish to offer in evidence at this time photostatic copy of the original signed affidavit of Wilfred Brian Ashworth. This applies to Specification No. 4. This is an Australian affidavit and we have the photostatic copy properly signed.

DEFENSE: The only objection the defense has is to paragraphs 13 and 14.

PROSECUTION: May it please the Commission, I left that in for the same reason as previously stated for it shows the condition of this camp at the time stated.

DEFENSE: The affiant is not a doctor. He is in the Signal Corps.

PRESIDENT: The Commission will take note that opinions given by non-doctors are the opinion of laymen. Paragraph 14 is not relevant. 13 will remain. 14 will be stricken.

(Document referred to was produced and marked Prosecution Exhibit No. 13 for identification and was received in evidence.)

(Prosecution Exhibit No. 13, excepting those parts stricken, was read by the prosecution.)

PROSECUTION: I wish to offer in evidence the original signed affidavit of Robert Arthur Wickens which affidavit applies to Specifications 4 and 1.

DEFENSE: Objection is made to paragraph 4 as not being relevant to this case and furthermore for the conclusions of a rubber technician on medical matters.

PRESIDENT: Objection is overruled. It will remain in as having possible probative value.

DEFENSE: On paragraph 7, no connection is shown with this accused and again we have the medical conclusions but very specifically, it is irrelevant to this accused.

PRESIDENT: It will be accepted as the opinion of a non-medical man and the objection is overruled.

DEFENSE: Even the non-medical matter does not show any connection with Kato.

PRESIDENT: I am reading only what you are calling attention to. I thought you were basing your objection on the fact that he is a layman making medical conclusions.

DEFENSE: And also because it is not related to the accused.

PROSECUTION: Paragraph 3 definitely names the defendant. Four and five, and five especially, definitely tells you about the treatment administered to this affiant by Kato. Then paragraph 7 tells you how that mis-treatment affected the man he is talking about.

PRESIDENT: If it has no bearing, the Commission will -

DEFENSE: The same applies to paragraph 8. There is a medical conclusion given by this rubber technician.

PRESIDENT: The defense has a right to its opinion. The objection is overruled.

DEFENSE: Paragraph 8. I don't know whether this witness had access to the hospital records and was in a position to make the statement that he did make.

PRESIDENT: We have to accept the statement he did have and your objection is overruled. It will be given due credence.

DEFENSE: In paragraph 11, the witness states a conclusion of law in accusing several persons of stealing and no such specification is charged against this accused.

PRESIDENT: That objection is sustained and paragraph 11 is stricken.

PROSECUTION: May I state that under Specification 4, the latter part of that specification states "by otherwise abusing them". The prosecution contends that stealing supplies was "otherwise abusing them."

PRESIDENT: It is not pertinent and will be stricken.

PROSECUTION: The only other reason I feel it pertinent was the fact that many of these beatings arose from Mr. Jackson's or Major Ackerman's complaints of the stealing of the food.

PRESIDENT: We have seen affidavits so stating. This paragraph will be stricken as not being pertinent.

DEFENSE: Paragraph 12 is subject to the same defects, if the Commission please.

PRESIDENT: Objection is sustained. Of course, 12 will be stricken.

DEFENSE: And 13 is not relevant at all to this case that I can see.

PROSECUTION: I have no objection.

PRESIDENT: Thirteen will be stricken.

(Document referred to was produced and marked Prosecution Exhibit No. 14 for identification.)

(Prosecution Exhibit No. 14 was read by the Prosecution.)

PROSECUTION: May it please the Commission, I wonder if we may have a five minute recess. That is all our affidavits and may possibly be all of the proof of the prosecution. I would like to have a five minute recess before proceeding further.

PRESIDENT: We had better take a recess and see whether you have anything further.

PROSECUTION: However, the Commission may wish to adjourn now and come back at 1:15 and then I may rest my case.

PRESIDENT: If you so desire.

DEFENSE: We prefer to have a short recess now to find out if the prosecution has concluded his case because we would like to have time to make motions.

PRESIDENT: How long will it take? We will take a ten minute recess.

The Commission then took a recess until 11:30 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

PROSECUTION: Now, may it please the Commission, in view of the ruling on the last affidavit wherein it is my understanding that the President ruled that the misappropriation or stealing of rations did not come under abuse of war prisoners, I want at this time to move on the record that I be allowed to amend Specification 4 by adding these words:

> "did steal, misuse and misappropriate Red Cross supplies and rations of prisoners of war."

I am making that in order that that will comply with the proof in some of these affidavits.

PRESIDENT: Any comment by the defense?

DEFENSE: If the Commission please, we have prepared a defense based on those specifications which we have had for quite a time. We are not prepared for any additions or amendments to the specifications. We will, of course, have to ask for an adjournment long enough to consult with the accused at Sugamo and if that be the case, we will have to request that it be on a motion for this reason, because we do not wish to be responsible for delaying the trial.

PROSECUTION: In respect to that, the defense does know that the prosecution has the privilege at the conclusion of their case to always make a motion to conform their pleadings to the proof.

PRESIDENT: The Commission is cognizant of that fact. The Commission will recess to decide this matter.

The Commission then took a recess until 1150 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

The Commission denies the motion to amend Specification 4 by an insertion such as the prosecutor mentions, but will entertain a motion to add a new specification under the charge to be received upon resumption this afternoon.

PROSECUTION: Members of the Commission, I think under the pleadings, that new specification would possibly have to be signed by Colonel Carpenter. That is my understanding.

PRESIDENT: I do not think so. I think under SHAP rules we can receive a new specification. The Commission considers misappropriation of supplies cannot even remotely be considered abusing the prisoners. The word "abuse" is a word that directly applies to a positive act committed against a prisoner of war.

PROSECUTION: Well, if we can have until 1:30 we will prepare an additional specification and ask to include that in the charge.

PRESIDENT: I would like to be sure we are correct in that.

DEFENSE: Sir, this is going to create immeasurable complications. Specifications will have to be translated into Japanese and a copy served on the accused.

PRESIDENT: We know all of that, but if it is legal, the specification -

DEFENSE: I merely mention that so that the prosecution may reconsider its intention in regard to that matter.

PRESIDENT: The ruling that it may be admitted is based purely on the fact that there is a statement or possibly more than one that deals with misappropriation of food and certainly does not warrant an assumption that the Commission will find the accused guilty.

PROSECUTION: May I suggest this: It is my understanding that, perhaps, it would have to go through and be signed by Colonel Carpenter and might have a tendency to delay these proceedings. In view of that I think I will withdraw my motion and let us decide this case on the specifications before the Commission. Therefore, if the court has denied the motion to amend we will not make a further motion.

PRESIDENT: It would certainly simplify this case and if you later desire to you may charge on a separate charge and specification.

PROSECUTION: I withdraw my motion to add a new charge and the prosecution rests its case.

DEFENSE: Before making its motions to dismiss, the defense would like to have a continuance until two o'clock this afternoon.

PRESIDENT: Any objection by the prosecution?

PROSECUTION: We have not.

PRESIDENT: By the Members of the Commission?

PROSECUTION: I would like to ask this, that if you have any written motions you could have some copies and -

DEFENSE: We have nothing written now and I have no intention of writing anything.

PRESIDENT: The Commission will recess until 2:00 o'clock.

The Commission then took a recess until 1400 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

WEDNESDAY AFTERNOON
29th January, 1947

PRESIDENT: The Commission will be in session.

PRESIDENT: : Before the defense proceeds, the Commission would like to know why the name of Major Ashcayd was omitted from Specification 1?

PROSECUTION: May it please the Commission, if you will examine all the affidavits we have submitted you will find that four or five victims were not named in definite specifications and I had to cover them in the blanket specification. The reason for that is this: the record introduced ordering this trial will show that the trial was ordered some time in October. The case had been prepared back in August and sent to the Eighth Army. There were about six affidavits and they would show that some of them were taken in Australia as late as October 18th so there is about six affidavits that we knew nothing of and which were not in the files and records at the time we prepared these specifications and our cover-all specification No. 4. The Ashcroyd affidavit does not show the date it was taken. It says,

"Sworn at Heidelberg in the State of Victoria this day of 1946."

PRESIDENT: That is true and without trying to remember what is in all the other affidavits, it appears that Specification No. 1 was drawn on the basis of Major Ashcroyd's affidavit. He names the other people but he also names himself as a victim.

PROSECUTION: There were other affidavits naming themselves. Ritema names himself. I am not sure, although I prepared most of the pleadings in this case.

PRESIDENT: There seems to be some direct evidence of a beating of Major Ashcroyd and the Commission therefore desires that the name of Major Ashcroyd be written in Specification 1 unless the prosecution has an objection.

PROSECUTION: I was leaving it in the cover-all specification because we named numerous prisoners having been beaten and in my argument, I will show there was at least five different men who are not named specifically in the specifications because we did not have all the affidavits we have now. That is why we put in the overall specification. But I will be glad to include that name in that specification if the Commission would prefer it there instead of in the blanket specification No. 4.

PRESIDENT: If you intend to include other names mentioned in evidence and not in specifications, perhaps it is just as well to include Major Ashcroyd at that time.

PROSECUTION: That is what I intended to do.

DEFENSE: At this time the defense moves for a directed verdict of Not Guilty in respect of Specification No. 1 with reference to Lieutenant Everett Manual Genies on the ground that the proof submitted to the Commission is insufficient to sustain a finding of guilty under the Specification.

There are but four affidavits which refer to Lt. Genies:

1. Prosecution's Exhibit No. 1, the affidavit of Major Ashcroyd refers to him in paragraphs numbered 16 and 28(a). Paragraph 16 states that the accused with another compelled the Lieutenant to "hold forms (sic) above their heads, for up to an hour at a time, on many occasions."

It is respectfully submitted that this may certainly have been inconvenient but by no stretch of the imagination can be extended to constitute a war crime.

PRESIDENT: Perhaps you have not read paragraph 28 of that same affidavit.

DEFENSE: I was going to refer to that. In paragraph 28 there is no mention of this specific accused. There is the general statement that "the staff and patients were then dismissed with the exception of Lt. Genico, Sgt. Wickens and myself who were stood to attention and beaten for some minutes and then dismissed". There is no mention that this accused participated in that beating.

The second affidavit which mentions the name of Lt. Genico is that of Ritema.

PRESIDENT: Before proceeding, let me write down exactly what you are moving.

DEFENSE: I am moving to dismiss Specification No. 1 with respect to Lt. Genico.

PRESIDENT: With respect to Lt. Genico only?

DEFENSE: At this point, yes. On the ground that the proof tendered by the prosecution is insufficient to sustain a verdict of guilty under the specification as charged.

In Ritema's affidavit, Prosecution Exhibit No. 3, there is no mention made that Genico was beaten either by this accused. The name of Genico is not even mentioned and Genico was supposed to be, and both were supposed to be together in this affair, and Ritema, who was present and gives a very complete affidavit does not mention the name of Genico.

He does mention, and I do not want to overlook anything, that that same night one of the doctors was slapped by Kato. Genico is said to be a pharmacist, so it could not possibly be the same person in his mind.

The next affidavit referring to Lt. Genico is that of Commander Berley. This has been previously referred to. On page 2, it states that Lt. Genico, Major Ackeroyd and the affiant were in front of the morgue for the evening "tenko". It continues that Kato passed the three men but then another Japanese who followed, one Bando, struck Ackeroyd and everyone down the line. Possibly Lt. Genio was then struck. That may be the incident to which the prosecution refers. But that was Bando, not Kato. To make matters even clearer, Commander Berley continues and specifically states that Kato "had not taken an active part in the beating."

If any affidavit were ever entitled to credence, it is the carefully stated affidavit such as that of Commander Berley where, as the Commission can see, he very carefully and assiduously goes through the matters in great detail and his recollection is of the events of May 8th with which the accused is charged under Specification No. 1.

I am reading from page 4, second line, "when the whole thing was over, Kato, who had not taken an active part in the beatings, took Ackeroyd, Genico and myself into our office and said, 'Now, you see

you speak to doctor - no good." He was apparently being solicitous of their welfare.

Prosecution Exhibit No. 14, which is the affidavit of Wickens, again mentions the incident where the three of them were beaten. It, again, does not specifically name Kato in that incident. It merely makes a general statement that the three Japanese were there. Commander Berley said the three of them were there. Berley said two of them participated in the beating. The third did not.

That is all the mention that is made of Lt. Sonies.

PROSECUTION: Is that the end of your motion?

DEFENSE: As to Lt. Sonies, Yes.

PROSECUTION: May it please the court, referring to the Wickens affidavit, the last one read. The Japanese in charge of Ichioka was Sergeant Major so-and-so and was assisted by Kato and Nakayama and Kitamura. Then he goes on to give the description of these men.

"On May 8 1944 I experienced a severe backing at the hands of Bando, Cato and Nakayama."

Then, he goes on to tell what happened. Paragraph 6, "The three Japs" he has named, that is Kato, Bando and Nakayama, "The three Japs finally came back to us and dismissed the staff with the exception of Major Akroyd, myself and a Dutch Lieut B. M. Sonie. They then bashed the three of us for about half an hour with belts and kicked us on the shins with their boots."

He tells how the three men did the beating but does not name Kato in paragraph 6, but he is talking about the three men in paragraph 5.

PRESIDENT: Which affidavit are you reading from?

PROSECUTION: The Wichems affidavit.

PRESIDENT: May I ask now, with a view of possibly saving time, what effect it will have on the defense if the Commission should find in these cases now rather than at the end of this trial?

DEFENSE: Well, for one, it will shorten the trial. In that way we do not have to meet other issues and submit additional proof if there is no evidence to support the specification.

PRESIDENT: May I ask how many witnesses of any kind might have to be questioned on this if they remain in the specification?

DEFENSE: We were only going to introduce one witness as to that which would be the accused.

PRESIDENT: One live witness other than the accused?

DEFENSE: The accused.

PRESIDENT: I cannot see that there will be any advantage in the Commission closing now to debate this case rather than wait to the end of the trial and let you argue at that time for findings of not guilty.

DEFENSE: It is the basic right of any accused.

PRESIDENT: You are quite right, but as President of the Commission I am also directed by SCAP to expedite the trial. If there is an advantage to the accused in interrupting it now to find on certain specifications and not on others, we will do it.

DEFENSE: If there is any doubt in the Commission's mind on any of these questions, they may reserve decision and we will continue on these motions and it will probably take the rest of the afternoon, and tomorrow morning the Commission will be ready with its decisions and the accused's rights will be maintained.

PRESIDENT: Alright.

DEFENSE: Thank you, Sir.

PROSECUTION: Then I submit, in further answer to his argument, that Exhibit 14 specifically names Kato, when you read it together with the others, as having beaten E. M. Conica. Ritsma's affidavit refers to himself. Wickens' affidavit specifically mentions the beating of him. The other affidavit he referred to also goes on to say this:

"We were ordered to line up, also the patients, with the exception of the worst."

Referring to the medical men there, "Kato, Bando and Nakayama took roll call and the slapping, beating and kicking started for the patients, nurses and doctors all the same."

DEFENSE: Which affidavit is that?

PROSECUTION: That is Ritama's affidavit. "When the doctor tried to intervene for the sake of one of the patients by name Bonsoni (he could hardly stand - "

PRESIDENT: I am sure the Commission can read these things. If four members are going to read this separately - we are not mental gymnasts who jump here and there through these affidavits. I am sure this Commission will save time if we read these affidavits carefully and decide whether or not these people are mentioned in there.

PROSECUTION: I want to agree with what the President stated a while ago. I cannot see any time lost for the defendant if he puts in his testimony and then makes his motions at the end of trial because this argument we are going to have will take this afternoon. In order to answer the argument, I have to stand here and read practically every affidavit.

PRESIDENT: The Commission is not prepared to receive these and have them hastily read. We would have to go into closed session. If you are going to have some ten or twelve witnesses -

DEFENSE: We will only have one witness.

PRESIDENT: You are going to have only one witness?

DEFENSE: I am sorry sir. I meant as to Lt. Denice we were only going to have one witness. We may have other witnesses.

PRESIDENT: You may have other witnesses?

DEFENSE: Yes. And I thought we might reach an agreement. We would argue the motions and not delay the trial. Then the Commission could make decisions tomorrow morning and we would not have the same arguments repeated again.

PROSECUTION: It strikes me counsel intends to make a motion on every specification and it should be in the nature of a written motion so we could answer it in a proper way or we would have to answer it by picking out a few lines here and there.

PRESIDENT: I would like to be sure what SCAP rules provide. Do they not provide for a written motion so we can also consider it. I am not sure. I would like to look that up before we proceed.

PROSECUTION: Rules of Procedure 1(c), Eighth Army.

PRESIDENT: I am going to rule that the defense must present to the prosecution and the Commission written outline of a motion so that both the prosecution and the Commission can read the affidavits referred to. The defense has had an opportunity to read them. We have not, nor can we follow them in the rapid fire argument.

DEFENSE: Sir, I appreciate that point but I do not see how we can submit written motions today. The prosecution has just ended his case. We did not know which affidavits would be submitted. Some affidavits are withheld and we have to wait until the prosecution finishes his case to know on what he rests his argument. If we are to put in written motions, we now need time and will try to do so as quickly as possible if the Commission so desires.

PRESIDENT: I am very reluctant to rule against anything that may seem to be the right of the accused but I cannot for the life of me see any point in moving to find anything at the present time. We are just taking more time.

The Commission members are quite competent to read these affidavits and they do read them and they do it jointly. I am sure, in your closing argument, you can point out additional discrepancies we may have overlooked. But to proceed along the line we are now going we would have to go into closed session because we would not take your word that these are the only ones, and again, at the close of the trial. I can not see that the rights of the accused will be jeopardized by letting the trial proceed and letting the argument proceed at the end. I cannot prevent you from making the motions, but I would like to have them made without too much argument and then we will go into closed session to decide whether to deny or agree with them.

DEFENSE: May we have a recess to discuss this matter?

PRESIDENT: We will recess if you will inform the bailiff when you are ready.

The Commission then took a recess until 1415 hours at which time the personnel of the Commission, prosecution and defense, and the accused, interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

DEFENSE: We consulted over the telephone with Major Philips, Chief of War Crimes, and he said that it cannot be permitted that the accused's rights should be so waived that these motions should not be made; that if the court desires that they be in writing that it would be necessary to have a continuance of two days in order to prepare written motions on these various specifications.

PRESIDENT: May I ask how many motions defense intends to make in respect to these specifications?

DEFENSE: Two on the first specification and one on each of the others; and possibly two on the seventh.

PRESIDENT: Then the Commission will request that the motions be made in writing; and the Commission will adjourn until the defense has prepared its motions.

DEFENSE: Alright sir, will that be Friday afternoon?

PROSECUTION: May the prosecution reserve the right prior to introduction of such motions to introduce such further evidence as may come to our attention?

DEFENSE: This is something new. The prosecution has rested its case.

PROSECUTION: The prosecution may introduce new evidence at any time.

PRESIDENT: There is no question but what the prosecution can bring in new evidence. I was simply hesitating forthe moment to decide when it should be introduced.

PROSECUTION: Well, if these motions are going to be written, we should have an opportunity to check them over when they serve them on us.

DEFENSE: I frankly do not think it will be convenient to have them until Friday morning. If any are completed earlier we will send them over as soon as they are completed.

PRESIDENT: This is for the Commission. We desire to have these motions in writing. Alright, you will be prepared when?

DEFENSE: For the afternoon, Sir.

PRESIDENT: Alright, the Commission will adjourn until 1:30 on Friday.

PROSECUTION: When will we be served with these motions?

PRESIDENT: If you are not prepared at that time - we are not being impressed by what Major Philips thinks - the Commission acts under the rules of SHAEF. However, as President, I do not wish to deny the accused any of his rights. Therefore, we will entertain written motions Friday.

DEFENSE: If the 24-hour rule is not strictly enforced we may be able to serve these on the prosecution on Thursday night or Friday morning. Now, would that be sufficient time for the prosecution, if we refer to these various affidavits properly, of course.

PROSECUTION: If you will give us the substance of what you intend to complain about in each specification we will try to meet it.

DEFENSE: We can state the substance right now: that the evidence offered by the prosecution does not make a case. It is a summary of the evidence to show that the evidence, as it affects the specification, does not sustain any finding of guilt.

We will accept the prosecution's offer, if it please the Commission.

PRESIDENT: The Commission does not require your argument in writing. We want your motions and reference to affidavits, not a lengthy argument. We intend to read these affidavits very carefully and in this hasty reading of fourteen affidavits, we do not retain the facts contained in each. We must reread and practically memorize them. We need time to listen to you.

The Commission will then adjourn until Friday afternoon to meet at 1330 on Friday.

The Commission then at 1440 hours on Wednesday, 29th January, 1947, adjourned to meet at 1330 hours on Friday, 31st January, 1947.

Franklin E. Morris
Chief Prosecutor
Herman M. Greenfield
Chief advisory counsel

John F. Roehm

JOHN F. ROEHM, COLONEL, MC.,
President.

Yokohama Court House,
Yokohama, Japan,
Friday, 31st January, 1947

The Commission met, pursuant to adjournment, at 1330 hours, all the personnel of the Commission, prosecution and defense, who were present at the close of the previous session in this case, being present.

The accused, the interpreters and the reporter were also present.

PRESIDENT: The Commission will be in session.

DEFENSE: Sir, we adjourned last Wednesday to present to the Commission in writing motions made for a directed verdict of not guilty. Does the Commission wish me to read these now so they will be in the record.

PRESIDENT: I think the reporter might make a note and attach it as an exhibit.

DEFENSE: I think the prosecution would like to argue each one separately.

PROSECUTION: And while doing that I thought I would point out where I think the defense is mistaken.

DEFENSE: May the record also show that we did give written copies to the prosecution prior to meeting now?

PROSECUTION: Then, if I might proceed, I might call attention -

(Reporter's Note: Motions of the Defense above referred to are incorporated in the record at this point).

MOTIONS

Motion for Directed Verdict of Not Guilty (Specification 1)

The defense moves this Commission for a directed verdict of not guilty on Specification No. 1 with reference to Lieutenant Everett Manual Genice on the ground that the proof submitted to the Commission is insufficient to sustain a finding of guilty under the Specification.

There are but four affidavits which refer to Lt. Genice:

1. Prosecution's Exhibit No. 1, the affidavit of Major Ashcroft refers to him in Paragraphs numbered 16 and 28(a). Paragraph 16 states that the accused with another compelled the Lieutenant to "hold forms (sic) above their heads, for up to an hour at a time, on many occasions." It is respectfully submitted that this may certainly have been inconvenient but by no stretch of the imagination can be extended to constitute a war crime.

b) Paragraph 28 states that Lt. Genie and two others "were stood at attention and beaten for some minutes, and then dismissed." It does not state that Nate, the accused, took any part in this particular abuse. It must be further borne in mind that this incident is that of May 8, 1944 (paragraph 18) and that Commander Berley, who was present and not beaten and at all times was in a perfect condition to observe, specifically excludes Nate, the accused. (Prosecution's Exhibit No. 12, Pg. 4, line 3).

2. Prosecution's Exhibit No. 3, the affidavit of Hendrick J. Ritsma. This affidavit mentions Lt. Genie as the Pharmacist on the Prisoner of War Staff. It does not mention any beating of Lt. Genie. Since both were Dutch, it can be assumed they know each other and would know of any beatings suffered.

3. Prosecution's Exhibit No. 12, the affidavit of Commander Berley. This has been previously referred to. On page 3, it states that Lt. Genie, Maj. Ackroyd and the affiant were in front of the morgue for the evening "tenko." It continues that Nate passed the three men but then another Japanese who followed, one Bande, struck Ackroyd and everyone down the line. Possibly Lt. Genie was then struck. That may be the incident to which the Prosecution refers. But that was Bande, not Nate. To make matters even clearer, Commdr. Berley continues and specifically states that Nate "had not taken an active part in the beating."

4. Prosecution's Exhibit No. 14, the affidavit of Robert Arthur Wickens refers to Lt. Genie in Paragraph 6. This is subject to the same defect as previously mentioned in Major Ackroyd's paragraph 28. It refers to the same incident of May 8, 1944 (Paragraph 5). It refers to the "three Japs" and a beating. But it does not say Nate participated in the beating. He was there. Commdr. Berley so states. But despite his presence, Commdr. Berley explicitly states he did not participate in the beatings. It should be further noted that no affidavit from the alleged recipient of the beating has been put in evidence by the Prosecution. It follows that Nate can be convicted of beating Lt. Genie on the basis of the evidence adduced by the Prosecution only if there is an imputation read into statements explicitly refuted by Commdr. Berley. The Commdr. does not lay all guilt on "three Japs" equally and without consideration. He carefully explains the the role each of the three played in the events of the evening. Hence it is the conclusion of the Defense that the motion for a directed verdict of non-guilty on Specification 1 with reference to Lt. Genie should be granted.

Motion for a Directed Verdict of not Guilty (Specification 2)

Exhibit 9, Jackson's Affidavit, doesn't state that the accused hit him. Exhibit I, Akroyd states that Tomatani beat all the prisoners of the war staff with the exception of officers on one occasion. That on another occasion, Major Akroyd saw Lt. Jackson and his cooks beaten for over an hour by the Japanese quartermaster's staff, because Lt. Jackson made inquiries about rations. Most important, is that Akroyd stated he saw. The Defense contends that the alleged beating mentioned in Exhibit I is the same one as alleged by Exhibit 9, and since the Prosecution stated that the accused was a medical orderly, he is not guilty. It is not the fault of the Defense that the Prosecution has seen fit to introduce conflicting and contradictory evidence. A very simple method would have been to obtain affidavits from the other prisoners of war named in this specification and if in support, a case against the accused could have been made. There has been ample time.

The three elements that must be demonstrated in every crime are not proven. They are: I. That a crime has been committed. II. That the accused committed it. III. That he did it with the requisite criminal intent. Defense contends that the incident as a whole even using the statement of Jackson is not even a war crime, and further, calls attention to Article 46 of the POW part of the Geneva Convention.

Motion for Directed Verdict of Not Guilty (Specification 3)

Welford's affidavit, Exhibit 5, is not corroborated as to this accused. Is a single unsubstantiated affidavit, such as this one sufficient: This Exhibit only implies that the accused beat Welford. It is vague in detail. Again, why no corroboration from any member of the cook-house staff other than Welford? The Exhibit mentions the Japanese staff. Is this the basis for the charge against the accused? The Defense respectfully calls Commission's attention to Exhibit I. What staff does this refer to? Does it not refer to the same quartermaster's staff and is not the accused named as a medical orderly? The prosecution is bound by the evidence it introduce. Vague reference in other exhibits fail to bolster their proof against the accused. The defense contends that the same three elements of a crime have not been proven. Has the prosecution proved this specification beyond a reasonable doubt and to a moral certainty?

Motion for Directed Verdict of Not Guilty (Specification 7)

The Defense moves this Commission for a directed verdict of not guilty on Specification 7 on the grounds that the proof submitted by the Prosecution is insufficient to sustain a finding of guilty under this Specification.
This Specification is the famous Prosecution catch-all provision. It will be recalled that the Defense initally objected to this Specification on the grounds that it failed to apprise the accused of the specific charges he was required to meet as required in SCAP regulations (LO 5 Rec. 45, Par. 5, Subd (b), Sub - Subd 1) and that its inclusion was inflammatory and prejudicial to the accused. The objection at the time was overruled.
Now the cat is out of the bag. When the Commission suggested to the Prosecution at the conclusion of the Prosecution's case that it would entertain a motion to include the name of Major Ackeroyd in Specification No. 1, the Prosecution declined. It stated that Specification No. 4, the catch all specification for events affecting this accused at the Ichiken PW Hospital was intended to cover subsequent affairs arising from subsequent affidavits not in the hands of the Prosecution at the time the Specifications were drawn, that the Specifications as drawn were based on the affidavits then at hand and that the catch-all specification was sufficient to embrace the subsequent affidavits, including that of Major Ackeroyd. Hence this catch-all specification is initially made not upon evidence at hand but upon the hopes of receiving subsequent evidence in the form of affidavits. Now, unfortunately from the viewpoint of the Prosecution there were no subsequent affidavits with reference to Yokkaichi PW Camp. Their hopes fulfilled in Specification No. 4 must fall in Specification No. 7. The incident of the beating of the beating of four persons was known to the Prosecution at the time they drew the Specifications. They then chose to limit it to Walsh. They sought other incidents for No. 7. Having made their choice, the Prosecution must be stuck with it. Can one incident be compounded into many Specifications? Then there could have been another separate Specification for Sellenberger, who is alleged to have been one of the four persons beaten. And two more Specifications for the other two alleged victims.

As previously stated, in a moment of weakness, dictated by the exigencies of the moment, the Prosecution stated this type of specification was drawn to cover subsequent hoped for affidavits. This hope proved a delusion. So the Prosecution now seeks to compound this one incident into two Specifications.

It will further be noted that no affidavits came because there were no other incidents involving this accused. Sergeant Dunmore testified that except for this one incident the accused was never involved in any beating whatsoever at Tokmaichi. And he stated that had he been he would have known thereof.

Hence it is respectfully submitted that this motion should be granted.

PROSECUTION: Then, if I might proceed, I might call attention to these different paragraphs and cite wherein I think the motion should be denied.

I was given this motion about twelve o'clock today and have not spent a lot of time on it but I am prepared to argue it right now to save time.

With reference to Specification No. 1,- it is a motion to dismiss Genice from that specification. Counsel has cited the affidavit of Major Ashcroft. Pertaining to this and in that affidavit, Major Ashcroft refers to Genice being compelled to do certain things.

In that same affidavit, members of the Commission, I want to call your attention and ask you to make a notation of it, of two or three paragraphs that counsel has overlooked because I say that is the gist of this whole thing. That is Exhibit No. 1.

The thing I want to call your attention to specifically is paragraph 22. The reason I call your attention to that is that Major Ankersyd was referring to the May 8th incident, as you will notice from paragraph 18, and he says, "About two hours later Chashi left the camp, followed later by Kitamura and Ohama, leaving Kato, Nakayama and Bando as the only three Japs in the camp." So, on the evening of May 8 at 2000 hours, all Japs had left the camp except Kato, Nakayama and Bando.

Now, let us read paragraph 25:

> "At 2000 hours, I took the parade for rollcall, Kato appeared to take the report. I bowed, and before I recovered from bowing, Bando came from behind Kato, with two slippers and proceeded to beat me in front of the whole parade. Kato took off his belt, and beat me with it also."

Genice has not been mentioned yet.

MEMBER: For the sake of the record, may I correct you. For "2000 hours" it is "twenty hours". That is correct. I think the reporter should so report it.

PROSECUTOR: Thank you.

Now, going on to paragraph 28 on that page:

> "The staff and patients were then dismissed, with the exception of Lieut. Genie, Sgt. Wickens of 2/9 Hm, and myself, who were stood to attention and beaten for some minutes, and then dismissed."

I will show you later that Genice was a pharmacist connected with the staff. Let me cite what counsel set up in his brief. Looking at paragraph (h) in the brief,

> "Paragraph 28 states that Lt. Genice and two others 'were stood at attention and beaten for some minutes, and then dismissed.'"

The significant part of that paragraph is that "the staff and patients were then dismissed" with the exception of Lt. Genice, Sgt. Wickens and myself. He says in his brief that they were dismissed with two others except himself. The affidavit says Genice, Wickens and "myself". After the mass beating in the hospital, everybody is dismissed but Wickens, Genice and Ackeroyd. All the Japanese are in the camp, Kato, Bando and Nakayama.

Now, let us look at this fellow Wickens. He says three members of the staff at the hospital - three Japs were present. Exhibit 14 referring to May 8, the very night this all happened. "Approximately one hour later Okana left the camp. The climax occurred at 2000 hours when we were lined up for roll-call. Bando, Gato and Nakayama came into the hospital and after ordering the PoW to salute them commenced to bash first of all Major Akroyd and the remainder of the PW hospital staff in turn. The bashing was given with belts, slippers or bayonet scabbards. I was next to Major Akroyd and was the next to receive a bashing which lasted about a quarter of an hour and which was given with the heel end of a slipper. The bashing of the staff lasted about half an hour after which Bando, Gato and Nakayama proceeded to the sick bays where the sick and dying men were lying and proceeded to kick and ill-treat them."

On further in paragraph 6 -

DEFENSE: May I protest against the reading or irrelevant and inflammatory matter on Specification 4 when we are arguing Specification 1.

PRESIDENT: Please make these arguments short. The Commission can read all the affidavits. If you point out just the statements that pertain to the facts you will save our time. We have read these three or four times and it is only a matter of courtesy.

PROSECUTION: The next paragraph, paragraph 6, in the Wickens statement he says the three were there:

> "The three Japs finally came back to us and dismissed the staff with the exception of Major Akroyd, myself and a Dutch Lieut R. N. Genie. They then bashed the three of us for about half an hour with belts and kicked us on the shins with their boots."

Ackeroyd says Genie was there. Wickens comes along and says how Kato and Bando came there and beat Ackeroyd and the others and there were only three Japs in the camp.

I submit Specification 1 has been established beyond any question of doubt.

On 2 pecifications 2, 3 and 7,- I am glad they compounded 2 and 3 because I intended to argue them together anyhow.

Specification No. 2 refers to the beating of Surgeon-Lieutenant Jackson, Rhodes and J. J. Quinn, Marine. The affidavit of Surgeon-Lieutenant Jackson, paragraph 3, reads as follows:

> "Myself and 3 other prisoners of war" - I want you to bear that in mind - "were the victims of an assault by members of the Japanese staff in July, 1943." Here is something else to remember. "This concerned an unjust punishment by physical violence upon the cookhouse staff and myself as a reprisal for having reported to the Japanese authorities the theft of food from our meagre rations." Remember that.

Here is the cook house staff being beaten - the doctor and four others for reporting the theft of food.

> "The man responsible for this incident was the Japanese quartermaster named Owaza, who in fact had himself stolen the rations concerned. After the Japanese authorities had taken action to prevent further thefts, I and the following prisoner of war cooks, were sent for and stood outside the Japanese office:- Able Seaman Rhodes, R.N., Frank Gibbs, a civilian employed by the Admiralty as a telegraphist, Hughesten, R.N., Quinn, Royal Marines, and one other whose name I forget. While we were lined up outside the Japanese office 3rd Class Private, Gato, 1st Class Pte. Tomitini and a Japanese Corporal cook whose name I do not know, came up to us, and after taking off their shoes began a general beating up. After this beating we probably looked rather worse damaged than we were in fact."

Let us go to the next specification. That is the beating of John Welford. Here is his affidavit, sworn statement of John Welford, Exhibit 3:

> "On my arrival I found the Hospital to be in a filthy state, vermin infested; we had to lay on straw and the place was worse than a stable. There were 170 of us there and the lads were dying daily of diphtheria, dysentry and malnutrition. Whilst at the Hospital I saw numerous cases of sick patients, some of them dying, taken from their beds and beaten by the Japanese staff. They repeatedly stole rations from the patients, and, as I was aware of this, owing to being in charge of the cookhouse, they ordered me to keep my mouth shut under pain of being beaten. I did eventually report the thefts and my staff and I were taken out and beaten up with belts, fists and boots.

What do these other gentlemen say here? He and five members of the cookhouse staff, four of which he remembered and one of which he did not remember, were beaten up. Welford remembers all the cookhouse staff and goes on and tells you how his staff was beaten up for the report of the stealing of the food.

He names the assistants of Tomitani - "Jap Medical Orderlies - Kato, Nakihama and one other whose name I do not know. These men performed the beatings and stole rations, and the whole of the patients at the Hospital lived in fear and dread of any of these men coming in."

Can there be any question in your mind as to who beat Walford because the previous statement I have just read tells you who and they are the members of the cookhouse staff. Walford was in charge of the cookhouse staff and he tells you he and his staff were beaten.

I submit, Members of the Commission, there can be no question about Specifications 2 and 3 being established beyond any question of a doubt.

Now, in this specification, I think there is a lot of conclusions here and I think counsel is somewhat confused on some issues in this case. This is Specification No. 7.

I do not like, "Now the cat is out of the bag." It is an inference that someone is trying to conceal something. I do recall, in taking up the first specification, telling the court why Major Ackerayd was not included. I told the court it was because I did not have the affidavit and I expected that he could come under Specification 4 instead of Specification 1. The court, of its own motion, said I could put it under Specification 1; and when I said to put it under Specification 4, the court said "Alright."

We did put the specification in there and we did it because day after day we got in new affidavits and we know how technical the defense are in charging something new that they do not know about, so, we have to do it that way.

So, so far as specification 7 is concerned, you have heard the statement of Walsh how he and three other boys who were playing cards legally on time off, were taken out by Kato and you have heard his statement, how his teeth was knocked out. That is specification 8. He tells you how his three friends played cards.

The witness Donnmore states how he positively witnessed the beating of his three friends; how they were lined up in the guard house; and how Kato wrapped the belt around his wrist and beat them. He told you how they were made to stand in front of the guard house and soldiers were ordered to slap them as they went to the latrine.

I submit that each and everyone of these motions should be denied beyond any question of doubt because there is ample testimony in these affidavits and from the witnesses to establish every one beyond a reasonable doubt..

DEFENSE: May I say something with regard to what the prosecution has said on the motion on Specification 2. In reading the Jackson affidavit the prosecution read to where the affidavit says:

> "None of us suffered any permanent injury and I do not consider that the incident was a serious one apart from our loss of pride and respect."

I mention that specifically to indicate that we are not dealing here with a war crime which is the first element that must be found for any prosecution. This is an instance where the prisoners involved suffered loss of pride and respect. It is not a nice thing, but we are dealing with war crimes; and the question is, Is that a war crime. If the Commission finds that is not a

war crimes then that specification will have to be dismissed.

PRESIDENT: At this time, the Commission will withdraw to consider the motions.

The Commission then took a recess until 1400 hours at which time the Commission, prosecution and defense, and the accused, interpreters and reporter resumed their seats.

PRESIDENT: The Commission will be in session.

PROSECUTION: Is it necessary after each adjournment that mention be made of the presence of the commission and the staff?

PRESIDENT: It has been done in other commissions. It is just as well to note after the recess that all members are present.

The Commission, after considering the motions,-

As to the motion on Specification 1 to find not guilty as to Lt. Genico, the motion is denied;

Motion to find not guilty under Specification 2 is denied;

Motion to find not guilty under Specification 3 is granted; and

Motion to find not guilty under Specification 7 is denied.

DEFENSE: The Defense will put on as its first witness the camp commander at Yokkaichi in order that he will not have to come back Monday if this trial should go over until Monday.

SHOICHI ARAKI

a witness called by the defense was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Defense:
(Questions and Answers through Interpreters)

Defense: If the Commission please, this man is now awaiting trial so would the Commission please warn him of his rights.

PRESIDENT: Did you keep a copy of the warning that I read here?

INTERPRETER: I have the copy at the office. They are having them printed now.

PRESIDENT: The witness is advised that in giving evidence before this Commission he is not obliged to give an answer to any question that might incriminate him in offenses against prisoners of war. If such question is asked he may say "I refuse to answer". He must not say, "I don't know" or "I don't remember" when, in fact, he does know and does remember.

The privilege to refuse to answer questions refers only to such questions as might incriminate the witness himself and does not extend to the accused or any other person.

Q Were you assigned to the Tokkaichi prisoner of war camp?
A

PRESIDENT: Please let us start with his name.

Q Will you state your name and rank?
A First Lieutenant Shoichi Araki.

Q Were you a member of the Japanese Army?
A Yes.

Q Were you ever assigned to the Tokkaichi prisoner of war camp in 1945?
A Yes.

Q What months were you there?
A From March 7th to May 27th.

Q What were your duties there?
A I was the branch camp commander.

Q As branch camp commander did you have any conferences with the senior Allied prisoners of war?
A Yes.

Q Who were they?
A Colonel Stubbs, Captain Henry, Captain Thompson, Captain Brinkley.

Q What did you tell them at these conferences?
A During the conference I told the prisoners of war that this war is between countries and this is not a fight between individuals. I do not like war and was drafted from civilian life to fight this war. And that I cannot help because it is the policy of the country. I have only praise for you who have done your best for your country and my sympathies are now with you as you are now taken prisoners of war. I will do my best to make your stay here as pleasant as possible and I will protect you to the fullest extent as prescribed by the international treaties. If there is any wrong doings by the Japanese personnel, do not hesitate to report this to me and I will take the necessary measures.

I would not trouble you. You officers should hear complaints from other prisoners of war if there are any unlawful acts done upon the prisoners of war by the Japanese personnel, report them to me directly. That is the gist.

PROSECUTION: Now I am going to move that that entire answer be stricken except where he states he instructed the men or the officers that if there were any crimes committed. The other has no bearing on this case at all.

PRESIDENT: It will remain in the record.

Q Were there any such reports made to you during the time you were at this camp?
A No. I did not receive.

DEFENSE: Your witness.

CROSS EXAMINATION

Questions by Prosecution:

Q He was only at the camp from March 7 to May 27. Is that correct?
A Yes.

DEFENSE: May the record show that was in 1945.

PROSECUTION: Mr. witness, are you cognizant of your responsibilities as a camp commander?
A Yes.

Q Do you know whether or not you would be responsible for the mistreatment of any Allied prisoners of war by subordinates under your command while you were such camp commander?

DEFENSE: Defense objects to the question and asks whether that is proper cross examination.

PRESIDENT: It is just as pertinent as the instructions the camp commander gave to the Allied officers. It is wholly unnecessary to the case so far as the Commission is concerned. We are not swayed by pretty speeches. We simply want to know the facts. If you keep your witnesses to these issues you will save our time.

DEFENSE: If it is not relevant then it is no use cluttering the record with that.

PROSECUTION: I believe the Commission has ruled on it, counsel.

PRESIDENT: The question has been ruled on and may be answered. It has more bearing on the case than any conversation he may have had with the prisoners of war.

(Question repeated)

A I have instructed my subordinates to restrain themselves strictly from personal punishment and to report anything that happened to me. If these are not reported to me I cannot be responsible for them.

PROSECUTION: No further question by the prosecution at this time.

PRESIDENT: Any questions by members of the Commission?

Appearing to be none, the witness is excused.

I would like to ask the defense or prosecution to refrain from putting witnesses on the stand to make speeches. They are absolutely of no use. Instructions that a camp commander may have given have no bearing on the case. We are only concerned with whether he knows of any incidents or not.

DEFENSE: If the Commission please, it has a bearing - an indirect bearing on the severity of the beatings that occurred. That is the reason we put it on, not that we want to fight Araki's case here.

The next witness for the defense will be the accused. He will be examined directly by the Japanese attorney.

PRESIDENT: Just a moment before you swear him. Do you have a translation of paragraph 5 of the instructions of the Eighth Army - the one we have been reading to every accused that appears here.

INTERPRETER: Yes.

PRESIDENT: It is necessary to tell him his rights before he is sworn.

(Interpreter reads instructions referred to, to the witness.)

PRESIDENT: Does he understand his options of testifying under oath? Testifying under oath or remaining silent?

WITNESS: I will testify under oath.

PRESIDENT: Alright, the witness will be sworn.

MASATOSHI KATO

a witness called by the defense was sworn and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY defense:

DEFENSE: If the Commission please, I have just been told by Mr. Kuhehara that he would like to interrogate him in Japanese and then have it translated.

PRESIDENT: It is perfectly alright provided the question is translated as well so we will know what is being asked.

PROSECUTION: We do not have an interpreter.

PRESIDENT: You have an official interpreter.

PROSECUTION: We do not have an interpreter to work with us here.

PRESIDENT: You do not need one. He is the Commission interpreter. The ruling is that the Japanese attorney may question the witness. Let us get on with the case. The questions and answers will be interpreted.

PROSECUTION: Will he interpret the question before any answer is given?

PRESIDENT: Instruct the witness that he will not answer the question until the question has been put in English.

DEFENSE: What is your name?
A Masayoshi Kato.

Q What is your age?
A 55.

Q Where were you born?

PRESIDENT: I must tell the attorney that these cases must be kept pertinent. Only questions that pertain to the case may be asked. If his birth place has anything to do with it, alright, but if not let us get to the issues in this case.

Q How long have you been connected with the Army?
A From January 18, 1942, to the end of the war.

Q Were you ever at Ichioka prison camp and Tokkaichi prisoner of war camp?
A Yes.

Q What period of time did you serve at Ichioka?
A From June 16, 1942, to July 10, 1944.

Q At Tokkaichi prisoner of war camp?
A From February 4, 1945, to May 11, 1945.

Q What were your duties at the Ichioka prisoner of war camp?
A I was a medical orderly.

Q At Tokkaichi?
A Also a medical orderly.

Q What were your duties as a medical orderly?
A My duties consisted mainly of shining the officers' and non officers' shoes and preparing the meals and serving tea and also keeping the rooms clean and sanitary.

Q Were you in your duties ever connected with sick prisoner of war patients?
A No.

Q Who was directly responsible for the sick prisoner of war patients?
A At that time it was Naturayama, medical officer.

Q Who was under medical officer Naturayama?
A Sergeant Major Okana.

Q And below him?
A Superior private Tomitami.

Q Were there any soldiers other than those mentioned working with you or any civilian guards working with you?
A Yes. There were.

Q Give the names if you know them.
A First class private - among the soldiers were - First class private Asai; First class private Nakayama. Civilian guards were Kitamura, Shiro, Ikeda and Inai.

Q While you were connected with the camp how many prisoners of war were there?
A The maximum number was about 120 to 130 prisoners of war.

Q Among the prisoners of war were there some officers?
A Yes.

Q Do you know the names of the officers that were at the camp?
A Yes.

DEFENSE: Do you want to change that answer and have it repeated?
INTERPRETER: He has changed the question again. There is a difference in the shade of meaning each time he asks.

PROSECUTION: May the prosecution know what is going on?

DEFENSE: If you know the names will you relate them to the Commission?
A I know names of First Lieutenant Bexley, Sonies and Major Page.

Q Are there any prisoners of war other than officers whose name you could remember?
A Yes. Section leader of the mess Kelliher, Quinn and Gibbs.

Q Do you know Ritema?
A I don't know.

Q Do you know Rhodes and Jackson?
A No. I don't remember them.

Q Did you ever beat prisoners of war at this prisoner of war camp?
A Yes.

Q Do you know whom you beat?
A No. I don't remember.

DEFENSE: Unless the Commission gives me permission -

May we have a recess.

PROSECUTION: However, we want it understood that counsel cannot speak to the witness in the meantime.

DEFENSE: I think that was a ridiculous statement of counsel. We appreciate the confidence Mr. Adinolfi has in the defense.

PRESIDENT: Let us not get into any recriminations. We want to get this case over and just want the facts.

The Commission will take a short recess.

The Commission then took a recess until 1445 hours at which time the personnel of the Commission, the prosecution and defense, and the accused, the interpreters and reporter resumed their seats.

PRESIDENT: The Commission will be in session.

(Questions by Advisory Counsel; Questions and Answers through interpreters.)

PROSECUTION: The witness is reminded that he is still under oath.

DEFENSE: Before the Commission recessed you stated that you had beaten some prisoners of war at Ishioka. How many had you beaten, do you recall?

A I beat four prisoners in all. One the first time and three on another occasion. On another occasion I was ordered to beat the prisoners.

PRESIDENT: One the first time and three on another occasion. Did he say he was ordered to beat all prisoners?

WITNESS: I was ordered to beat the last three prisoners.

DEFENSE: Do you recall the name of the one that you beat the first time?
A I do not remember.

Q Do you recall the circumstances surrounding the beating?
A Yes.

Q Tell the Commission about it.
A The first time was at roll call. He reported less than the number of prisoners that were out and he reported less again on the second time. I made the count myself and I found out that the number was the same so I slapped the prisoner twice.

Q Was that during the time that he was reporting to you alone?
A Yes.

PROSECUTION: Read that question and answer will you. Is that clear to you?

(Question and answer reread)

DEFENSE: Do you remember his name?
A No.

Q Do you remember what this prisoner's duties were?
A He was a soldier on detail at the Ichioka Hospital.

Q When you say soldier do you mean the prisoner of war or a Japanese Soldier?
A A prisoner of war soldier.

Q With regard to the time you struck three other prisoners of war, do you recall any of their names?
A Those prisoners of war whom I was ordered to beat were Gibbs and Quinn and one other person I do not remember.

Q Was it an officer?
A No. I believe he was a soldier on detail.

Q Did you recall a prisoner of war named Jackson, a Lieutenant?
A No.

Q Who was the Allied prisoner of war doctor in July, 1945, if you remember?
A I believe that the prisoner of war medical officer was Jackson but I don't know.

Q Describe Lieutenant Jackson if you can.
A I believe the person referred to as Lieutenant Jackson had a thick beard.

Q And was this one other person besides Quinn and Gibbs clean shaven or did he have a beard.
A He was clean shaven.

Q Tell the Commission the facts concerning this incident.
A This incident occurred when Medical Officer Hosu of the Osaka main camp came to the Ichioka Hospital suddenly and he made an inspection of the prisoner examination room and the prisoner of war sick ward. At that time he found a quantity of medicine and such as aspirine, absorbine and some powder medicine under Jackson's bed and one other prisoner of war's bed. And also among the documents he found a map that had been clipped from a newspaper. At that time prisoners of were were prohibited from reading newspapers.

Dr. Hosu had Quinn and two other prisoners of war stand at attention in front of the guards at the gate. At that time I was the telephone operator at the office. Dr. Hosu and Jackson came into the office and Dr. Hosu began reprimanding Jackson so I went to the next room. However Hosu called out and when I went into the office, Dr. Hosu reprimanded me. He ordered me to beat the three prisoners of war who were standing outside so I went over to the prisonersof war and struck them lightly with my open hand and came back. I never did beat Jackson.

Medical officer Maturama and Sergeant Major Okana knew the facts of this incident. Dr. Hosu was questioning Jackson but since he had difficulties and needed an interpreter he found it necessary to bring Jackson to the main camp. He ordered me to bring the documents to him so I gathered documents that were found under the bed, placed them in a box and brought it to Dr. Hosu. Then Dr. Hosu and Jackson and two other prisoners of war, including Quinn, went to the main camp.

PROSECUTION: I would like to request that we stop at shorter intervals so we can have an interpretation and get things. It is impossible for us to do it when it gets that long.

PRESIDENT: You mean before it gets so long. Yes. Let us have this broken up as we go along.

WITNESS: Then Nakagawa and I went back with them to the main camp bringing the documents which Jackson hid and after placing the documents in the main camp we returned immediately to the main hospital.

Q Does he wish to say more?
A Of the three who were standing in front of the guard at the gate only Quinn was left because he was working in the mess. He was engaged by Dr. Hosu. Quinn was also Jackson's handy man.

Q How far from the office is the place where the three men were ordered to stand prior to the time they were struck?
A About 25 or 26 feet away.

Q Are you sure there were not four men outside?

A Yes. I am sure there were not four men. There were only three.

Q Is that the only way you struck these men?
A Yes.

Q Were you ever ordered to strike a prisoner of war by Lieutenant Matsuyama?
A No.

Q Was Lt. Matsuyama ever present when you struck a prisoner of war besides this last one that you mention?
A No.

Q Do you remember who was the pharmacist on the prisoner of war hospital staff?
A You mean a prisoner of war?

Q Yes.
A Genico.

Q Do you recall the name of Ritsma?
A No.

Q Do you know who the prisoner of war pharmacist was at the time Genico was there?

PROSECUTION: Just a moment. I am a little confused. Will you go back to the third question.

DEFENSE: There is some evidence that Ritsma assisted Genico and I wanted to know if he remembered it. He says he does not.

(Question repeated)

PROSECUTION: He had testified the Genico was there.

DEFENSE: I mentioned that he had a staff, small as it was. Did you ever drill any prisoners of war?
A No.

PROSECUTION: The answer was "No"?

DEFENSE: Did you give the prisoners of war physical exercise?
A No.

Q Did you drill them on how to stand at attention?
A No.

Q Did you drill them on how to bow?
A No.

Q Do you remember ever striking Lieutenant Genico?
A I have never struck Lieutenant Genico.

Q Why is it that you remember the name of Genico so well?
A When I was ill I was examined by Genico and received medicine from him. That is why I remember him so well.

Q Did you ever hit him with a slipper?

A Absolutely not.

Q Did you ever hit him with a belt?

A No.

Q Did you ever strike him with your fist?

A No.

Q Do you recall an incident that occurred in the early part of May, 1944?

A Yes.

Q Tell the Commission about this incident?

A One night I went to take roll call. Nakayama and Bando came a little later. It takes about eight to ten minutes to take roll call.

At the end of roll call, Nakayama and Bando beat Genice and twelve or thirteen other prisoners of war. At that time Nakayama used a belt and Bando had a slipper in his left hand.

Q Continue. The-cold e

A The roll call took ten minutes and the beating lasted for about twenty minutes.

Q Does he wish to say anything more?

A At that timeNakayama went on the table and beat the prisoners. Bando was down.

Q And why did you not take part in that beating?

A I did not beat the prisoners because I did not think that the prisoners of war did anything wrong.

Q Did they do anything wrong while you were there?

PRESIDENT: What do you mean - while he was at the beating or at the camp?

DEFENSE: We are still talking about the same incident.

PRESIDENT: Did they do anything wrong during the incident?

DEFENSE: Yes sir.

A I don't know.

DEFENSE: It is a question of interpretation.

PRESIDENT: We want the right answers and the right questions. Let us try to get the interpretation the first time.

DEFENSE: The answer was, "I did not know."

PROSECUTION: I do not object to corrections of interpretations but I do not think it proper for defense.

PRESIDENT: I think it proper for anybody that disagrees with the interpretation. The interpreter does not - The accused is entitled to a chance to understand a question correctly before he gives answer.

PROSECUTION: I have no objection to that.

PRESIDENT: Apparently defense counsel understands Japanese. I do not.

PROSECUTION: And I don't either.

PRESIDENT: And it is either a question of the defense counsel or the defense interpreter objecting to the interpretation. There is not an objection to it if we get the question asked and the answer given by the accused.

(Question repeated)

PRESIDENT: I want to know the question you asked him at that moment and the answer he gave?

INTERPRETER: Do you want this on the record?

PRESIDENT: I want it from you.

INTERPRETER: "Do you know whether the prisoner of war did anything wrong during the incident?" The answer is, "I don't know."

PRESIDENT: Is there any objection to that?

PROSECUTION: I want to state my position. Neither I nor the other prosecutor understand Japanese. We are perfectly willing to rely on the official interpretation by the official interpreters but I do object on the record - I object to defense counsel who understands Japanese endeavoring to correct the interpreters without the prosecution knowing what he is talking about.

PRESIDENT: Your objection is overruled. I have given my position and the position of the court. We will get the interpretation straight no matter who interprets it and who helps.

PROSECUTION: I think we have the right to know the extent of the aid and assistance being given.

PRESIDENT: Let us stop this right now. The Commission is trying this case. Proceed with the question.

DEFENSE: Did you know a Major Ashcroyd a prisoner of war at the time you were there?

A I do not know.

Q Do you recall the name of another prisoner of war, Wickens?
A I do not know.

Q Did you strike any bed-ridden patients while this was going on.
A

PRESIDENT: Your questions confuse me too and I am not Japanese.

DEFENSE: Calling your attention to this particular incident in which Bando and Nakayama beat those twelve or thirteen or fourteen prisoners of war, did you go into any of the wards and beat or strike any of the bed-ridden patients?

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PRESIDENT: Your objection is overruled. I have given my position and the position of the court. We will get the interpretation straight no matter who interprets it and who helps.

A No. I never beat bed-ridden prisoners of war.

Q Do you recall a prisoner of war whose name is Wada?
A I do not.

Q Lieutenant Ingree?
A I do not.

Q What happened after the beating was over?
A I reported the result of a roll call to the main camp.

Q Is that all you did?
A Then I went to the examination room and warned Dr. Berley and Genice not to report this to Chashi the next day or otherwise they might be beaten again.

Q Show the Commission how you managed to get this access to Commander Berley?
A I spoke in Japanese and made hand motions telling Berley.

Q Can you speak English?
A No.

Q Do you know the meaning of the English words, "All men die. O. K."
A I do not.

Q You say you warned Commander Berley. Show the Commission how you managed to convey your message to the commander.
A This is what I did. (Indicating)

PRESIDENT: Indicating by pantomime that he endeavored to convey the idea.

DEFENSE: This was in the morning and he was not to tell Chashi?

PRESIDENT: He can't tell all that.

DEFENSE: You just used the word "morning". What other English words do you know?

A "No good" and "O.K.".

Q What about the word "All"?
A I do not know.

Q The word "men"?
A I do not know.

Q The word "Die"?
A I do not know.

Q Where did you go after you told Commander Berley not to tell Dr. Chashi?
A To the Japanese office.

Q Were you alone?
A Nakayama was also in the office.

Q Was Lieutenant Genie there?
A No.

Q Sergeant Wichana?
A No.

Q Major Ashcroft?
A No.

Q Where was Bando?
A He was at the sentry post.

Q Do you want this Commission to understand that you took no active part in this May, 1944, incident that occurred in the evening?
A I did not participate in this incident and did not beat anyone.

Q Calling your attention now to Yokkaichi prisoner of war camp. Do you remember a former prisoner of war, Vance Walsh?
A I do not know.

Q Do you use dope?
A No.

Q Did you use dope while you were at Yokkaichi?
A I never used any dope.

Q Did you ever hit a prisoner of war while you were at Yokkaichi?
A Yes. Once.

Q Tell the Commission about it.
A Two or three prisoners of war were called to the office because they had stolen something from the Company. I went to the office for liaison purposes and at that time Sergeant Yamanaki who interrogated these prisoners told me that the prisoners of war had stolen something from the Company and ordered me to beat them.

Q Tell him to stay there.

Is it customary for a sergeant to tell a private why he is ordered to beat a prisoner of war?
A Yes.

Q What time of the day or night was this?
A As I recall it was about 4:30 in the afternoon.

Q And did you hit them then at the order of the sergeant?
A Yes.

Q Are you sure there were not four prisoners of war?
A There may have been four but, as I recall it, I can only recall three prisoners of war.

Q Where did this take place in which you struck them at the order of this sergeant. Was it barracks, headquarters, corridor, outside of a building?
A It was in the corridor.

Q What does this corridor divide?
A This corridor divides the soldiers' quarters, mess quarters and the officers' quarters to the east side and on the west side there is the office of the civilian quarters.

Q What did you use when you struck these prisoners of war?
A A leather belt.

Q Which end?
A I folded the belt in two and held the buckle in my hand and struck the prisoners.

Q Did you ever beat ~~this~~ 7E2 prisoner of war by wrapping it around your hand and having the piece hanging out of your hand about that far (indicating)?
A No.

Q Did you ever beat ~~this~~ 7E2 prisoner of war in the Japanese headquarters in that camp?
A No.

Q Did you notice any blood on any of the prisoners of war that you were beating at that time?
A Yes.

Q Where was it?

(Off the record discussion)

Q Do you mean the upper lip?
A Yes. On the upper lip near the nose.

Q Did you knock out a tooth of that same prisoner of war at that time?
A No.

Q Tell the Commission what you did after this beating was over?
A I beat the prisoners, then released them except one whom I brought to the steps of the dispensary and told him to go in and be treated by Corporal Tanabe. Then I went back to my room and meditated.

(Conference of interpreters)

INTERPRETER: Instead of "to the steps of the dispensary" will you change that to the "entrance to the office".

A Then I went back to my room and stayed there for about five minutes and regretted the fact that I beat the prisoners of war under order.

Q You mentioned the name Tanabe? Who is he?
A He was the medical man.

Q Was he there then? Was he in camp at the time you took this prisoner of war to the steps of the office?
A He was in the dispensary.

Q Was Sergeant Yamanaki in camp at this same time?
A Yes.

Q Did you order certain prisoners of war to line up at a place where others would have to pass by?
A No.

Q After you went back to your room to meditate did you come out and do anything else that evening?
A No.

Q Was Yokkaichi a big camp?
A Yes. It was quite big.

Q How many streets were there?

PRESIDENT: How many what?

DEFENSE: Streets. There are mains or streets in between the buildings. You can call them streets.

A By streets, what do you mean?

Q The space in between in which people walk to and from other buildings.
A One.

Q Where was the prisoner of war latrine? From where your room was in that building to which you went to meditate?
A The prisoner of war latrine was not in the same building.

Q But, as you were in this one street, could you see the building in which the latrine was?
A No.

PRESIDENT: If there are no objections, at this time the Commission will adjourn until 0900 hours on Monday.

The Commission then at 1615 hours on Friday, 31st January, 1947, adjourned until Monday, February 3rd, 1947, at 0900 hours.

Franklin E. Morris
Chief Prosecutor
Herman M. Greenfield
Chief Advisory Counsel

John F. Roehm
JOHN F. ROEHM, COLONEL, [illegible]
PRESIDENT.

Yokohama Court House
Yokohama, Japan
Monday, 3rd February, 1947

The Commission met, pursuant to adjournment, at 0800 hours, the personnel of the Commission, the prosecution and defense, the accused, the interpreters and the reporter, who were present at the close of the previous session, being present.

PRESIDENT: The Commission will be in session.

PROSECUTION: The witness is advised that he is still under oath.

DEFENSE: Do you remember a prisoner of war by the name of Shannon?
A No.

Q Was there a prisoner of war that you beat or hit at least eight times over a three month period?
A No.

Q Do you remember a prisoner of war by the name of Stradley?
A No.

Q Was there a prisoner of war that you ever hit in the eye?
A No.

Q Do you remember Major Ackeroyd?
A No.

Q Did you ever hit any Major?
A No.

Q Did you ever hit any officer?
A No.

Q Did you ever slap any officer?
A No.

Q Did you ever slap a doctor?
A No.

Q Did you ever curse prisoners of war?
A No.

Q Outside of the incidents which you have related, did you ever abuse any other prisoners of war?
A No.

Q Last Friday you mentioned you spoke to Commander Berley after the incident in which Bando and Nakayama beat thirteen or fourteen prisoners of war. When you spoke to Commander Berley were you threatening him or advising him for the benefit of the prisoners?
A I was advising him.

Q When that beating was over, what did you directly do?
A I made a report of the roll call to the main camp.

Q Did you take out of the ward, or see taken out of the ward, Major Ashcroft, Lt. Genice and Sergeant Wickens?
A No.

Q Why didn't you try to stop these people from beating the prisoners of war?

INTERPRETER: You mean Bando and Nakayama?

Q That is right.
A I could not stop Bando and Nakayama because I was not the official duty man.

Q Who was the official duty man?
A I believe it was supposed to be Sergeant Major Chana but he was absent.

Q In the absence of Sergeant Major Chana who was the ranking Japanese military person present?
A The next in line would be Superior private Tomitami but he was also absent and I believe the next was Nakayama.

Q Was Nakayama your superior?
A Yes.

Q You testified on Friday that you slapped a prisoner of war because of an error in reporting bed check. Was he a Dutch man, do you know?
A As I recall, it was a Dutch man.

Q You signed a certain statement a few months ago. Didn't you?
A Yes.

Q In that statement is there anything different than what you have testified to here?

PROSECUTION: I believe that is not competent. It is not in evidence. How can he state whether what this man is going to say is different? What is the statement he is referring to? The one he gave us?

PRESIDENT: Objection overruled. Go ahead.

A On that statement I said I did not assault any prisoners of war.

PRESIDENT: Just a moment please. If he pleads different, let us get it straight as to what the answer is.

DEFENSE: Do you want that in the form of a conference with Mr. Morris?

(Conference of interpreters)

WITNESS: In that statement I said I did not assault anyone with some implement.

PRESIDENT: (Off the record.

(Off the record discussion)

PRESIDENT: Now let us have the question repeated.

(Question repeated)

WITNESS: When I was asked, Did you strike the prisoners with something? I said I never did strike anybody with something.

PRESIDENT: Meaning an implement?

WITNESS: I was asked if I beat a prisoner with slipper, boots or fists and I answered I never did strike a prisoner with any of those things.

DEFENSE: Were you asked in that statement whether you ever struck any prisoners at Tokkaichi prisoner of war camp?

A I was asked the question after they took the statement.

Q In answer to that question, did you admit the same incident you described in this court?

PROSECUTION: Just a moment. I think the statement is the best evidence and I have no objection to presenting the statement to the court. In fact, there are two of them. I have both statements and will consent now to introducing them in evidence.

PRESIDENT: I would like to ask the purpose of admitting this line of questioning?

DEFENSE: There was one point in the statement and rather than have a great deal to do made of it, I would sooner have it brought out at this point.

(Question repeated)

WITNESS: Yes. In that statement -

DEFENSE: What did you say you struck the prisoners with in that statement?

A I answered that I beat the prisoners with slipper at Tokkaichi. There was an error in my recollection.

Q Outside of that were there any errors at the time you made the statement?

A By errors what do you mean?

Q Did you say anything different than the truth as you testified here in court?

A The only thing was I answered that I beat the prisoners with slippers and there was my error in recollection. There is no difference besides that.

Q Did you ever hit any prisoners with slippers?

A No.

Q Did you ever hit any prisoners with your fists?

A No.

Q Did you ever kick a prisoner of war?
A No.

Q Outside of the one incident you testified to, did you ever use a belt on any other prisoner of war?
A No. None besides that.

Q Did you ever touch a sick prisoner of war?
A No.

Q When did you enter the Japanese Army?
A I was drafted on January 15, 1945.

Q Will you state briefly the various places you were in the course of your being in the Japanese Army?

PROSECUTION: Just a moment.

DEFENSE: It is not in the record and I want it in the record.

PROSECUTION: Do you think that is material?

DEFENSE: I think the court should know the other places he was at. Nothing has been mentioned about other places. It is just these few incidents that have come up and I think the court should know he has a clean record at all other places.

A From January 15, 1945, to the 18th, of the same year, I was attached to Nara 67th Kahuta Unit.

From January 19th to 20th of the same month I was at the Nara Army Hospital.

From January 20th to March 11th of the same year I was with the Osaka main prisoner of war camp.

From March 11th to June 15th, I was with the Osaka prisoner of war camp, Kawasaki branch camp.

From June 16, 1945, to July 10, 1944, I was with the Ichioka Hospital. This is also Ichioka No. 3 prisoner of war camp.

From July 11, 1944, to February 3, 1945, I was attached to the Osaka prisoner of war camp, Kobe. The Kobe Hospital annex.

And From February 4, 1945, to May 11, 1945, I was attached to Yokkaichi prisoner of war camp.

From May 12, 1945, to the end of the war I was attached to the Nara Army Hospital.

That is all.

CROSS EXAMINATION

QUESTIONS BY PROSECUTION:

Q Witness, do you recall giving a statement while you were at Sugamo prison to a Japanese investigator by the name of Toshio Inouye on or about July 17, 1945?
A 1946. I do not recall who it was but I recall that I gave a statement.

Q Well, the first time you gave a statement to anyone, was it given to a gentleman who could speak your own language - a Japanese?

DEFENSE: I object to the use of the word "first". I do not know of any other statement.

PROSECUTION: Alright. Strike out the last question.

PRESIDENT: Can you give the accused a chance to identify the statement?

PROSECUTION: Now, witness, do you remember giving a statement on or about the first of July. Do you remember my calling with Corporal Bummere, a soldier who has testified here?
A Yes. I recall that you brought somebody else with you.

Q At the time I called was there a Japanese interpreter there?
A Yes. There was one.

Q And did you give me a short statement at that time?
A
DEFENSE: Is that an oral or written statement?

PROSECUTION: A written statement.

A Yes. I was asked to sign the statement so I signed it.

Q Did the Japanese interpreter read the statement to you and explain it to you.
A Yes.

Q And in both the statements, the one you gave in July, and the one you then gave in August in 1946, were they both read and explained to you in Japanese?
A The statement taken in July was not read to me in Japanese.

Q In the statement taken in July did you admit -

DEFENSE: I object to that. He said the statement was never read to him in Japanese and now he is asking him a question based on that statement.

PRESIDENT: Are you still referring to a statement not read to him in Japanese?
A Yes.

Q Well, the question then is not in order at this time.

PROSECUTION: Did you sign this statement dated July 17, 1945? Is that your signature there?
A Yes. I signed the sheet.

Q I would like to offer in evidence statement admitted to have been signed by the defendant.

DEFENSE: I object to the statement on the ground that it is in English and the prisoner says it was not read to him in Japanese.

PROSECUTION: I offer it for what it is worth. There is an affidavit on it.

PRESIDENT: Up to now it has not been established that that statement was read back to him in Japanese.

PROSECUTION: The statement on its face will show that, and I will offer it.

Now, witness, did you while at Ichioka Hospital use any dope of any kind?

A No.

Q Did you use liquor, whisky or sake, or any intoxicating liquors?

A No.

Q Did you while at Ichioka Hospital get drunk and get in a fight with one of the Japanese guards as a result of being intoxicated?

DEFENSE: I object to that. I fail to see the relevancy.

PRESIDENT: Objection is overruled.

WITNESS: Yes.

PRESIDENT: Are you sure both questions were understood?

DEFENSE: That question embodied two separate questions. One was, was there a fight; the other was, did you get drunk?

PRESIDENT: It is a signed statement and will be accepted in evidence for what it is worth. Is the original statement in Japanese?

PROSECUTION: No. It was taken down in English.

PRESIDENT: You mean it was interpreted in English and written down?

PROSECUTION: The statement, may it please the court, was taken in English. All of them were.

PRESIDENT: He cannot speak English.

PROSECUTION: We question in Japanese. The Japanese interpreter gives the answers in English and then he reads the English translation back into Japanese.

PRESIDENT: I thought it was offered.

PROSECUTION: No. I asked the reporter to mark it for identification.

PRESIDENT: Doesn't the Commission understand that it was offered in evidence and it was offered for what it is worth?

PROSECUTION: I did want to cross-examine this witness on the statement but I did ask that it be marked in order that I could interrogate on it and refer to the number. If the Commission wants me to introduce it now, I will, but I think I have the right to cross-examine before I offer it in evidence.

PRESIDENT: No objection to cross-examining but it has been entered in evidence at this time.

PROSECUTION: I assure the court I will offer it and counsel can read it.

PRESIDENT: You can strike it out.

DEFENSE: I will ask Mr. Morris to strike it out.

PRESIDENT: The question was, Did you get drunk and have a fight with another Japanese? Is that what the record says?

DEFENSE: I want to point out there was actually two questions.

PRESIDENT: You will have an opportunity to reframe the question.

PROSECUTION: He answered "Yes" to a legitimate question.

PRESIDENT: Well, clear it up right now.

PROSECUTION: Did you get drunk while at Ichioka prison camp?
A Yes. I was drunk once.

Q And did you engage in a fight with the other guard by the name of Asai?
A Yes. We argued.

Q So you did use some liquor while at the camp there?
A Yes. That was the only time that I used liquor.

Q Didn't you tell the investigator in this first statement in July that you never struck, touched or mistreated any person of any kind.
A Yes.

Q Why didn't you tell him about the incident you have related to your counsel when he took this statement in July?

DEFENSE: His counsel taking a statement in July?

PROSECUTION: I say why didn't he tell the same thing in this statement that he told you in the court room here.
A When I was asked by the investigator in July I did not recollect of any happening at that time.

Q While you were in camp did you ever hear of any complaints against Bando and any of the other guards for stealing food from the prisoners?
A
DEFENSE: Objection. Stealing is not in question here and the person referred to is outside this case.

PROSECUTION: I said, Did he while in camp ever hear of any complaints against Bando or any other guards for stealing food?

PRESIDENT: Objection is overruled.

WITNESS: I have neither seen them nor heard of such complaints.

PROSECUTION: Witness, who were the members of the cookhouse staff at Ichioka Hospital?
A Do you mean the Japanese interniame personnel or the prisoner of war staff? I recall Kelliher was the mess chief and also from that

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I recall, Quinn was also on the staff. The others I do not remember.

Q. I will now offer in evidence the statement marked Prosecution Exhibit 15 and I will call the court's attention to the fact that the date appears to be 17th July, 1945, and I think that was in error and should be July, 1946. I will offer it in evidence for what it is worth.

DEFENSE: Can I read it?

PROSECUTION: Yes.

DEFENSE: If the court please, there is some material in here which is in parenthesis and is apparently the writer's. It may be the writer's attempt to discover the attitude of the prisoner "acting as he could not recall his name".

PROSECUTION: Let the court see the whole statement.

DEFENSE: I am just going through it for the first time. You would not let us see it before you questioned on it. If the Commission please, is there any reason why we could not have had a certified true copy of it. Was it taken in such a manner that they did not want to bring it to light before the trial?

PROSECUTION: That is a point to be argued.

May it please the court, counsel for the defense is the first man that raised the question about any statements having been made. Because there was not any particular mention in the statement admitting beatings on the part of the defendant we did not serve them with a copy. We do not have to unless we intend to use that in our direct testimony. I say we can use it for cross examination. Because of the inference there, I want you to see just what he did give us. Now the defense sees there is something in there contrary to what they expected. These inferences as to why we did not present it earlier are entirely improper.

DEFENSE: If it had not been taken we could not ask for a copy and now get one. The whole thing was raised by the prosecution and the document was not even read to him in Japanese.

PROSECUTION: Section D of the rules and regulations covers that.

PRESIDENT: I want to ask the prosecutor how he happened to have that statement with him this morning if he did not intend to use it.

PROSECUTION: I had it in my file.

PRESIDENT: Didn't you have any idea you would have to use it in rebuttal?

PROSECUTION: Yes.

PRESIDENT: It seems to me it should have been shown the defense.

PROSECUTION: Let me show the court regulation D referring to affidavits, statements, documents and preliminary motions.

"The rules set out in (a), (b) and (c) above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission."

I do not think that rule was put there for anything but one purpose. When we go to Sugamo to see a witness, 99 times out of a 100 they admit nothing. I have statements in many cases that would be useless because they admit nothing. We do not serve these statements. We keep these and wait to see what the defendant testifies to. Then, if he admits beatings we keep them to show that he once denied them, all for the purpose of cross examination and every lawyer who ever practiced law did the same thing.

DEFENSE: If the Commission please, about the question of this statement the Commission will rule as the law requires and as the rules require. But I do think this is a nice time to bring to the Commission's attention the fact that there is one affidavit that has not been introduced because of the fact that the specification to which it was to refer was stricken.

PRESIDENT: Will the defense counsel -

DEFENSE: If I am wrong the Commission will overrule me.

This is the affidavit of one Sellenberger whose name was mentioned in this trial as having a scar from being in that Yokkaichi beating. That statement shows Hate to have been present when he was at the Nagoya hospital. At this time, if the Commission sees fit we call upon the prosecution for the copies of that affidavit so that we can introduce it as our exhibit. It has probative value I assure you. Any man who got a scar as described here would say something about it in the affidavit and yet it pertains to a beating that someone else has been sentenced for and when the prosecution found out about it they struck the specification.

PRESIDENT: The Commission desires to have the affidavit produced so it may be examined for relevancy.

PROSECUTION: Now, let me make this statement. I am frank in stating to this court that I am surprised at the method used by defense counsel. I am surprised at them for this reason; We had set up a specification relating to a certain incident that happened. Counsel and I have discussed that as far back as two weeks ago. Counsel called me about it. I said I was satisfied the man who made that statement had the dates wrong and I would stipulate to strike it out because I did not think their man was in the camp at the time. I came in here when the trial started, told him I was going to strike it out and that I would not use the affidavit of Sellenberger.

Counsel asks us to produce it. He has had it three weeks. I told him I would let him have it and give him all the copies. This statement made this morning is made for the purpose of misleading you.

PRESIDENT: Let me say I want this wrangling to stop. You insult the integrity of the Commission.

PROSECUTION: I don't like these inferences that we are trying to conceal something when counsel knows better.

PRESIDENT: I started to ask you about that. I intended to ask you if you intended to use it, why was it not used earlier. If you intended to use it in rebuttal the statement is accepted.

PROSECUTION: I intended to use it if occasion arose and I thought they would raise the issue and I had to use it.

PRESIDENT: The question will be referred to the Law Member to decide whether it is relative to the case at a later time.

PROSECUTION: How many statements of Sellenberger would you like?

DEFENSE: The usual amount.

PRESIDENT: May I ask whether the interpreter who took the statement of Kato is not available in this area. We would like to know whether he implied anything in the statement put in evidence.

PROSECUTION: I do not know whether the interpreter is here or not.

PRESIDENT: Is he a member of the prosecution staff or was he at that time?

PROSECUTION: According to this here, it shows he was an investigator for the Legal Section of SCAP and has nothing to do with the prosecution.

PRESIDENT: Is he still here?

DEFENSE: May we request a definition of what the Legal Section of SCAP is.

PRESIDENT: I don't want this, gentlemen. Let us stop this and get back to the case. You two make this a forensic field-meet.

PROSECUTION: I offer the statement made by the accused at the Sugamo prison for what it is worth. It is entirely up to you Mr. President stating that statement as written and the defendant's admission in respect to it, it is up to you to say whether it should be admitted. I say it is material.

PRESIDENT: Now, Mr. Morris, you tell me what you want. The Commission wants to see if the man who took this statement in Japanese is available since the accused did not admit it was read back to him in Japanese but does admit the signature. The best man to say whether it was is the interpreter provided he is available to get on the stand here.

PROSECUTION: It is a sworn affidavit from the man who took it swearing he did read it back to him.

PRESIDENT: Why was the attention of the Commission not called to that fact? This still does not clear up. This is written in English that "I have had read to me the foregoing translation". The question is open.

PROSECUTION: Does Your Honor feel that it is inadmissible as it stands?

PRESIDENT: No, we will take it for what it is worth.

DEFENSE: If the Commission please, your attention was called to that parenthesis. May we assume that that was read back to him.

PRESIDENT: I will remember that.

If there is no objection at this time the Commission will recess for ten minutes.

The Commission then took a recess until 1010 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The commission has read this entire statement now and it will be unnecessary to produce the interpreter.

PROSECUTOR: And that can be read into the record?

PRESIDENT: Such parts as are pertinent to the case.

PROSECUTOR: The witness is still under oath.

I think the pertinent part of that statement is that beginning with question 9, "Do you remember that did you hurt anybody?" down to the end of question 15, "No. I did not hurt him at all."

(Document referred to was produced and marked Prosecution Exhibit 15 and was received in evidence.)

(The pertinent part of Prosecution Exhibit No. 15 as set forth above was read by the Prosecution.)

PROSECUTION: Now, may it please the court, I am offering Prosecution Exhibit 16 which is a statement in my own handwriting taken on the seventh day of August, Eugene Prison in the presence of an interpreter, certified by an interpreter that he read it to the accused. I am offering it for what it is worth and I am offering it because counsel has raised the question about the prosecution not presenting statements.

DEFENSE: I do not understand the reference "counsel has raised the question about the prosecution not presenting statements". Does the prosecution seem to say that they presented this statement to us at any time prior to this trial?

PROSECUTION: No. It does not.

DEFENSE: Let the record show that we never saw this statement before; that this is the first time we have seen this statement at any time.

If the Commission please, as I read this statement, if I am correct, it states what took place at a camp where this accused was and to which he has testified on the stand. On that basis the defense has no objection.

PROSECUTION: We introduce the statement as the statement of the accused and that is all. I understand they have no objection and the court has no objection.

PRESIDENT: It may be read.

(Document referred to was produced and marked Prosecution Exhibit No. 16 for identification and was received in evidence.)

(Prosecution Exhibit 16 was read by the prosecution.)

PROSECUTION: Witness, I will ask you if your signature appears on Prosecution Exhibit 16.

A Yes.

Q Did the interpreter read and explain this statement to you?

A Yes.

DEFENSE: For the record, I want to state that the accused did know of this statement and that was the only statement he knew of when we questioned him about it.

PROSECUTION: I do not think that is proper at this time. It is a point for argument, there is nothing in evidence to show whether that is so or not.

PRESIDENT: It will be accepted for what it is worth. These matters are insignificant to the Commission. They may be highly important to counsel, but they are not to the Commission.

PROSECUTION: I do say that the statement counsel made that the accused did not know is for him to testify and not for counsel to state.

PRESIDENT: The Commission has now read one and heard the other read and will accept them both for what they are worth without further argument.

PROSECUTION: Witness, did you occasionally take roll call while at Ichicha Hospital?

A I took roll call about four or five times during the absence of the duty NCO.

Q And do you remember the evening of May 8 when all the prisoners were lined up and you took roll call with Bando and Kitamura.

A No.

Q Do you remember taking roll call, where you took the roll call and Bando immediately followed you?

A Yes. Once.

Q Is that the time when Major Ackeroyd was present and Lieutenant Gonico and Sergeant Wickens were present?

A I do not remember.

Q Do you remember any occasion when Major Ackeroyd saluted you and Bando stepped up and proceeded to beat anyone?

DEFENSE: I want to object to that because the witness has previously testified he does not remember Major Ackeroyd, so the use of that name will only confuse the witness and will make confusion in the answer. I object to the prosecution -

PRESIDENT: I sustain the objection if he does not admit knowing Major Ackeroyd. The question will be re-framed in the interest of saving time.

PROSECUTION: Was there any other American major in camp other than Major Ackeroyd?

DEFENSE: The testimony is that Major Ackeroyd is an Australian.

PROSECUTION: "Allied major" then, if that satisfies counsel.

A I recall that there was a medical officer, Major Page.

Q Did you state that you did not know who Major Ackeroyd was?

A I do not know.

Q Well, do you remember seeing Lieutenant Gonico present on the evening of May 8?

DEFENSE: I still make this objection. It is evident that the witness does not connect that event with the date of May 8 and the use of May 8 will only serve to confuse.

PROSECUTION: Let the witness state his confusion.

DEFENSE: It is only cluttering the record.

PROSECUTION: Cluttering up the record.

PRESIDENT: Let him answer.

(Question repeated)

WITNESS: No. I do not.

PROSECUTION: Do you remember seeing Sergeant Wickens on the 8th?

A No. I do not.

DEFENSE: It is a question of interpretation.

(interpreter repeats question)

INTERPRETER: The answer is, "no, I do not remember the evening of May 8".

PROSECUTION: Do you recall any incident where you or Bando or anyone caused the prisoners and the nurses and the doctors to be lined up at roll call about 2000 hours in the evening?
A Yes. I recall.

Q Who took roll call that evening?
A I took it.

Q Is that the only time when you took roll call when the doctors and nurses and the prisoners were all lined up?

DEFENSE: I asked the interpreter to state the answer.

PROSECUTION: Sir, I again object at this time. It seems to me that defense counsel in this case is not only interpreting but testifying. We have two interpreters in this court room and it is their duty to interpret as they think it should be done.

PRESIDENT: The defense counsel may object to the interpretation but the answer will be given by the official interpreters as they hear it. Proceed with the answer given by the witness.

WITNESS: The only time that incident happened was that time.

Q Was that about 2000 hours in the evening?
A Yes. Roll call is taken every day at eight o'clock.

Q During the time you were taking roll call or shortly thereafter, did Bando beat or slap any prisoners of war or doctors or nurses?
A Yes.

Q Did Nakayama beat, slap, or mistreat any doctors, nurses, prisoners?
A Yes.

Q Major Ackeroyd states in his affidavit at this particular time that it was only Kato, Bando and Yakayama left at the camp. Is that true? Y
A Yes.

Q Now, Major Ackeroyd also states that after the nurses and doctors were dismissed, leaving himself, Lieutenant Gonice and Wickens, the three allied prisoners. Is that correct?

DEFENSE: Just a minute. Is that three Americans?

PROSECUTION: Three allied prisoners.

WITNESS: No. They were not left.

Q Where did you go after you dismissed the roll call?
A I went back to the office and made a report of the roll call to the main camp.

Q Where did Lieutenant Genico, Sergeant Wickens and Major Ackeroyd go?
A They went back to their respective rooms.

Q Who went with them if you know?
A They were all dismissed.

Q If Major Ackeroyd states that the staff and patients were then dismissed with the exception of Lieutenant Genico, Sergeant Wickens and himself, who were stood at attention and beaten for some minutes and then dismissed, you would say he was mistaken?
A Such a thing did not happen.

Q And when Major Ackeroyd states that "Kato then entered the boys where there were bedridden patients and pulled them to their feet beating them about the head and body as he did so". You would also say he was mistaken?
A Such a thing never happened.

Q And when Sergeant Wickens states "the bashing of the staff lasted about half an hour after which Bando, Kato and Nakayama proceeded to the sick bays where the sick and dying men were lying and proceeded to kick and ill-treat them". You would say Sergeant Wickens was mistaken?
A Yes. He is mistaken.

Q And when Wickens further states that "the three Japs finally came back to us and dismissed the staff with the exception of Major Ackeroyd, myself and Dutch Lieutenant M. M. Genico. They then bashed the three of us for about a half an hour with belts and kicked us on the shins with their boots", you would say he was mistaken? Would you?
A Yes.

Q Witness, you stated that you did not know the English words for "all men die". Is that correct?
A That is right. I do not know.

Q Well, what are the Japanese words for "all men die"?

INTERPRETER: How do you want me to put that across?

PRESIDENT: The interpreter can't put that question.

PROSECUTION: Can't you ask him to say it in Japanese?

WITNESS: I do not know.

PROSECUTION: Well, Mr. Wickens said that the Japs called out "all men die. OK." You didn't understand that? Is that right?
A I do not understand that.

Q Do you deny any participation in the beating of the doctors, the nurses and the sick patients on the evening of May 8 do you?
A I don't know about the evening of May 8.

Q Well, you only took roll call once when all the prisoners, nurses and doctors were all lined up. Didn't you?
A Yes. That was the only time that incident happened.

Q Well, do you recall about what date it was when you took roll call?
A I don't remember.

Q Do you know the meaning of the word 'shinshi' in Japanese?
A Yes. I know.

Q What is the meaning of it?
A 'Shinshi' is a bad where one sleeps.

Q Now, witness, I understood in direct examination, correct me if I am mistaken, in answer to a question by counsel, 'How many do you recall being beaten' you said 'Four.'
A
DEFENSE: Mr. Morris, I do not know what camp you are speaking of.

PROSECUTION: I am speaking of the hospital. I am speaking of Ichiko.

PRESIDENT: There was no such testimony given. He was speaking of the beating at Yokohama of three.

PROSECUTION: May we have a five minute recess to clear that in the record. I think we would like to see just what that was.

PRESIDENT: The Commission will recess until 1100.

The Commission then took a recess until 1100 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

PROSECUTION: Call, your Honor, to clarify this. Will you read the statement starting at, 'Do you know Mitsuo', and 'Do you know Roby' and read the questions and answers.

DEFENSE: The defense will concede that the accused testified four persons were slapped at Yokohama.

PROSECUTION: I would just like to have it cleared up for all of us.

DEFENSE: I was trying to save time.

PRESIDENT: Incidentally, we have only the notes of members of the Commission about the incident referred to.

(Evidence read)

PROSECUTION: Gibbs and Quinn and the other prisoner were all prisoners at Ichiko Hospital. The beating of these on the night of May 5th is referred to in the evidence.

Now, witness Gibbs and Quinn and the other prisoner were all prisoners at Ichiko Hospital. Were they not?
A Yes.

Q Was the beating of Gibbs, Quinn and the other prisoner on the night of May 5th when you had roll call or was it on another occasion?
A It was not during a roll call.

Q Do you recall whether or not Gibbs and Quinn and the otherone you beat were all members of the cookhouse staff of the Allied prisoners of war?
A Quinn worked in the kitchen but I do not know about the other two.

Q. Didn't that beating arise because complaint was made that you and Sunto had been stealing the rations of the American or Allied prisoners?
A. No.

Q. What were they beaten for?
A. I beat them after receiving orders from Mr. Shon.

Q. Was John Holford the other man you beat up whose name you do not remember?
A. I do not know.

Q. What did you beat them with?
A. With my open hands. I struck them lightly three times.

Q. You knew Mr. Jackson, didn't you?
A. I don't remember him very well.

Q. Didn't you testify Friday you knew Mr. Jackson?

DEFENSE: I object to that. He testified he did not.

PRESIDENT: The question will be answered. The objection is overruled.

PROSECUTION: When Mr. Jackson states in his affidavit: -
Will the reporter repeat the question?

(Question repeated)

A. I said that I did not remember him very well.

Q. "Myself and 5 other prisoners of war were the victims of an assault by members of the Japanese staff in July 1943. This assault was subject punishment by physical violence upon the camp house staff and myself as a reprisal for having reported to the Japanese authorities the theft of food from our meagre rations."

Does that refresh your memory as to whether Mr. Jackson was present or not?
A. When I beat the prisoners Mr. Jackson was in the office with Mr. Shon.

Q. You deny striking or slapping or beating Mr. Jackson on the occasion when you beat Quinn?
A. Yes.

Q. Now, this one individual you beat up, did you know whether or not his name was Stanley, a private in the United States marines?
A. I do not know.

Q. What part of the body did you strike this prisoner on?
A. His face.

Q. What did you strike him with?
A. With my open hands. I struck him twice.

Q. Who ordered you to strike him?
A. There was no order.

Q. What did you strike him for?
A. Because he made an error in reporting roll call.

Q Well, was that the same roll call that you told us about when all the prisoners were lined up?
A No. That was on another occasion.

Q Was there a roll call on the other occasion or just one or two reporting?

DEFENSE: On which occasion? Can't you make that more specific. You have mentioned two occasions. I don't know which one you mean.

Q He mentioned the first one where all were lined up. Now he mentions a second time.

DEFENSE: Are you referring to the roll call on which one came to him?

PROSECUTION: Read the question.

PRESIDENT: "roll call or one or two prisoners of war reporting?

DEFENSE: I submit "on the other roll call", the accused does not know which is referred to.

PROSECUTION: Let the accused testify to that, counsel.

PRESIDENT: Lethim testify as best he can. I will ask that the prosecutor make his questions a little more specific. It will save everybody's time.

PROSECUTION: Let me rephrase it this way.
Witness, on the occasion when you have admitted slapping one man, how many prisoners were present at roll call?

A All the prisoners of war were present at the roll call.

Q So you held roll call on two different occasions, then. Is that right?
A There were two roll call incidents. Once I beat a prisoner and another time someone else beat the prisoners.

Q Now, referring tothe Yokohichi prisoner of war camp, I think you testified you beat three prisoners of war and may be four. Is that correct?
A Yes.

Q I believe youtestified that in this beating you took off your belt and folded it in your hands and beat them with the belt?
A I held the belt in my hand and struck the prisoner.

Q Did you strike three or four of the prisoners of war?
A Yes.

Q With the belt?
A Yes.

Q Just tell us the exact instructions your superior officer gave you regarding that beating?
A Sergeant Yamazaki ordered me to strike the prisoners when these prisoners did something and to strike them as a punishment.

Q Did he tell you what to strike them with?
A No. He did not.

Q And were the prisoners lined up at attention when you were striking them with the belt?
A They were standing in an ordinary position.

Q Were they standing next to each other in the row?
A Yes.

Q I believe you said in direct examination that one of the prisoners had a cut on his lip?
A Yes.

Q Can you describe the belt you used?
A It was the type of belt used by the soldier for carrying a sword.

Q Was it what we commonly call a garrison belt?
DEFENSE: If the Commission please, the use of the term 'garrison belt' will mean nothing to this man.

PRESIDENT: Well, let the witness answer.

DEFENSE: Ask him what a garrison belt is and prepare the way for him.

PRESIDENT: Let him say that and he will say it in less words. If he says he does not understand we will save thousands of words in the record.

A The belt was about 2½" wide.

Q Did it have a large buckle on the end of it, witness?
A Yes.

Q How long would you say the belt was?
A About three feet.

Q Will you take this small belt and just show the Commission how you folded up the belt and beat the prisoners?

DEFENSE: The defense objects to that, if the Commission please. We have no objection to the prosecution's mentioning, but this is like making him give evidence against himself.

PRESIDENT: He already testified he folded up the belt and struck the prisoner.

PROSECUTION: If the Commission please -

DEFENSE: If the objection is overruled, I do not have to listen to Mr. Adinolfi!

PRESIDENT: That is right!

PROSECUTION: Show the Commission how you beat up the prisoner?
A In this manner (indicating).

Q Let the record show swinging right and left.
You heard Corporal Bonnere testify last week?
A Yes. I remember.

Q He testified that you wrapped the belt around the hand, leaving the buckle end about 6 inches extended and beat the prisoners that way. Was he mistaken?
A Yes. I would say he is mistaken.

Q How long a period of time did you beat these prisoners?
A I struck the prisoners about four times each and left them.

Q Were you the non-commissioned officer of the day at the time of this - the duty officer?
A No.

Q Who was the duty officer on that particular occasion?
A I believe it was sergeant Yamauchi?

Q You say you believe it was? Are you sure, or is that just your best recollection?
A I am sure.

Q Where were you when you first received the orders to beat the prisoners?
A When I went to the office for liaison.

Q Where were the prisoners at that time?
A They were near the corridor.

Q And after you received the orders to beat them, what did you first do?
A Then I beat them.

Q How many evenings a week were the prisoners allowed to play cards?
A I don't know about this.

Q Well, you do know they were allowed to play cards one or two evenings a week. Don't you?
A I don't know.

Q Did you ever serve as duty officer during the period you were at Yokohama? Non-commissioned officer?
A No.

Q I think you stated you did not know a man by the name of Nakai?
A Yes.

Q Where did the sergeant go after he ordered you to administer the beatings?
A He remained in the office.

Q Was he in a position to watch you administering the beating?
A No. Could not.

Q And after beating these prisoners, where did you take them then, or where did you go?
A After beating them I released them to go back to their quarters and I brought one of them to the steps of the office and told him to go to the dispensary for treatment. Then I went back to my quarters and regretted the fact that I struck the prisoners.

Q And do you know whether or not that prisoner did go to the dispensary?
A He went to the dispensary.

Q And did you see the prisoner the next day with a patch on his lip?

DEFENSE: I object to that as a double question. Did he see him the same day and did he see him with a patch on his lip.

PRESIDENT: Referring to the prisoner he went to the dispensary, naturally.

DEFENSE: Objection sustained.

WITNESS: I saw him later.

Q Did he have a patch on his lip when you later saw him?
A Yes. He had a plaster on his lip.

Q Did you personally report the beating you had administered to these prisoners to the camp commander?
A No. I did not, because I beat them through orders.

Q Do you know whether or not this beating was ever reported to the camp commander?
How long did you proceed to beat the prisoner after you saw blood on his face? How long did you continue to beat this prisoner?
A When I saw blood on his face I stopped beating him.

PRESIDENT: I think that is all.

EXAMINATION BY THE COMMISSION

QUESTIONS BY MEMBERS:

Q Do you know the the prisoner of war doctor was who treated the prisoners from June of 1943 to March, 1944?
A When you say 1943, do you mean at Ichiein?

Q Were you not at Ichiein during that time, June, 1943, to March, 1944?
A Yes. I was.

Q Then I mean at Ichiein.
A When I went to the camp it was Jackson and later Hurley and Gonion that I remember.

DEFENSE: Just a moment.

Q Do you remember Dr. Jackson being sent away from Ichiein Hospital?
A Yes. I remember.

Q Who took his place?
A As I recall, it was Hurley and Gonion.

Q Didn't you work in the hospital?
A Yes. I was working in the hospital.

Q Didn't Major Ashizuyi come in in March and take Jackson's place when he left?
A I don't know Major Ashizuyi.

Q You remember a major who was at Ichiein for three months from July, 1943, to October, 1943, and then left and returned to Ichiein Hospital in March, 1944?
A I don't know.

Q Did you not work around in the hospital where the doctors worked?
A I worked at a different place from where the medical officers worked.

Q Where did you work?
A In the Japanese office.

Q Did you stay in the office?
A Yes. Practically all the time.

Q Didn't you say you took care of the wards in previous testimony and kept them sanitary?
A No. I did not.

Q What did you say as part of your detail duties? What did you do in the hospital?
A I was polishing the shoes of the officers and keeping the quarters of the Japanese personnel sanitary and preparing meals for officers and the medical officers and to serve tea.

Q Your duties were concerned then entirely with the Japanese personnel and not with any prisoners of war? Is that correct?
A Yes.

Q How did you happen in May to take that roll call?
A Because the duty noe was absent from camp and I was present so I took the roll call.

Q What authority did you have for taking a roll call?
A Because I was present in camp I took the roll call.

Q Were you next in line to the duty noe at that time in order to - in order of rank to the Japanese noe?
A There were Nakagawa and Tonitsuki were above me.

Q Then why were you taking the roll call?
A Because I would be reprimanded if I did not take the roll call immediately.

Q Why didn't the senior Japanese military guard present take the roll call?
A I had to take the roll call because I was the subordinate. In the Japanese Army the subordinate has to do practically everything.

Q Did you not state that you were a medical orderly?
A Yes.

Q Did a medical orderly only take care of Japanese officers' quarters?
A I was a medical orderly and that was my principle duty.

Q Did you not work in the hospital wards at any time?
A No.

Q How well did you know Dr. Jackson?
A I don't know him very well but I recall him as having a thick long beard when he came with Dr. Nosu.

Q How often did you see him while he was at the hospital?
A I saw him only once when he came into the office with Dr. Nosu.

Q Dr. Jackson was the prisoner of war doctor for over ten months. Did

you see him only once in that ten months?

A I have recollection of having seen him definitely only once within that period.

Q You said that you don't understand what the words "All men die" mean. Is that correct?

A Yes.

Q Did you have the prosecution affidavits that are present in this case interpreted to you?

A No.

Q You have never heard the affidavit of Major Ackerayd, Ritana, Walsh, Welford, Denny, Granger and about seven other affidavits interpreted to you

A Yes. They were interpreted to me.

Q During the interpretation of these affidavits were you not told what the words "All men die" mean?

A Yes. It was explained to me.

Q Then you still say you do not know what the words, "All men die" mean?

A I did not know what "All mendie" means.

Q Didn't you say that the words were interpreted to you?

A I was told that means "Asu shini" - meaning "to die tomorrow".

Q Do you understand what the words "You die tomorrow" mean?

INTERPRETER: In English.

MEMBER: Yes.

A I don't.

PRESIDENT: If there are no objections, the Commission will recess at this time until 1:30 p. m.

The Commission thereupon took a recess until 1330 hours at which time the personnel of the Commission, prosecution and defense, the accused, the interpreters and reporter resumed their seats.

Noon Monday, Feb. 8

PRESIDENT: The Commission will be in session.

PROSECUTION: The witness is advised he is still under oath.

PRESIDENT: Do you remember when Doctor Jackson left Ichioka Hospital?

A I do not know.

Q Do you remember a new doctor appearing at Ichioka Hospital and noting that Doctor Jackson did not seem to be around.
A I do not remember.

Q You testified that Bando and Nakagawa participated in the beating of a number of prisoners one night after you had taken the roll call. Is that correct?
A Yes. I did.

Q Who was the prisoner of war doctor in charge at that time?
A There were medical officers Berley and Gonico.

Q Did you participate in that beating by striking any prisoners of war?
A I did not participate.

Q Did you at any time in Ichioka Hospital cause a man by the name of Shannon or Hitsma or Gonico to stand with their hands above their heads holding a form.

INTERPRETER: What kind of a form?

Q I don't know. Standing holding anything over their heads.
A I did not see.

Q Let us repeat the question. I asked him if he caused a prisoner of war by the name of Shannon or Hitsma or Gonico -
A No. I did not.

Q Did you ever participate in the beating of prisoners for reporting that some of the Japanese orderlies had been taking food intended for prisoners of war?
A No. I did not.

Q On the night of the beating of which you spoke when Bando and Nakagawa beat the prisoners, did either or both of them go into the ward and strike prisoners who were in bed, sick prisoners who were in bed?
A No. They did not.

Q Were you present until the entire incident had ended?
A Yes.

Q Neither Bando nor Nakagawa went into the wards and struck any bedridden patients. Is that correct?
A They did not strike any bedridden patients.

Q You said you remembered what Doctor Jackson looked like. Shortly after you came to the hospital did you beat Doctor Jackson?
A No. I did not.

Q Did you ever, in conjunction with Private Tomitani beat Doctor Jackson and three or four other prisoners of war?
A No.

PRESIDENT: Questions?

MEMBER: What was your occupation before you were drafted into the Japanese army?

A I was a carpenter.

Q How many Japanese prisoners did you take care of in the hospital camp at Ichiko?

INTERPRETER: Take care of?

Q He testified that he served tea and cooked for some. I will re-phrase the question.

How many Japanese personnel did you take care of, meaning to cook for, or to serve, as you testified?
A About six.

Q How much of your time each day did that take?
A After the meal I washed the dishes and cleaned the table which took about 1½ hours after each meal.

Q What other personal services did you render to these Japanese personnel?
A Besides that, cleaning the quarters and other things which took up the rest of the day.

Q What did you mean when you testified earlier today that you spent most of your time in the office?
A After serving tea in the office I remained there for awhile.

Q What did you do in the office?
A I would wait until they finished drinking their tea and take out the dishes again.

Q Did you have any duties in the office or did you use it merely as a resting place?
A Beside that I did not have any other duty in the office.

Q Did you have freedom to go anywhere in the camp you wanted to go?
A Unless I received an order I could go to any part of the camp.

Q How often did you enter the prisoner of war barracks?
A I have been in the prisoner of war barracks about four or five times.

Q Why did you go in them?
A When I went to take roll call.

Q Was taking roll call part of your duties?
A It was my duty when the duty noncom was absent from camp. That is the only time I went into the barracks.

Q When the duty noncom was absent from camp did you take over his duties?

A Formerly, the next ranking soldier should take the duty. However, in the Japanese army, as a matter of courtesy the lowest ranking soldier does most of the duties.

Q Did you take over these specific duties without specific orders?
A Yes.

Q Then, do I understand, that you took taake roll call without any specific order from your Japanese seniors?
A Yes.

Q When you took that taake roll call were the seniors present in camp?
A There was Nakayama who was above me.

PRESIDENT: Questions?

MEMBER: Do I understand it was your regular duty to take roll call every night?

A No.

Q Was it your duty to take it frequently, once or twice a week?
A No.

Q Who took it the rest of the time when you did not?
A The duty noncom.

MEMBER: Did you say, as a matter of courtesy the junior took the roll call?

A As a matter of courtesy in the Japanese army the subordinates do everything before the higher ups.

Q Were you not present when the duty noncom was in camp?
A Yes.

Q Then, as a matter of courtesy why didn't you take the roll call rather than the noncom?
A Taking the roll call is part of the noncom's duty.

Q Why wasn't it the duty of the next senior when the duty noncom was not there then?
A According to the rule, the next ranking officer takes over the duty. However, as a courtesy the lowest ranking soldier makes it his business to do things before the higher ranking officers.

Q Weren't you the lowest ranking soldier present at that hospital on a number of occasions during the roll call periods?
A At that time I was the lowest ranking soldier in the hospital.

Q Isn't it a fact that the duty noncom was not present for roll call on occasions other than the night of the beating you spoke of?
A That is correct.

Q Then, did you not on those occasions also take the roll call since you were the junior soldier present?
A When the duty noncom was absent I took the roll call.

Q How often would you say you took the roll call between July 1943 and July 1944?
A About March of 1944 I took roll call about four or five times. That is all during that period.

Q Did you at no other time prior to March 1944 and after July 1, 1943 take roll call?
A No.

Q Then do I understand that the duty noc was always present between July 1, 1943 and May of 1944? He was never absent. Is that correct?
A Yes. During that period the duty noc was not absent.

Q Do you know why he was absent on that particular night of the beating?
A I do not know.

Q Were you ever duty noc or acting noc between July 1943 and May 1944?
A During that period I did the duties of duty noc about four or five times between March 1944 and May 1944.

Q How often did you do the duties of noc between July 1, 1943 and March of 1944?
A I did not.

Q Were you excused from duty officer from July 1943 to March 1944?
A I did not have the authority to act as a duty noc.

Q How did you happen to get the authority in March 1944?
A Because the duty noc was absent from the camp I did his duties.

Q Was he permanently absent from the camp?
A He was absent once in awhile.

Q Did you not testify earlier that the duty noc was always present for roll call except on the occasion of that beating?
A No. I did not.

Q Let's get back to that question. Will the reporter read the former question and answer.

REPORTER: (Re-reading) "Then do I understand that the duty noc was always present between July 1, 1943 and May of 1944? He was never absent. Is that correct?

A Yes. During that period the duty noc was not absent."

WITNESS: Yes. That is the testimony I made.

Q Now let us go back to the last question before I begin to look this up.

REPORTER: (Re-reading) "Were you excused from duty officer from July 1943 to March 1944?

A I did not have the authority to act as a duty noc.

Q How did you happen to get the authority in March 1944?
A Because the duty noc was absent from the camp I did his duties.

Q Was he permanently absent from the camp?
A He was absent once in awhile."

Q Then, do you state that the duty noc was never absent at roll call between July of 1943 and March of 1944?
A Yes.

Q How did the duty non com begin to absent himself from roll call after March of 1944 when he was never absent prior to that time?
A They may have been absent due to business or when the weather was bad they would not be able to come from the main camp.

Q How did that situation differ from the situation that existed from July 1943 to March 1944?
A I do not know.

Q There was a period of nine months during which the non-commissioned officer was never absent from roll call and suddenly in March of 1944 he was absent on three or four occasions during that month. How do you explain that?
A I do not know the reason why the duty nco was absent.

Q About the time that you state that you began to take roll call, which was in March of 1944, Major Ackeroyd states that he came to Ichioka and a man by the name of Shannon came there to work in the hospital treating prisoners of war. Do you remember either of these two?
A I do not know.

Q Shannon says that both he and this Doctor Ackeroyd who came to Ichioka to take the place of Doctor Jackson were beaten on several occasions by either Kato or Nakayama. Is that statement correct?
A I never beat these prisoners.

Q Except on the occasion of the beating you spoke of previously when Bando and Nakayama beat prisoners did you ever see Bando and Nakayama beat any prisoners of war at Ichioka?
A No.

MEMBER: Was this duty non commissioned officer about whom you have testified a member of the hospital at Ichioka?

A There were two or three duty nccs that came from the main camp. The others of the camp staff that did the duties of a duty nco was a Sergeant Major Okana, civilian Kitamura and Superior Private Tomitami.

Q Was a member of the Ichioka hospital held in daily rotation as a duty nco for the Ichioka hospital camp?
A They were on duty in rotation about once a week.

Q Then, I understand the same man was not on as duty nco all the time?
A Yes.

Q How many men were on this roster from which the daily nco was selected?
A About six.

Q Can you name them?
A Yes.

Q Name them.
A Kitamura; Okano, sergeant major; Tomitami, superior private; Kawamura, sergeant; Kobiashi, corporal; and Sergeant Major Okuyama who came about three or four times as duty nco.

Q Why then, if all of these men were on the roster to take the duty as daily duty nco for the Ichioka hospital camp was there any necessity for you to take the duty through the absence of the duty nco?
A By taking over the duties, what do you mean?

Q Why was there any necessity for you to assume the duties as a duty nco in place of one of these men who were on the regular roster of these duties?

A There is only one duty man for one day and it was when this duty man asked for a day or was absent that I took over the job.

Q Is it not a fact that the duty man for a Japanese prisoner of war camp could not be absent without someone else officially taking over his duties?
A Yes. According to the rules the duty man is not supposed to be absent from his post. However, if any roll call report is not made the ones who are reprimanded would be one of us, so I took the roll call.

Q Is it not a fact that the Japanese army rules made the duty man completely and solely responsible for the guarding of the prisoners and the security of the camp at all times during the absence of the camp commander?
A Yes.

Q Is it not a fact that the duty man of the camp -

INTERPRETER: Will you ask the questions in their positive form. I have difficulty putting them over in their negative form.

Q If the duty officer absented himself from the camp when he was detailed on duty would that not be a neglect of duty and failure to properly perform his duties?
A Yes.

Q Didn't the camp commander know that the duty man was absenting himself from camp and failing to perform his duties?
A Do you mean the branch camp commander?

Q The commander of the Ichiki hospital.
A I believe that he did not know.

MEMBER: No further questions.

PRESIDENT: If there are no objections at this time the Commission will recess for 15 minutes.

The Commission then took a recess until 1430 hours at which time the personnel of the Commission, prosecution and defense, and the accused, the interpreters and the reporter resumed their seats.

PRESIDENT: The Commission will be in session.

PROSECUTION: The witness is advised he is still under oath.

PRESIDENT: Any further questions by the prosecution?

PROSECUTION: We have no further questions.

PRESIDENT: Questions by the defense?

DEFENSE: I have a question that was brought up by the president.

REDIRECT EXAMINATION

Questions by defense:

Q Mr. Witness, you said that some soldiers or men came from the Osaka main camp. Is that correct?
A Yes.

Q How many per week took over the duties of the duty man?
A Three.

Q What time did they arrive?
A About five o'clock after working hours.

Q And what time did they return to the Osaka main camp?
A About eight o'clock the following morning.

Q Did they take a roll call in the morning before they left?
A Yes. They took morning roll call about 6:30 in the morning.

Q What was your rank in July 1945 while you were at Ichioka?
A First class private.

Q How many stars did you wear?
A Two stars.

Q What was your rank in May 1944 at Ichioka?
A Two stars.

Q What was Nakayama's rank in May 1944?
A He was first class private.

Q How many stars did he wear?
A Two stars.

Q What was Matsumitsu's rank during the time you knew him at Ichioka?
A Superior private.

Q How many stars did he wear?
A Three stars.

Q In the Japanese army, as one soldier entered and became a soldier before another does he out-rank the second one?
A Although they may be of the same rank the one who entered first is the superior soldier.

Q Just one question. When the duty man of the day was absent did you take over the post of that man or did you only take the roll call and not the other duties of the man?
A I only took the roll call.

DEFENSE: That is all.

RECROSS EXAMINATION

Questions by the prosecution:

Q Witness, did you testify Friday that Bando and Nakayama were with you at the time you took roll call and that Bando beat the prisoners and that you did not because you did not think they had done anything wrong? Did you testify to that?

DEFENSE: What we have on the record is the best evidence of what the witness said. My recollection is that he did not know.

PROSECUTION: Let us see his answer.

PRESIDENT: Ask him the question.

WITNESS: Yes. Because I thought the prisoners did not do anything wrong.

PROSECUTION: Now, you just told us, in answer to defense counsel's question that Bando was a two star private the same as you were.

DEFENSE: Nakayama was a two star private.

PROSECUTION: Nakayama was a two star private the same as you. Is that correct?

A Yes.

Q And that was Bando's rank at the time you were taking the roll call?
A He was a civilian attached to the army.

Q Did he have authority over you or did you have authority over him, referring to Bando?
A I could not say. The civilians were different to the army personnel.

Q Did you consider you were in charge of the roll call that you have just told us about when Bando and Nakayama were present with you?
A Because the duty noc was absent I took the roll call.

Q Were you in charge of the roll call? Will you answer that question?
A No. I was not in charge.

Q Well, who was in charge of the roll call on this particular evening that you have told us about?
A The duty noc.

Q Didn't you tell us awhile ago that you were taking the place of the noc.

PRESIDENT: There appears to be some confusion on that. He said he took the roll call but as noc was responsible; but in the absence of the noc it was a matter of courtesy in the Japanese army to do it, still leaving the duty officer responsible.

PROSECUTION: Was there anyone else present at taking the roll call except you, Bando and Nakayama?

A Noone else was present.

Q You told us awhile ago that on that occasion you did not beat the prisoners because you did not think they had done anything wrong. Did you say anything or do anything to stop Bando or Nakayama beating the prisoners?
A I could not stop them beating the prisoners.

PROSECUTION: No further questions.

DEFENSE: I would just like to say for the record, it would explain matters and it is in the record, why he could not stop them.

PRESIDENT: It is in the record before?

DEFENSE: Yes. That is right.

PRESIDENT: The witness is excused.

DEFENSE: At this time the defense wishes to put into evidence an affidavit made by Robert B. Sallenberger. You have copies of that.

PROSECUTION: It is an affidavit that pertains to specification 6 which it was agreed would be stricken from the charge and specifications. I felt in view of the fact that that specification was stricken that it would not be necessary to present that affidavit in support of it. I do not feel it is material but if the court thinks it is, I have no further objections.

DEFENSE: The defense puts this in because Sallenberger was mentioned as one of the four men being struck at Yokkaichi by Corporal Demmore.

Sallenberger, in making an affidavit as to atrocities that occurred at Yokkaichi does not make any mention of this incident. Apparently, if it occurred and he was one of the prisoners involved it was of such little consequence that he did not mention it and for that reason it does not appear in the affidavit.

PROSECUTION: I think the last part is a matter for argument. I will concede on the record that Sallenberger does not make any mention of the beating that Demmore testified to in connection with the incident. I will concede that he did not mention it.

PRESIDENT: I think, without any further arguments, if the defense wants it admitted, and there is no objection by the prosecution, it will be admitted and read in evidence.

(Document referred to was produced and marked Defense Exhibit A for identification and was received in evidence.)

(Defense Exhibit A was read by the defense.)

PROSECUTION: Now that that is read into the record, I would like to say this. That is an affidavit used in the case of Morimo Shinjo. Defense counsel was present at that trial most of the time. Evidence in that case related to the mistreatment of Kristgovic and others after the large air raid at Yokkaichi in July. Counsel was present and knows that.

DEFENSE: As Defense Exhibit B we wish to submit a list of the Osaka camp personnel. This is in part and is a translation. It is submitted because it lists the name of Tatsuo Kato who is a different person to the one here.

PRESIDENT: Has the prosecution seen it? Any objections?

PROSECUTION: Is this the one at Yokkaichi prison camp?

DEFENSE: No, Ichioka was under Osaka. It was under the Osaka jurisdiction.

PROSECUTION: Is this a list of the personnel in the Osaka main camp?

DEFENSE: Yes. In part.

PROSECUTION: I object to that. I do not see how it is material.

AB DEF. Have you a list of the Ichioka hospital? We did not put in Exhibit 7, the Granger affidavit. It states it is Tat Suo Kato. We merely put in proof that he existed. Furthermore, if the Commission please, you have evidence

that there were prisoners going back and forth from Ichicha and Osaka.

PRESIDENT: Does the prosecution require proof that Ichicha is in the city of Osaka?

DEFENSE: Ichicha is a district of Osaka.

PROSECUTION: I just say that you should have a copy of the Ichicha Hospital personnel. Although you admitted the defendant was at the Ichicha Hospital I do not see where the guards at the Main Osaka Camp come in this.

DEFENSE: Unless Mr. Granger is wrong.

PRESIDENT: I have been trying to follow this argument to see why we are getting into this to prove that a man, Tatsuo Kato existed elsewhere.

DEFENSE: That he existed in the same Osaka district.

PRESIDENT: As I understand it, the name of the accused is Masayoshi Kato and there was a man by the name of Tatsuo Kato. That seems to be relevant and will be admitted into evidence.

(Document referred to was produced and marked Defense Exhibit B for identification and was received in evidence.)

(Defense Exhibit B was read by the defense.)

PROSECUTION: As a point of information, in the Osaka area there were 28 branch camps.

DEFENSE: Since the prosecution seems to have made the check out there may I inquire if all the 28 -

PRESIDENT: We are wasting too much time on this argument. We will concede that the hospital was in the Osaka area and if there was a man by the name of Kato in that area let us get it into the evidence and forget about it.

DEFENSE: Sir, we believe the prosecution has in its possession other affidavits that would bear on the incident of May 8. We believe that these affidavits would omit the name of Kato and implicate others. Our belief is based on the specifications drawn up by the prosecution in the case against Bando. It was drawn up on October 12, 1946, three days earlier than the specifications in the instant case. In the specifications there is a specific specification concerning Major Ashcroyd. Since Major Ashcroyd's affidavit was not received until a week ago the prosecution must have other affidavits which refer to the beating of Major Ashcroyd and we believe, since this case is against Bando that these affidavits of which we have no knowledge would implicate persons other than the accused in this case and might exculpate or exonerate this accused from all responsibility in that incident. Furthermore, there is another specification in that case given by Sergeant Wickens and there again the situation prevails. Hence there were other affidavits existing around October 12, 1946 that must have referred to this and omitted the name of Kato or the prosecution would have brought them into evidence in this case. Therefore, I think this Commission should be in possession of any other affidavits in the hands of the prosecution which relate to that incident for which the accused is being tried here.

PROSECUTION: Are you charging on the record that I am deliberately withholding affidavits?

DEFENSE: I don't say you have any knowledge.

PROSECUTION: Are you charging that any member of the prosecution staff is deliberately withholding affidavits from this Commission?

DEFENSE: I only say there are apparently other affidavits. There may be separate files.

PROSECUTION: Have you got proof of that?

DEFENSE: It is our duty to present all the facts before the Commission so that the Commission, which is a fact finding body as well as a judicial body, can have all the facts in their possession. In the course of this case I ran across the Bando case and it seemed reasonable that on such charges then existing the prosecution would have other affidavits against the accused. I would not say Mr. Morris or anyone else is deliberately withholding anything.

PROSECUTION: Do you know or do you not?

PRESIDENT: What prevents you from finding out?

DEFENSE: We cannot have access to them.

PRESIDENT: May I ask the prosecution if they have, or have seen, affidavits bearing on the incidents here that are not before the Commission.

PROSECUTION: I state on my word of honor I never had. I never prepared the Bando case however, The only thing I knew anything about is one affidavit, Exhibit 2, from Kitsma and counsel and the Commission objected to it.

PRESIDENT: Gentlemen, let us stick to the issue. You are taking up the time of this court and filling the record with unnecessary words because of your personal battle. We ask you certain questions. The prosecutor says he has no affidavits.

DEFENSE: I believe the prosecutor but I ask him to look in the files in the Bando case. That is my suggestion. I believe in the files of the Bando case affidavits in issue here may be present. I do not know of my own knowledge.

PRESIDENT: Is there any prohibition against your finding out as a member of the defense?

DEFENSE: As I understand it, we have no access to their records and we of the defense have no access to these records.

PROSECUTION: I do not know of one instance where the defense counsel has asked to see an affidavit of any prisoner -

DEFENSE: There, he says of any prisoner.

PRESIDENT: We have enough difficulty listening to all the people -

DEFENSE: I don't know of any specific prisoner. I just have a belief that because they were made on a certain date that they were not made out of thin air.

PRESIDENT: If there are any additional affidavits that might help the Commission in determining the case the Commission would like to have them. It is incumbent upon the defense to bring here an assurance that the Legal Section

of SCAP will not permit you to see or have these affidavits before we will direct the prosecution to bring in affidavits that may not exist. We have heard the accusation made that the defense has no access to the SCAP file. Frankly, I do not believe it exists as it sounds. If so, the accusation has been made by defense counsel.

DEFENSE: I will return today to Tokyo with Mr. Morris to look at the files in the Bando case to see if such affidavits exist.

PROSECUTION: I think you should not make allegations -

PRESIDENT: Here sir, off again on an argument. I don't want legal battles. If you are trying to develop your forensic ability let us stop it now.

PROSECUTION: I won't say ~~no~~ any more, but demand a request that accused make his written motion on the record and supported by his word of honor by affidavits.

DEFENSE: I have stated my position clearly. I do not know. I have a belief.

PRESIDENT: And do you request an adjournment to have time to find evidence in the Legal Section of SCAP that might exist.

DEFENSE: It is 3:42 p.m. now. That allows them an hour. I will go down to Tokyo today to see if I can have access to the records and report tomorrow morning.

PRESIDENT: And I would like to know the facts accurately and plainly in case you are denied access to the affidavits existing in these files. I have heard that statement made several times and, frankly, I do not believe that evidence that might help the accused is being withheld. If it is, I want to know because I would like to write a letter as president of the Commission.

PROSECUTION: Might I say the policy is not dictated by the prosecution.

PRESIDENT: I do not care who dictated it. The Commission wants all the evidence for and against the accused that might exist. If there is such a thing as withholding evidence I want proff of it and that defense has been denied affidavits. I am sure that General MacArthur does not approve of withholding evidence that might assist the accused.

PROSECUTION: I understand for the record that counsel be allowed to see all the affidavits we had in the Bando case and Your Honor suggests that you should see it.

Counsel, has the Bando case been approved and sent down to you?

DEFENSE: Only the specifications.

PROSECUTION: I do not know anything about the Bando case.

MEMBER: May I add something in general terms. It ought to be possible for the defense to ask through a proper channel that there are no further affidavits covering a certain camp or a certain period for any of the deponents that might be an undertaking for the prosecution to cope with but it is not unreasonable.

PRESIDENT: I think it should be ended by the Defense Section of the Eighth Army and the Legal Section of SCAP and it should be asked by letter if there are any other affidavits covering the camps mentioned.

PROSECUTION: This is off the record.

(Discussion off the record.)

PRESIDENT: Your motion was to be permitted to visit SCAP Legal Section, to see if affidavits existed.

DEFENSE: I was suggesting that I would take the prosecutor's word for it and he says it is not in his hands.

PRESIDENT: The motion will permit the defense time to look at the file and it is granted. The Commission will not direct that the prosecution look through all the files but we will if you are prohibited from looking through them.

PROSECUTION: The only reason I told him I did not prepare the Bando Case was because I do not know what lawyer has the file nor where it is.

PRESIDENT: Well, we would want any affidavits that cover the incident at the Ichioka hospital even though they may not name Kato. We want the evidence.

DEFENSE: If we cannot return to the Legal Section before five o'clock we will be closed out.

PRESIDENT: You are the people who are delaying this, not I.

PROSECUTION: You could not do it today.

PRESIDENT: All you have to do is to make a motion to adjourn.

DEFENSE: Then we would like to adjourn until 1:30 tomorrow afternoon.

PRESIDENT: Other than that you have finished your pleadings?

DEFENSE: That is correct.

PRESIDENT: Then the Commission will adjourn until 1:30 tomorrow.

The Commission then at 1540 hours on 3 February 1947 adjourned to meet at 1330 hours on 4 February, 1947.

Franklin C. Morris
Chief Prosecutor
Herman M. Freundlich
Chief Advisory Counsel

John P. Rodan

JOHN P. RODAN, COLONEL, Mq. Eighth Army
President.

Yokohama Court House
Yokohama, Japan
Tuesday, 4th February.
1947

The Commission met, pursuant to adjournment, at 1330 hours on Tuesday, 4th February, 1947, all members of the Commission, the prosecution and defense, the accused, the interpreters and the reporter being present.

PRESIDENT: The Commission will be in session.

DEFENSE: Sir, the defense staff and prosecution staff conferred in Tokyo this morning at the Meiji Building with Mr. Blackstock, Chief of the Prosecution Section. And as a result of that conference all parties concurred in this expression of policy of the prosecution staff:

If the defense were to request a particular affidavit from the files of the prosecution it would be given access to it; but if a request is made to see the files of any camp the request would not be granted; that is, no camp file, as such, will be open to the defense.

PROSECUTION: From there, may I go on.

May it please the Commission, after you made that order that counsel could examine the Bando file, I think there was some statement in there that if they were not permitted to examine it, then I would examine it.

I examined the Bando file this morning. I discovered that Mr. Black, a lawyer in our office, had prepared the Bando file. He left for Manila on the 15th September and arrived back here on the 29th of January. During that time his files were in the typing room.

However, this morning, Mr. Black was there and I talked to him and examined his files.

Counsel, when he made the statement yesterday, said he thought we were withholding evidence and made the statement on the strength of Specification No. 3 in the Bando Charges. Specification No. 3 says:

> "On or about the 8th...Bando did wilfully and unlawfully mistreat Major John Finch Ackeroyd, an Australian prisoner of war."

Counsel, going on the theory that Mr. Black could not have prepared that specification without the Ackeroyd affidavit - and you will recall the Ackeroyd affidavit did not go in until later.

In examining the file of Mr. Black, and I have his trial brief here, Mr. Black based that specification on the Barley affidavit and I have that here. That is the affidavit that was served upon defense counsel and had they examined it very closely they would have found that Mr. Barley said in that affidavit that Bando had beaten Ackeroyd.

In the Bando case there were six affidavits, four were those used in this very case. Two were not. One of these two is an affidavit and the form affidavit of Alfred M. Underwood referring to Bando beatings but no reference to Nato.

There was another long statement there by Major Harvey B. Seidman. I think I read it before. He refers to the beatings in his statement but does not mention names of anyone who participated in it.

I have brought both these affidavits here. These are the only affidavits that were found and I would like to have the Commission consider putting them in evidence.

PRESIDENT: Does defense believe they are relevant.

DEFENSE: Yes sir. Yes sir.

PRESIDENT: I may disagree with you as to whether they are relevant. This one I have read and that may be introduced if the defense desires. I will read the other now.

In what way does counsel feel this is relevant. It identifies no one and simply mentions a beating of July, 1943, and identifies no one except some English speaking personnel.

DEFENSE: On page 4, "the only one of the Japanese soldiers I personally saw was appropriating to his own use...." If the Commission remembers much of a point was made of who stole what and when.

PRESIDENT: Well, all that statement says is that the only one he could identify was the quartermaster. Of course, that brings in nothing as to whether anyone else did steal it. There were evidently three men who beat Jackson for reporting themselves. That would indicate somebody was concerned.

DEFENSE: Well, since it contains the name of Dr. Jackson we were of the opinion that it is relevant.

PRESIDENT: If you want to read in just the incident and that the man was at the camp there during that period I see no objection. I see no sense in cluttering up the record with all the rest of the irrelevant material.

DEFENSE: Did the President take cognizance of page 5, "Dr. Jackson had been beaten by the Japanese quartermaster and guard."

PRESIDENT: Yes.

DEFENSE: We believe that is relevant.

PRESIDENT: If you want to red it in there is certainly no objection. We will, of course, consider anything that is read in.

DEFENSE: Without having to go through the whole affidavit -

PRESIDENT: Just go through it all.

DEFENSE: I want the whole thing in the record. May we have this affidavit?

PROSECUTION: I can state that neither one of the affidavits are relevant or material in this case. However, because of the insinuations that were made I am leaving it entirely up to the Commission.

PRESIDENT: The defense then will read them in.

DEFENSE: We do not have copies.

PRESIDENT: We will refer them to the reporter for his file after we have read them.

There are five pages of irrelevant material. I don't intend to put them in.

(Document referred to was produced and marked Exhibit G for identification and was received in evidence.)

(Extracts from Defense Exhibit G were read by the Defense.)

MEMBER: That is reading extracts of that, not the whole affidavit.

DEFENSE: I will read the whole affidavit if you wish.

MEMBER: If you read extracts I think you should read the whole affidavit.

PRESIDENT: Note that defense read an extract of Defense Exhibit G and the exhibit is introduced into evidence.

Defense will read an extract from Defense Exhibit D and the exhibit will be presented in evidence.

(Document referred to was produced and marked Exhibit D for identification and was received in evidence.)

(Extracts from Defense Exhibit D were read by the Defense.)

PRESIDENT: That is defense Exhibit D.

DEFENSE: The defense rests.

PROSECUTION: The prosecution has no rebuttal.

PRESIDENT: No rebuttal? Does defense wish to make a closing argument.

DEFENSE: Yes sir. Does the prosecution want to waive its opening.

PROSECUTION: No. But unless the court wants us to waive argument.

PRESIDENT: I think that is what you mean. Do you have a closing argument?

PROSECUTION: I has an opening argument and a closing argument.

PRESIDENT: Well, the opening argument was at the beginning of the trial.

PROSECUTION: No. That is the opening statement as to what we expect to prove. Then after we put in our testimony we make, under the rule, an opening argument. Then the defense answers that and puts in his argument and the prosecution closes.

PRESIDENT: I don't recall the procedure. Is that in the Eighth Army procedure?

PROSECUTION: Yes. I think that is the custom and has been in all cases I have been in.

Sir, the summations may be held as the President of the Commission wishes

That seems to be what the rules state. I am willing to waive my argument if the defense is agreeable.

PRESIDENT: The only thing I find is, "The Commission will now hear the argument of prosecution and defense" indicating that the prosecution may open.

PROSECUTION: Do you want to argue the case?

DEFENSE: We have what amounts to an argument. It is really a summation.

PRESIDENT: Well then, the prosecution may begin.

(Arguments of prosecution and defense followed at this point but are not made part of the record.)

PRESIDENT: There being nothing further, the Commission will adjourn until ten o'clock tomorrow.

DEFENSE: Just one thing, if the Commission please. May we have permission to allow the accused to speak to his family before he leaves because he has almost two hours.

PRESIDENT: It is beyond my jurisdiction and he comes into the jurisdiction of the prison guard when he leaves the court room. It is entirely up to the prison guard officer as to what he can do. I do not make rules for Sugamo prison.

DEFENSE: Alright.

PROSECUTION: Mr. President, are you keeping these two affidavits or will you return them for us to get copies.

PRESIDENT: We will want them long enough to read and they will be returned to the reporter.

PROSECUTION: Then we can get them back tomorrow morning at ten o'clock.

The Commission then at 1530 hours on Tuesday, February 4, 1947, adjourned until 1000 hours on Wednesday, February 5th, 1947.

Franklin C. Morris
Chief Prosecutor
Herman M. Freundlich
Chief Advisory Counsel

John F. Roche

JOHN F. ROCHE, COL., AQ., [illegible] ARMY
President.

Yokohama Court House
Yokohama, Japan
5th February, 1947

The Commission met, pursuant to adjournment, on Wednesday, 5th February, 1947, all members of the Commission, prosecution and defense, the accused, interpreters and reporter all being present.

PRESIDENT: The Commission will be in session.

Will you bring the accused before the Commission please?

Masayoshi Kato:

As President of this Commission, it is my duty to inform you that the Commission, in secret session, two-thirds of the Members concurring in the findings, find you:

Of Specification 1, Guilty
Of Specification 2, Guilty
Of Specification 4, Guilty
Of Specification 5, Guilty
Of Specification 7, Guilty, except the words 'and torture numerous', 'clubs', 'belts' and 'and ropes'; substituting therefor the words 'several' and 'a belt'. Of the excepted words, not guilty; of the substituted words, guilty.

Of the Charge, Guilty.

Having found you guilty of above charge and specifications, the Commission, still in secret session, two-thirds of the Members concurring in the sentence, sentences you to be confined at hard labor at such place as the reviewing authority may direct for twenty-five (25) years.

DEFENSE: Sir, the defense wishes to move to set aside the findings and verdict in regard to specifications 1, 2 and 7 for the following reasons:

1. Specifications 1 and 2 refer exclusively to the commission of criminal acts against persons who were subjects of Holland and the United Kingdom of Great Britain respectively; and who were not citizens of the United States of America at the time of the commission of the alleged offenses. The proof in specification 7 does not show that the persons against whom the alleged offense was committed were citizens of the United States of America.

2 This Commission has no jurisdiction over offenses committed against persons not citizens of the United States or under the protection of the United States.

3. This Commission is a national and not an international tribunal, created by the Commanding General of the Eighth Army of the United States of America and does not ave the direct, delegated or inherent powers or jurisdiction to determine offenses involving internationals.

4. This proceeding was instituted solely in the name of the United States of America as party plaintiff charging the accused with

the commission of offenses against persons not citizens of the United States of America.

5. The United States of America or persons under its protection were not injured parties, therefore no right of action exists in the United States of America against the accused for the offenses charged in these specifications.

6. Jurisdiction over the offenses charged does not extend to each of the Allied Nations, but is confined to the courtesy tribunals of that nation to which the injured party is subjected.

7. No right of action exists in the United States of America over these offenses because the injured parties were subjects of a nation other than the United States of America and at said time were beyond its territorial limits.

8. The Regulations governing the Trials of Accused War Criminals, promulgated by the Supreme Commander for the Allied Powers, promulgated and dated December 5th, 1945, and the amendments thereto dated and promulgated December 27th, 1946, does not provide, extend or give to this Commission jurisdiction over offenses against non-nationals of the United States of America in any manner and fails to provide specifically or by any inference the right of jurisdiction over non-nationals when they are without the territoriality limits of the United States of America.

9. Attention of the Commission is directed to the April, 1945, issue of the American Journal of International Law which quotes with approval the following taken from the "Opinion of American Members, Commission on Responsibility, 1919":

> "The United States could not institute a military tribunal within its own jurisdiction to pass upon violations of the law and customs of war unless such violations were committed upon American persons or American property."

10. Further attention is directed to the Declaration of Moscow, 1943, which expressly recognized the principles hereinbefore set forth and accordingly provided that the United States of America should turn over to the U.S.S.R. enemy nationals who had committed offenses against the U.S.S.R. and who were taken prisoner or came within the jurisdiction of the United States armed forces. Similar reciprocal provisions were provided among all the High Contracting Parties.

11. This principle is recognized in Japan and the Commission can take judicial notice that regularly Japanese nationals are requested by Allied Governments and are sent out to face trial in Singapore, Batavia, Hong Kong and other places for a legal offense against Allied Powers.

12. Unless this finding and verdict are set aside the accused will be in double jeopardy as the Governments of the United Kingdom and Great Britain and of the Netherlands may properly request his trial before a Commission or Court of their choosing for offenses against their nationals.

13. This point is raised at this rather late date in the proceedings as the defense had believed the prosecution would show its right to proceed as by some assignment of right to the United States of America.

PRESIDENT: The motion of the defense is raised on a technicality inasmuch as the charge sheet reads "United States of America". However, the original order came from SCAP directing the Commanding General of the Eighth Army to appoint a Commission to try the case of Hideyoshi Kato and on this Commission, you will note, sits a member not an officer of the United States of America. Therefore, we will assume that there is jurisdiction.

Of course, your motion may be made in writing to give to this Commission. This Commission feels it is appointed to sit under delegated authority from SCAP to the Commanding General of the Eighth Army.

Any motion such as you made should be made through the Commanding General of the Eighth Army to SCAP from whom he got his authority.

Is there anything further to come before the Commission?

PROSECUTION: The prosecution has nothing further at this time.

PRESIDENT: Defense?

DEFENSE: Nothing further.

PRESIDENT: The Commission will be adjourned.

The Commission then at 1[illegible] hours, Wednesday, 5th February, 1947, adjourned *sine die*.

Franklin E. Morris
Chief Prosecutor
Herman M. Freundlich
Chief Advisory Counsel

John F. Roehm

JOHN F. ROEHM, COL., Hq. [illegible] ARMY
President.

VOLUME II

EXHIBITS

in the case of

UNITED STATES

vs.

MASAYOSHI MATO

Case Docket No. 24

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama, Japan
January 28 - February 5, 1947

/s/ BH. I, VX 18194 Major John Finch ACKEROYD, a Patient at 115 Military Hospital, Heidelberg, in the State of Victoria, make oath and say:-

1. I was taken prisoner of war in RABAUL on 6 March 1942, whilst RMO of 2/22 Bn.

2. I was first at ITCHIOKA Hospital, OSAKA from about 13 July 1943 until 15 October 1943.

3. During this period Lieut JACKSON of RNVR was the Medical Officer in charge of ITCHIOKA Hospital.

4. The senior Japanese medical officer of the PW area was Lieut. NOSU and the Japanese Commandant of the PW area was Col. MURATTA.

7.E.M. MD 5. ~~The hospital was underneath part of a grandstand and the~~ patients slept on rice matting mattresses, on boards raised above the asphalt floor. During heavy rain the asphalt floor used to be flooded up to ~~the height of nine~~ inches. Conditions for the ~~sick were bad and the diet was on the lowest non-working scale.~~ 7.E.M. MD

6. Sgt-Major OKANO was in charge of the hospital.

7. During this period, I saw TOMATANI, A Japanese medical clerk beat all the prisoners of war staff, with the exception of officers on one occasion, and on another occasion, I saw Lieut. JACKSON and his cooks beaten for over an hour, by the Japanese quartermaster's staff, because Lieut. JACKSON made inquiries about rations.

8. On 23 March 1944, I was brought back to ITCHIOKA Hospital and found Lieut. JACKSON in a dazed condition and his staff demoralised.

9. I was told that during the previous week, there had been several searches of JACKSON's gear and medical office and that finally the medical records had been removed from the office. JACKSON had been beaten by NOSU and then JACKSON and his clerk, Writer BIGWELL of RN had been taken to the OSAKA main camp, stood to attention for 24 hours and then cross examined and then returned.

10. On 25 March 1944, JACKSON and a Dutch Medical Officer named IRENS were sent away at very short notice, and I was informed, that I was in charge, by OKANO.

7.E.M. MD 11. ~~I found that the majority of the records had not been~~ returned by the Japanese. It appeared that any record relating to diet, caloric content or malnutrition, had been destroyed by 7.E.M. MD the ~~Japanese.~~

12. OKANO had with him, as staff at this time, KATO and NAKAYAMA as medical orderlies, KITIMURA as quartermaster, and BANDO and two others, as civilian army employees for 3 workand guards.

13. All the staff exceptOKANO and KITIMURA beat the prisoners constantly. OKANO and KITIMURA apparently authorised the beatings.

14. Pte. SHANNON of 2/9 Fd. Amb. was severely beaten at least eight times over a three months period, usually when he went to the sterilizer on duty. The sterilizer was kept in the Japanese quarters. KATO and NAKAYAMA did the beatings.

/s/ JFA /s/ BH

PROSECUTION EXHIBIT I

15. In the beginning of April, Sgt. RITZA, a Dutch medical Sgt., was severely beaten on many occasions by NAKAYAMA.

16. KATO and NAKAYAMA also made SHANNON, RITZA and Lieut. GONIE, a Dutch Army Pharmacist, hold forms above their heads, for up to an hour at a time, on many occasions.

17. On 8 April 1944, Lieut. F.V. BERLEY of USN was attached to me as an assistant and Lieut. OHASHI was appointed Director of the Hospital, with a view of forming a larger hospital at KOBE eventually.

18. On 8 May 1944, we received a fish issue, from which KITAURA and BANDO deducted their usual portion. Then BANDO took some more and KITAURA questioned two of the cooks, Leading-Stoker KELLEHER of RN and Pte. QUINN of Royal Marines.

19. After KITAURA left, BANDO stood these two cooks to attention, and beat them, finally standing QUINN to attention in front of my doorway, and when I came out, started to beat him again.

20. I went to the Japanese office, where Sgt-Major OKANO was seated with Lieut. OHASHI on his left and KATO on his right.

21. I said to OKANO, "Two cooks are being beaten, will you please inquire into it." KATO then spoke in Japanese to OKANO who then sent me away.

22. About two hours later, Lieut. OHASHI left the Camp, followed later by KITAURA and OKANO, leaving KATO, NAKAYAMA and BANDO, as the only three Japanese in the Camp.

23. At 2000 Hours, I took the parade for roll-call, KATO appeared to take the report. I bowed, and before I recovered from bowing, BANDO came from behind KATO, with two slippers and proceeded to beat me in front of the whole parade. KATO took off his belt, and he beat me with it also.

24. NAKAYAMA then joined in with a belt, running down the mess tables, beating the Staff on their heads and concentrating on the cooks.

25. KATO then entered the bays, where there were bed patients and pulled them to their feet, beating them about the head and body as he did so. Two of these patients were Pte. WADE of Royal Scots, with a rheumatic heart, and Lieut. DUPREE, an American with gangrenous foot.

26. I moved into the bays to remonstrate, and was beaten continually from behind by BANDO with the slippers, BANDO screaming as we moved from bay to bay, "All men die OK. All men die OK".

27. The beatings went on for about an hour, when we were allowed to go back on parade, where I gave the report of the parade.

28. The staff and patients were then dismissed, with the exception of Lieut. GONIE, Sgt. WICKENS of 2/19 Bn, and myself, who were stood to attention and beaten for some minutes, and then dismissed.

29. After this incident, matters went on much the same as before, with beatings of individuals until the hospital was moved on 10 July 1944, and I went to KOBE.

Sworn at Heidelberg in the State of Victoria this day of 1946. /s/ John F Akeroyd
Maj

Before me, /s/ B. W Hobart Capt
An Officer of the Australian Military Forces.

A CERTIFIED TRUE COPY:
JOHN R. PRITCHARD,
Captain, Infantry.

AFFIDAVIT

Today, Tuesday, 11 June 1946, appeared before me, C STEVENSZ, Assistant Prosecuting Officer to the Provisional Court Martial at Balikpapan (Borneo):

NAME: RITSMA, Hendrik Jan

DOMICILE OR LOCATION: Education Centre, KLANDASAN (BALIKPAPAN)

FUTURE ADDRESS: BERGUM, FRIESLAND (Netherlands)

AGE: 41

OCCUPATION: Teacher, High School
(at present serving as Medical Sergeant, ASN 174705

Q. Are you prepared to swear to tell the whole truth and nothing but the truth?

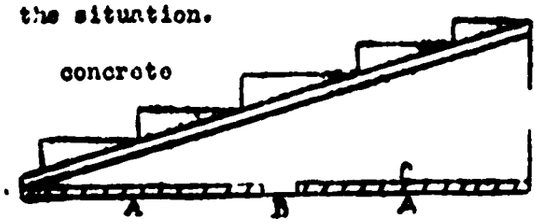
A. I am.

Affiant hereupon makes oath according to his religious denomination to speak the whole truth and nothing but the truth:
After the documents attached to a letter from the Chief, War Crimes Investigation Bureau, dated 30 April 1946 No. R/241, have been shown and read, affiant makes the following statement:

SCENE Ichioka-Hospital for P.O.W. at Osaka 23 rd of March 1944 - July/August 1944 by H. J. Ritsma; sgt. M.G.D. 174705 (Pharmacist mate 2nd cl.) Dutch R.P.

GENERAL CONDITIONS.

. Lodg. The Hospital was situated in the godowns under the seats of the stadion at Osaka. Further position cannot be given. A cross-section may explain the situation.



front 5 M. high with window.

A. Sick-bay.
B. Stone gangway 2½ M width with large tables and long benches.
C. Wooden platform with matrasses

The length of the whole hospital is estimated upon 50 M. At both sides were about nine to ten sick-bays. In each were 5 to 10 patients. Each patient had a matress and some blankets. ~~Each bay was bed-bug ridden in Winter and in summer-time many a man sought a refuge in the small garden outside for the many fleas and lice~~

.. Nursing. The total number of the patient was about a hundred on the average. The staff consisted of 2 doctors (Australian Maj. Akeroyd and American Capt. Berley), 1 Pharmacist (Dutch Lt. Conie), 3 nurses (myself, Englisch Mc.Credy, Australian Shannon and some auxilliary nurses: cured patients and 5 men kitchen staff. The Japanese staff consisted of 1 Japanese doctor, whom we hardly ever saw/ name unknown; 1 socho (-sergeant major) in charge of the daily supervision, some so-called nurses and guards, amongst whom 1) Bando 2) Kato 3) Naigama (whether that is the same as Bagami, I don't know.

[illegible]ses. ~~We had about 10 - 15 severe tuberculosis cases; many cases~~ of severe diarrhea and avitaminose (beri-beri; pellagra; night blindness; oedema; gangrene of the toes and feet) and some pneumonia.

Medicines. The right medicines for those sick-men were not there or in very limited quantities. The Japs gave us Adsorbin (~~-Kaolin~~) Sodium Bicarbonate, a very poor quantity of Bismuth, Scopolamine, Cresol, ~~Phenol and~~ Iodine by the grain. ~~No or very limited B. injections of a poor sort.~~

PROSECUTION EXHIBIT 23

nilamide, ~~-pyrudine or thiazol (-sulfa)~~. ~~I even doubt~~ whether the total amount of sulfo preep's would be enough for one decent cure. Red cross medicines: I remember that I've seen vitamin-pills and probably Sulfaguanidine but certainly not that much as we needed them. The staff got one bottle under promise not to speak about it. We had some apple-powder for curing diarrhea there may've been 3 tins, but the Japs saved the other tins for themselves and used ~~as~~ a bread-spread. Bandages and things like that were always running short. Even dressings dripping from the puss had to be washed every time. And what a job to do that without any-soap.

. Food. Everybody got about the same food: breakfast a watery barley-porridge (we called it barley-cream) lunch a loaf of bread weighing 240 grammes and supper: a bowl (-a big cup) of barley and millet with a watery soup with far too few vegetables and a little bit of soja-bean butter. Sometimes a piece of fish one inch long. Rice we never saw though it was on the menu, but the Japs changed for their barley. Sometimes the galley succeeded in cooking something out of the common f.i. when we got a Red Cross parcel, but then the Japs ordered for their share ~~and everybody had to pay~~ for it.

Treat-
ent I arrived in Ichioka Hospital on the morning of March 23, 1944 and got in charge of a sick-bay that very day. I had to report that bay at night-roll call to Jap. Guard. I was already warned for Kato, Bando and Naigama. The night Kato was in charge. I reported. According to Kato, I didn't shout loud enough though. I did my utmost. I had to repeat it about 4 times and each time he slapped me in my face with his sneakers (rubber-shoes) and kicked me against my shins. That same night one of the doctors was slapped by Kato.

2). Kato had another queer habit. He liked to drill us with ki otsoke (attention) on Keire's (bow) for about half an hour for some unknown reason just to show that he was the "big man". And the smallest mistake was punished with slapping and beating.

3). May 8 (or 5) 1944 was our Day of Atonement, the galley was cooking for Bando- I think ordered for his share and a that large one that our scanty meal would diminish to hardly anything. And we were hungry! So the chief cook reported it to the Jap-socho (Sergeant-Major). That night the socho was not at home at roll-call. We were ordered to line up, also the patients with exception of the worst, Kato, Bando and Naigama took roll-call and the slapping, beating and kicking started for patients, nurses and doctors all the same. When the doctor in charge tried to intervene for the sake of one of the patients by name Bensoni (he could hardly stand on legs with oedema) they started to paint the town red. At last the patient could go to their beds; the Japs put the staff on a short line at both sides of one the table our lords climbed on the table and the same thing started again, but new with sneakers, belts and sheeths. It was a nightmare for nearly an hour. My face was swollen for about six weeks, some had deep cuts and had to be bandaged, some suffered from severe head-aches. Such was the treatment by people who said when a dead man was reported: "More men shindai (-die) Ok.

sponsi-
ility During the time I spent in Ichioka there was a change in the command, though the names of the doctors in charge I don't know. Our average opinion was that it was the sergeant Major who was actually in charge of the hospital. That he knew about the atrocities committed is my sincere belief: literally speaking he would have seen it. He never made any investigation. Him being absent on those nightmare-nights was at least strange.

Kato was one of those mean sneaking creatures whose only pleasure seemed to be hurting us.

~~Bando was a stupid unreliable farmer and Maigama a conceited corporal, who liked to display "the generous Japanese Army" in a hard-hitting way.~~

In Yuli/August, 1944 the Ichioka hospital was transferred to Kobe, with the exception of the sergeant-major. Under a new boss the trio lost something of its glory and after a couple of months all but Kato had gone to other P.O.W. camps.

After the above statement has been shown and read, affiant declares to, ~~persist~~, without alteration or addition.
/s/CS stand by this statement

This document of affidavit has been drawn up and signed by me and affiant.

Balikpapan, 11 June 1946.
The Prosecuting Officer,
sgd. C. STEEVENSZ

The Affiant
sgd. H. J. RITSMA

For Certified Copy,
The Prosecuting Officer,

(C. STEEVENSZ)

I certify the above to be a true copy of a statement and the covering certificate to be a true translation from the Dutch original.

NETHERLANDS INVESTIGATOR
ASGD TO LEGAL SECTION, INV. DIV.

/s/ CJ Jongejans
(C.J.JONGEJANS, Capt. KNIA)

Stamp:

PARKET van den
PROCUREUR GENERAL
Regeerings, Bureau tot
Nasporing Van Oorlogsmisdaden
R.P.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War By/s/ C.A.MUZZY,CWO, USA

Q. State your name, rank, serial number, permanent home address, and any other pertinent information concerning yourself.

A. My name is Vance Wendell WALSH. I am a private first class in the U.S. Marine Corps. My serial number is 387742. My permanent home address is 981 27th Street, Des Moines, Iowa. I have completed two years of high school. I have been five years in the Marine Corps.

Q. State in your own words when you were captured and any experiences you witnessed which you would like to elaborate on.

A. I was taken prisoner on 6 May 1942 on Corregidor and was eventually transferred to Yokkaichi Camp in Japan, where I remained from 4 September 1944 to 4 September 1945.

In March 1945 at the Yokkaichi Camp, one evening while I was legally playing cards with four other POW's, a civilian guard who was refused a cigaret by us reported the incident to KATO (a two-star private in the medical corps). KATO, who was a dope fiend and was under the influence of dope this particular evening, came into the barracks and beat us up with garrison belts. One of my front teeth was knocked out and two stitches had to be taken in my lip. This beating lasted about two hours, and then we were made to stand at attention in front of the guardhouse for another hour.

One evening in May 1945, during an air raid, some sake wine was stolen from the guardhouse. Private first class SHERAN, Master Sergeant CHRISTOPAROS, and Master Sergeant ROBERTS, who had liquor on their breath, were strung up on ladders by their hands and feet, where they were beaten with hemp rope and garrison belts. This beating went on periodically for about a week. A guard nicknamed "The Ghoul" inflicted most of the worst beatings on these men.

I can recall nothing further concerning these incidents which would be of value to the War Crimes Office, and I do not have any other information, favorable or unfavorable, which I consider of sufficient importance to report.

RESTRICTED /s/CAM

[redacted]
RESTRICTED /s/CAM

STATE OF CALIFORNIA :
: SS.
County of Alameda :

I, Vance Wendell WALSH, of lawful age, being duly sworn, state that I have read the foregoing transcription of my interrogation, consisting of 1 pages, and that all answers contained therein are true to the best of my knowledge and belief.

/s/ Vance W. Walsh

Subscribed and sworn to before me this Fourth day of October, 19 45, at Oakland, California.

/s/ John Goodwin Locke
(Rank)

STATE OF CALIFORNIA :
: SS.
County of Alameda :

I, John Goodwin LOCKE certify that (name) Vance Wendell WALSH, (Rank) Pfc. USMC (ASN) 287742, personally appeared before me on the Fourth day of October, 19 45 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by (him (xxx) to the several questions set forth.

Place: Oakland, California

Date: 4 October 1945 /s/ John Goodwin Locke

Page 2 of 2 pages.

CERTIFIED TRUE COPY

Claude A. Mugg

[redacted]
RESTRICTED/s/CAM

CLAUDE A. MUGGY,
C.W.O., U.S.A.

F43

MD/JAG/PS/JC/315.

IN THE MATTER OF JAPANESE WAR CRIMES AND IN THE MATTER OF THE ILL-TREATMENT OF PRISONERS OF WAR AT ICHIOKA STADIUM (POW HOSPITAL) OSAKA, JAPAN.

I, John Wolford, Q.M.S.1868430, R.E., with permanent home address at 30 Grange Lane, Rossington, make oath and say as follows:-

I was captured by the Japanese at Hong kong on the 26th December 1941. I was put into a P.O.W. Camp in Hong Kong, where I remained until 26th September, 1942. I was taken by the Lisbon Maru to Japan.

We were taken on the 10th October, 1942, to Kobe, until 15th April, 1943, when I fell ill and was sent to Ichioka Stadium (P.O.W. Hospital) Osaka. I was there until 23rd November, 1943.

On my arrival I found the Hospital to be in a filthy state, vermin infested; we had to lay on straw and the place was worse than a stable. There were 170 of us there and the lads were dying daily of diphtheria, dysentry and malnutrition. Whilst at this Hospital I saw numberous cases of sick patients, some of them dying, taken from their beds and beaten by the Japanese staff. They repeatedly stole rations from the patients, and, as I was aware of this, owing to being in charge of the cook-house, they ordered me to keep my mouth shut under pain of being beaten. I did eventually report the thefts and my staff and I were taken out and beaten up with bolts, fists and boots.

During the time I was there, the Hospital Staff changed from time to time. Some treated us very decently, but the following were responsible for beatings of the patients and the theft of their food:-

1. The Doctor in charge of the Hospital during the month of August, 1943, who allowed these things to happen. This man was a Lieut. but I don't know his name. He stole rations and Red Cross supplies.
2. Tomitani, a Japanese Three-Star Medical Orderly, who did all the talking while the beatings of patients were taking place. This man was mainly responsible for ration thefts and the ordering of the beatings to take place.
3. The assistants of Tomitani - Jap Medical Orderlies - Kato, Nakihama, and one other whose name I do not know. These men performed the beatings and stole rations, and the whole of the patients at the Hospital lived in fear and dread of any of these men coming in. They would beat sick men for the least provocation.

J. Wolford.

Taken and sworn before me this 12th day of June, 1946.

Thomas Frost

Justice of the Peace for the W.R. of Yorks.

12th June, 1946.

CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY
C.W.O., U.S.A.

PROSECUTION EXHIBIT 5

RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War
By /s/ C.A.MUZZY,CWO,USA

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, Gardner C. Seney of lawful age, being duly sworn, on oath depose and say:

I am S/Sgt Gardner M C. Seney, ASN 6977374. My permanent home address is 1109½ W. Olympic Blvd., Los Angeles 15, California. I was captured on Panay, PI, by a Japanese infantry outfit on 29 May 1942. I was a member of the 14th Bomb. Squadron at that time. I arrived at Nagoya Camp #5, Yokaiichi, Japan, 4 Sep 44. I remained there until 1 Jun 1945 when I was transferred to Camp #7, Toyama.

At this camp, there was a Japanese private, a medical corpsman, who made a practice of beating prisoners with a belt. One particular instance, in April 1945. he beat a U.S. Marine, Vance Walsh, with the belt and the buckle struck Walsh in the mouth, cut his lip, and knocked out a tooth.

This man, the Japanese, is described as being about 5'4", stocky build, 130 lbs. 25 years old. He had very distinctive eyes. They were bloodshot, and inflamed looking.

Cpl. Givens Severn, Tom, Oklahoma, Capt. Belinkey, U.S. Army Medical Corps, and Col. Stubbs, Coast Artillery officer who formerly commanded Fort Drum, P.I. can corroborate my statements as they were with me during the whole period of my confinement. I can give no further description of the person responsible for the conditions which I have described and I can state no further details concerning the matters described in this affidavit.

Witness:
/s/ Jack F Sullivan
Agent, SIC

/s/ S/Sgt. Gardner C. Seney
6977374

Subscribed and sworn to before me this 7th day of October 1945, at Fort Lewis, Washington.

/s/ Arthur G. Bouley
ARTHUR G. BOULEY
CWO, U.S.A.
Asst Adjutant General
ASFTC Fort Lewis, Wash.

CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

PROSECUTION EXHIBIT 6

RESTRICTED /s/ CAM

FOR THE WAR CRIMES OFFICE

Judge Advocate General's Department - War Department

United States of America

In the matter of the atrocities committed by Bunhachi Banto, Tat Suo Kato, and Buichi Nagami at Ichioka Hospital, Osaka Area, Japan, between the dates of 10 April 1944 and 1 June 1944.	* * * * *	Perpetuation of Testimony of David A. Granger, a patient at Ward C-8, Room 22, Fitzsimons General Hospital, Denver 8, Colorado.

Taken at: Fitzsimons General Hospital, Denver 8, Colorado

Date: 20 May 1946

In the Presence of: Alner D. Ryan, Special Agent, CIC, Seventh Service Command

Questioned by: Alner D. Ryan, Special Agent, CIC, Seventh Service Command

Reporter: Alner D. Ryan, Special Agent, CIC, Seventh Service Command

Q. State your name and give a brief outline of your personal history.

A. My name is David A. Granger. I was born 29 September 1922 at Billingham, Washington. I entered the Army on 7 March 1940, was assigned to the Army Mine Planter Service, and stationed in the Phillipine Islands. I became a prisoner of war when the Island fell. I am now a patient at Fitzsimons General Hospital and expect to be confined here another year.

Q. Were you ever confined at Ichioka Hospital, Osaka Area, Japan?

A. Yes. I was confined at Ichioka Hospital from 10 April 1944 to 1 June 1944.

Q. Can you give any information in regard to the beatings received by Lt. H. Ritsma, Sgt. Alfred M. Underwood, and E. M. Gonie at this hospital?

A. No. I can just remember Underwood. I do not recall Lt. Ritsma and E. M. Gonie. I recall several beatings received by prisoners, but do not know the names of the individuals who received the beatings.

Q. Did you ever hear the names, Bunhachi Banto, Tat Suo Kato, and Buichi Nagami?

A. Yes. Bunhachi Banto was a Gunsoka or civilian attached to the Japanese Army. Tat Suo Kato and Buichi Nagami were both Three-Star Privates in the Japanese Army. All three individuals were employees at the Ichioka Hospital, Osaka Area, Japan.

Q. Can you describe any atrocities committed by these men?

A. Yes The three worked together to steal the food rations from the hospital. It was a known fact that they would steal rice and have some of the Prisoners polish it before they took it home. The American and British doctors and corpsmen complained about this stealing to the first lieutenant in charge of the Hospital. These three individuals were questioned about it by the lieutenant.

That night, the three men lined up the entire Prisoner staff of the Hospital. Banto went down the line with a rubber shoe in each hand and beat each Prisoner about the head. Kato came in now and then and beat the Prisoners with his hand or with a slipper. Nagami used a heavy leather belt doubled and beat all the Prisoners. This beating lasted about two hours. They were cautious not to draw too much blood or to leave wounds that would make scars. The Prisoners were, however, badly beaten up.

PROSECUTION EXHIBIT 7

WAR CRIMES OFFICE
Washington 25, D.C.

Q. Do you know the [illegible] of this beating?

A. No. It was during my confinement there, and I did witness the beating.

Q. Do you know the Japanese lieutenant's name in charge of the Hospital?

A. No.

Q. Could you suggest someone who might be more familiar with the atrocities committed at Ichioka Hospital?

A. There is a Staff Sergeant William H. Hayes who was in this hospital for a year. He will be released from Fitzsimons General Hospital in a few days and then may be interviewed at his home in Weslaco, Texas. I have heard him say that there was a period at Ichioka Hospital when they were losing at least 200 prisoners a month.

Q. Have you anything further to add to the above incidents?

A. No.

/s/ David A. Granger
David A. Granger

State of Colorado
County of Adams } SS

I, David A. Granger, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ David A. Granger
David A. Granger

Subscribed and sworn to before me this 27th day of May 1946.

/s/ Philip B. Holturick, 1st Lt. MAC

C E R T I F I C A T E

I, Alner D. Ryan, Special Agent, CIC, Seventh Service Command, certify that David A. Granger personally appeared before me on 20 May 1946 and testified concerning War Crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

27 May 1946

A. D. Ryan
Alner D. Ryan, S/Sgt, CIC, 7SC

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

WAR CRIMES OFFICE
Washington 25, D.C.

RESTRICTED

For the WAR CRIMES OFFICE

Judge Advocate General's Department - War Department

United States of America

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In the matter of Japanese atrocities committed upon Prisoners of War or neglect suffered in the hands of the Japanese.	Perpetuation of Testimony of Burton Vernon King, Bosun's mate 2nd Class, 3600804, United States Navy.

****

Taken at: United States Naval Hospital, Philadelphia, Pa

Date: 26 August 1946

In the Presence of: Leslie R. Harrison, Special Agent, Counter Intelligence Corps, Second Army

Reporter: Shirley Zovin, Stenographer, Philadelphia Field Office, Counter Intelligence Corps, Second Army

Questions by: Leslie R. Harrison, Jr.

Q. State your name, rank, serial number, and permanent home address.

A. My name is Burton Vernon King, Bosun's Mate 2nd Class, Serial Number 3600804, United States Navy. My permanent home address is 1204 W. Pierce, Houston 6, Texas.

Q. State the date and place of your birth and when you enlisted in the United States Navy.

A. I was born 21 August 1921 at Houston, Texas. I enlisted in the United States Navy on 10 November 1939.

Q. Were you a Prisoner of War?

A. Yes.

Q. Have you recently been returned to the United States from overseas?

A. Yes. I arrived in the United States on 28 September 1945.

Q. At what places were you held and state the approximate dat

F.E.M. MD

A. I was captured 6 May 1942 on Corregidor ~~and was held there until 23 May 1942 when I was loaded on a coal~~ cattle ship /s/P.V.K. and transferred to Manila. We were marched through the streets in a Japanese victory parade to Bilibid Prison and stayed there until 26 May 1942 and then entrained for Cabanatuan Prisoner of War Camp in boxcars. ~~We arrived at Cabanatuan that night and remained there in Camp #3 until~~ MD

PROSECUTION EXHIBIT 8

~~Sometime in October 1942. At that time, we left for Camp Cabanatuan~~ and arrived there 5 November 1942 and then marched back to Cabanatuan and loaded into boxcars ~~again for Bilibid~~ Prison. We spent the night in Bilibid and the next evening, 6 November 1942, we shipped for Japan. We arrived at Moji, Japan on 26 November 1942 ~~and were loaded on a train and arrived in Kobe 27 November 1942.~~ We were loaded on trolley cars and arrived at Yodogawa that night which is between Osaka and Kobe. We stayed there and worked in the steel mills until 16 February 1943, when I was transferred to a Prisoner of War Hospital due to gangrene of the foot. I stayed at that hospital until 30 June 1944 and was transferred to Osaka Camp No. 1, Headquarters Camp for the Osaka Area. I stayed there until 1 June 1945 and was bombed out that day by American planes. ~~We then transferred to a smaller camp that night and slept in a small~~ building. On 2 June 1945, we were sent to Sumori Camp, Kokiyama Steel Works and remained there until 17 June 1945. On 18 June 1945, we arrived at Nagoya Camp No. 10. We were liberated on 7 September 1945 and on 8 September 1945, we went to a small coastal town near Nagoya. On that date we were taken out to the USS Rescue and later transferred to the USS Benevolence in Yokohama Bay. Eight days later, we were flown to Guam and after staying there about eight days, I was flown to Pearl Harbor where I stayed overnight. From there we were flown to Oakland, California and arrived there on the 28th September 1945.

6. Tell what you know of Japanese atrocities committed upon Prisoners of War or neglect suffered in the hands of the Japanese during the period of your confinement.

Upon our arrival in Japan, at a time of the year when the cold was very noticeable due to our tour of duty in the Phillipines, we immediately started to work at the Steel Mill as laborers. Most of us had different types of jobs, but my specific duty was to carry pig iron in loose form in two baskets which were suspended from a pole across my shoulders by long ropes. My Army shoes had large holes in them by this time and as we were required to work in snow and slush, I soon noticed a burning sensation in my feet. My feet pained me to the extent where it was necessary to complain to the Japanese foreman, an Army Medical enlisted man, that my feet pained me greatly. However, my feet did not appear to be infected in any way at that time. The Japanese apparently believed my symptoms to be false and on several occasions struck me with his fist about the head and body. During this time, we were confined in a large building very similar in appearance to a warehouse with open sides and sloping roof. This building was a part of the steel works and we were confined at the top of the structure in a space resembling an attic and the roof was directly above us. The floor was approximately twenty-five feet above the ground so that we were living with the weather beating at us from all sides. At first we had only one blanket, but later we were issued two more. We had no clothing other than those we were wearing at the time of our capture. There was no heat in this building with the exception of a small hot type stove which burned coal and

which was burning only between 1600 and 2000 daily. Men were not permitted to gather for warmth as it would deprive the majority of the men from the benefit of the little heat available. About the only use this stove served was that of boiling water which would be used for drinking purposes.

One morning I awoke to find that my feet were swollen so badly that I could not get my shoes on. When that happened the Japanese acknowledged that I was sick enough to remain in the building. Several days later an inspection was made by one of the Japanese Medicalmen, a Japanese Army Doctor. By that time, my feet had become infected - several gangrene blisters were noticeable on the top of my feet and my toe nails had turned black. My feet were blue-black in color and were diagnosed to be gangrenous. The Japanese doctor noted that it was gangrene and ordered me sent to the Ichioka Hospital which was located under the seats of an outdoor stadium. When we patients arrived at this hospital, we met a Dr. C. A. Jackson, who was a Surgeon Lieutenant in the Royal Navy Volunteer Reserve. Dr. Jackson had been captured and had been taken prisoner by a German Naval Raider and was turned over to the Japanese by the Germans. As we entered the concrete building, I noted that the place was overcrowded and unclean. Men were lying about the floor in a disorderly manner on straw or blankets. There were fleas, bedbugs and lice in abundance. There were no medicines and the hospital housed all types of injuries and diseases. The majority of the cases were pneumonia, dysentery, beri-beri, frostbite and blindness produced by lack of proper food and care. The doctor had no instruments save a pair of paper cutting scissors and a dental instrument used for bone cutting. There was no anesthesia and all amputee cases were conscious at the beginning of the operation.

On 3 March 1943, Dr. Jackson amputated all the toes and about three inches of the right foot and on 5 May 1943 approximately the same operation was made on my left foot. Bandages used to cover the wounds were used over and over again, being washed after each dressing until they were completely worn out. All operations were not completed at once. By that I mean to say that many operations were made on my feet in order to take out splinters of bone or to cut infectious growth from the feet. I know that Red Cross supplies containing medicines and bandages were deprived us by the Japanese.

We had a Japanese doctor also. He was known to me only as the "Mad Butcher". I do not believe that I ever heard his name. He was short and stocky, had a short "Hitler" mustache on his upper lip. I do not believe that he was over particularly abusive to the men, but he did have some rather unorthodox methods of treating diseases and injuries. For example, in several cases he experimented with beri-beri by severing a nerve in a patient's abdomen to cause the nerves in the feet which were twitching to cease functioning even though a change of diet would have produced recovery. As a living example of this type of operation, I call your attention to one D. F. Widd, S 2/c, United States Navy (2114 Sunset Blvd., Houston, Texas), who was taken with beri-beri and his feet pained him to such a great exten that he could not walk on them. The "Mad Butcher" operated on Widd in

~~in the manner I have already described and produced a scar approximately~~ 12 to 14 inches in length. The conditions under which Kidd underwent the operation were so unclean that infection set in and the incision burst. Dr. Jackson re-sewed the incision with ordinary thread and needle and use buttons to anchor the stitches. Other men operated on in this manner were Sgt. Carl Eston, United States Army and Simon McCloud, United States Army (Eagle Lake, Texas). Eston, in particular, suffered from this operation as he lost the full use of his legs and could get about only through the use of two canes. McCloud also suffered as his feet had to be amputated later.

/s/ B.V.K.
/s/B.V.K.

Another type of operation performed by this Japanese doctor was employing punk in the cure of dysentery and diarrhea. He would place lighted punk on the patient's abdomen in four places to form a square design. The patient would not be given any anesthesia and would be held down by the Japanese until the punk would be burned out, many times leaving scar tissue on the abdomen. This method was also employed in the treatment of beri-beri and the lighted punk would be placed near the knee of the infected leg. This treatment was also used on their own troops who suffered from beri-beri.

Kidd once told me that he believed the reason that his incision failed to heal properly was due to infection suffered at the time he was operated on at the Japanese Army Hospital somewhere in Osaka, Japan. He also related to me that many patients were brought to the same table to be operated upon but that the table would not be cleaned of the blood and debris from the operation on the preceding man and that instruments used in another operation or even dropped on the floor were not washed or cleaned in any way before being employed in another operation.

David Granger, United States Army (residence in Washington State), once reported to me that he had been operated on in the Japanese Army Hospital in Osaka by a Japanese Army Doctor, but I do not recall whether or not it was the "Mad Butcher". He stated that following an injury to the thigh of his right leg, he was given a spinal anesthesia which did not "take", but was strapped down any-~~way and his leg amputated.~~

~~When the "Mad Butcher" left or rather was transferred, another~~ Japanese doctor was assigned to our hospital. He was a drunkard. I do not recall his name. On many occasions, when obviously under ~~the influence of liquor, he would be most abusive and beat us without provocation.~~ Two persons in particular in the camp at this time were most abusive and whenever we saw them appear we know that we were in for a beating. They were Two Star Private Kato, cockeyed, short, stocky and Three Star Private Nicono, short, wore horn rimmed glasses and always used a thick leather belt with heavy buckle as a weapon for beating prisoners. While ~~"the drunkard" was present, we received only a scant ration of our Red Cross supplies. He would~~

often chide us in reference to our food, commenting that we were receiving a large amount of rice, telling us that we were fortunate while pointing to our meager ration. When we argued with his statements, he would beat us. Dr. Jackson complained to the Japanese about not getting enough food rations for the prisoners and told the Japanese that the men could not get well on such small portions of rice. One day while we were eating our rations, Nisono and Kato came around and asked each fellow if they were getting enough to eat and they replied that they weren't, so Nisono and Kato beat each fellow up and then took eighteen fellows outside and beat them with leather belts and wooden shoes until they were unconscious. I wasn't one of the fellows, but I was beaten and slapped around while eating my ration of rice. Dr. Jackson was aware of these conditions and attempted to get word to Colonel Murata, in charge of Osaka Area, but with no results. As a result of these complaints, Dr. Jackson was beaten severely. He made the complaints without heed to his own personal danger. After many reports were made regarding the poor conditions at the hospital, an investigation was conducted through the Japanese Headquarters. The investigation resulted in a severe beating for Dr. Jackson and many of his patients. The investigation did produce one good result in that the second doctor left and a new one by the name of Dr. Ohash (phonetically spelled) arrive. He came sometime in February 1944.

Dr. Jackson was transferred to a mining camp further north as the immediate result of the investigation. Conditions at this camp improved in that Dr. Ohashi seemed to take an interest in making changes for the better about the hospital. He showed a professional interest in his work.

On June 1944, I was released from the hospital and transferred to the Osaka Headquarters Camp where I remained until we were bombed out by American planes on 1 June 1945. At this camp, we were issued rations of very poor quality and it was at the time that I was confined here that the effect of the American victories in the Pacific could be felt. On several occasions, the rice which we were issued as rations had become water-soaked and moldy and we found many small pebbles and worms in the rice. I wish to state that three men were particularly abusive to us in the Osaka Headquarters Camp. They were Lt. Kaziyama (phonetic spelling), who was known as the "go ahead kicker", Lt. Fukinaga (phonetic spelling), and Lt. Matsumura (phonetic spelling), Camp Commander, who was known as "you know". They would beat the men on countless occasions despite the fact that the men did nothing wrong. Lt. Colonel Murata, tall, heavy uncut mustache on upper lip, close cropped gray hair, was cognizant of the conditions in this camp, but made no effort to improve the conditions.

~~Q. Do you know the names of any men who would verify or be in a position~~ to give testimony in corroboration of your statements?

A. Yes. The following men have knowledge of the existant conditions of the Prisoner of War Camps in the Ozarks Area:

Camp Yodogawa

H. E. Wilkinson, Sgt., M.C., Ivanhoe, California
Omer L. Shaffet, USAF, Kentucky /s/B.V.K.
Carl Mortvedt, M.C.

Ichioka Hospital

L. F. Hopper, USA, 403 Shenton Avenue, San Antonio, Texas
Kenneth G. Boggs, Royal Navy, 144 Cheltenham Road, Bristol 6, England (assisted Dr. Jackson)
Lt. Comdr. Harry B. McInnis, 431 South Harrison St., Enid, Oklahoma

Camp No.1, Ozarks Area

Lowren A. Arnett, USN, Carlisle, Ind. c/o Vernor Arnett/s/B.V.K.
Angelo Manzano, Merchant Marines, 7599 Avenue N, Houston, Texas
Gilbert Charlesworth, USN, Somerset, Colo.
Levio Amidei, 136 W. 3rd St., Walsenburg, Colo., USN/s/B.V.K.
Jack Loaning, USN, 143 W. Kildreth Ave., Wildwood, N.J.
J. W. Dalzell, USN, 204 Cutliffe St., Albany, Ga.
Glen Warden, USA, Box 5, Gainsville, Texas
James C. Muldrow, USN, RFD #2, Florence, S. C. c/o E. W. Surrells
Robert B. Burnett, USN, Carlotte, Mich, RFD #2
Cecil W. Lewis, M.C., 113 N. Ennett St., Tyler, Texas
Luke Mondello, USA, 6501 Westcott St., Houston, Texas
W. G. Leonhardt, USN, Box 45E, Fremont, Ind.
W. T. Oxendine, USN, 6081 Avenue C, Apt. 4, Houston, Texas
Henry Fabian, CMM, USN, RFD #1, Lehighton, Pa.
R. N. Rawlins, USN, Route #2, McKee, Ga.
F. N. Royner, USN, 451 E. Washington St., Knox, Ind., c/o W. Hudkins
Robert T. Olson, 1810 Sheridan Avenue N, Minneapolis, Minn.
Paul Lewis Schosly, 216 W. Midway St., El Dorado, Ark.

Q. Do you have any further knowledge of abuses or atrocities committed by the enemy upon Prisoners of War during the time of your confinement?

~~A. No.~~

/s/Burton Vernon King
Burton Vernon King, Bosun's Mate
2nd Class, 3600804, USN

RESTRICTED WAR CRIMES BRANCH CAD
Washington 25, D.C.

State of: Pennsylvania)
) SS
County of: Philadelphia)

I, Burton Vernon King, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/Burton Vernon King
Burton Vernon King, Bosun's Mate 2nd Class,
3600804, USN

Subscribed and sworn to before me this 27th day of September 1946.

/s/Harry G Morriss, Major Inf.
Summary Court

CERTIFICATE

I, Leslie R. Harrison, Jr., Special Agent, Counter Intelligence Corps, Second Army, certify that on 26 August 1946, personally appeared before me, Burton Vernon King, Boson's Mate 2nd Class, 36CC8C4, United States Navy, and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said Burton Vernon King read the same and affixed his signature thereto in my presence.

Date: 27 Sept., 1946

Place: Phila., Pa.

/s/ Leslie R. Harrison, Jr.
Leslie R. Harrison, Jr., Special Agent
Counter Intelligence Corps, Second Army

RESTRICTED WAR CRIMES BRANCH CAD
Washington 25, D. C.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

)/J.C/FS/J 52(129)

IN THE MATTER OF JAPANESE WAR CRIMES AND
IN THE MATTER OF THE ILL-TREATMENT OF
PRISONERS OF WAR AND CONDITIONS AT ICHIOKA
HOSPITAL CAMP, OSAKA, JAPAN.

A F F I D A V I T

I, Surgeon-Lieutenant Charles Anthony Jackson, R.N.V.R., with permanent home address at Colends Farm, Norley, Surrey, make oath and say as follows:-

. I was taken prisoner of war by the Japanese on 25 December 1941 in Hong Kong, and being at various prisoner of war camps, was at ICHIOKA Hospital Camp, Osaka from October 1942 to March 1944.

. Myself and 5 other prisoners of war were the victims of an assault by members of the Japanese staff in July 1943. This concerned an unjust punishment by physical violence upon the cookhouse staff and myself as a reprisal for having reported to the Japanese authorities the theft of food from our meagre rations. The man responsible for this incident was the Japanese quarter-master named OMIZU, who in fact had himself stolen the rations concerned. After the Japanese authorities had taken action to prevent further thefts, I and the following prisoner of war cooks, were sent for and stood outside the Japanese officer:- Able-Seaman RHODES, R.N., Frank GIBBS a civilian employed by the Admiralty as a telegraphist, HUGHES R.N., Quinn, Royal Marines, and one other whose name I forget. While we were lined up outside the Japanese office 3rd. Class Private, CATO, 1st Class Pte. TOMITINI and a Japanese Corporal cook whose name I do not know, came up to us, and after taking off their shoes began a general beating up. After this beating we probably looked rather worse damaged than we were in fact. None of us suffered any permanent injury and I do not consider that the incident was a serious one apart from our loss of pride and respect.

OMIZU was a civilian employed as Quarter-master. He was an ex-soldier and I believe a Serjeant-Major in the Japanese Army. In looks he was similar to a gorilla with a low forehead, small dark eyes, almost bald. He had a mouth full of gold teeth, about 46 years old, height 5ft 4ins, of very square and powerful build.

CATO was a diminutive man. Had a lateral strabismus of the right eye (permanent squint), about 22 years old, height 5feet, shaved hair.

TOMITINI was a school master and an educated man of European appearance. About 25 years old, height 5ft 4ins, good physique, slender. Spoke and read English. He was more of a friend than an enemy to us apart from this one incident.

I cannot recall the name of BUNTO BUNHICHI, nor can I recall a prisoner of war named S/Sgt Alfred M. Underwood being assaulted.

. In October 1943 a serious mass beating occurred of a number of sick men, patients within the hospital. The incident originated from a complaint backed by myself and backed by the men, that the rations were inadequate to maintain life. We were allowed 115 grammes rice, 45 grammes barley, 15 grammes beans daily. After a preliminary punishment of myself and about 30 men the Japanese began working themselves into a frenzy and selected ~~from the~~ about 14 American patients all suffering from serious malnutrition, and beat up those men for over 2 hours, using leather belts and shoes. Any interference from us seemed only to result in aggravating the situation. As a man collapsed, he was resuscitated and assaulted. The majority of the Japanese medical staff indulged in the beating, acting under the orders of the Japanese medical officer Lieutenant MATUMIMA. Within 3 weeks of this incident, of the victims had died of their ill-nesses which were undoubtedly aggravated by this experience.

/6. .....

PROSECUTION EXHIBIT C/

6. [illegible] 50 years of age, [illegible] hair, 5ft 2ins, of fat build, very bad teeth and brown eyes. He was a reserve officer called from his civilians duties with the KAWASAKI Ship Building Yard.

7. ICHIOKA Hospital was founded in the Stadium OSAKA on the 19th October 1942, in order to accommodate the diptheria, dysentry and desperate sick survivers of the transport ship "Lisbon Maru". I was the sole medical officer at this period with 140 patients and 14 voluntary workers as nurses, cooks, e.t.c. The hospital consisted of an empty building with thin straw mats upon the floor. The Japanese were confronted with the unexpected and proved themselves quite incapable of organizing or dealing with the situation.

8. Our basic medical supplies consisted of Magnesium Sulphate, Kaolin Atropine powders and an assortment of ointments and unspecified tablets. Never was the quantity adequate to meet the demands of so many sick. This small stock was replaced monthly from the OSAKA Military Hospital and after some time augmented by preparations of doubtful quality, dressings and other drugs and we were able to supplement this allocation with such additional drugs that we could purchase illegally through co-operative guards.

9. From November 1942 until April 1944 new patients arrived from various camps on transport ships, some having died upon unloading from the trucks conveying them.

10. Normally the establishment was under the command of a Japanese medical officer. At first a Lieutenant KISHIMOTO, then a Lieutenant NISIURA and finally Lieutenant MATUIRA. Of these NISIURA was the only one who seriously interfered with the treatment of patients. He was a military doctor, about 35 years old, 5ft 4ins in height, stocky, eyes very close together and almost shut, suffering from permanent styes in his eyes, had a very greasy skin and was of a pale unhealthy complexion. On three occasions this man removed sick prisoners from the hospital by truck and ordered an operation upon them. On the first occasion I was allowed to accompany my patients to the OSAKA Military Hospital, where a surgical operation of a minor nature was performed under primitive conditions with insufficient anaesthesia. My vigorous protestations caused me being prohibited from attending subsequently when more serious surgical operations were performed upon men quite unfit for operation. Four men died directly as a result of this interference.

11. Rations allocated to the hospital were calculated upon a standard issue for the sick and were which was about one third of that given to working groups. It was neither suitable nor sufficient for sick men. Blankets and heating were quite inadequate, while fuel was so restricted it was impossible to keep down body lice. No treatment was provided to deal with the myriads of bed bugs and fleas. Neutral envoys were not permitted to visit the establishment.

12. Lieutenant NISIURA took every opportunity during 1942 and 1943 to inform me and my patients that all sick men were worthless animals and the sooner they died the better. This attitude influenced his behaviour towards the sick throughout his administration. He was responsible for and encouraged in this attitude by his senior, a Lieutenant NUSSO, who I believe was in charge of all medical arrangements for camps in the OSAKA area. Lieutenant NUSSO was in my opinion a pathological megalomaniac as his visits to the hospital invaribly led to disciplinary action and reforms.

13. I particularly want to state in this my affidavit that much of the difficulties at IOHIOKA were due to an Oriental inability to appreciate the European regard for sick and disabled men. The Japanese Army Medical Service was grossly incompetent and no effort was made in the early days to give the best of even of this. The looting of precious Red Cross supplies, which came to us but very rarely, was unforgiveable. This was done quite openly by all members of the

/Japanese.....

Japanese camp staff and in defiance of my protests. It had a serious effect upon my patients morale.

4. From July 1943 to September 1945, Surgeon-Lieutenant S. Stenning, R.A.N.V.R and Lieutenant H. B. McInnes, U.S.N. Dental Service, worked with me and will substantiate my statements.

5. I do not know the conditions at the camp nor who were the camp staff at CHIOKA between April and June 1944, as I left the hospital to go to KANROKA also in the OSAKA area on 24 March 1944.

SWORN by the said Charles Anthony Jackson at)
Spring Gardens in the City of Westminster)
this seventh day of June 1946.) (C.A. Jackson)

BEFORE ME

(Rathoroedan)

Major,
Legal Staff.

Office of the Judge Advocate General.
W.1.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

On this fifteenth day of October, One thousand nine hundred and forty six Leslie George KELLY of 103 Ningara Street, ARMIDALE in the State of New South Wales, a wardsman makes oath and says as follows:-

(a). My previous military status was NX.42788, a Pte. in the 13 A.G.H. I was captured at Singapore on 13 Feb., 1942. I arrived at ITCHIOKA HOSPITAL on 1 Jan 1944 and remained there until liberated.

(b). During my stay at ITCHIOKA Hospital the food was of very poor quality and consisted of rice and stew. It was in short supply and we never had enough. Very small quantity of medicines were available and were from the American Red Cross. The Japanese only supplied us with a few Aspros and Salts. Our clothes consisted of one pair of underpants and a discarded uniform of Japanese pattern. Towards the end of our confinement an issue of one pair of trousers and a shirt was made from American Red Cross sources. The quarters were fairly good.

(c). Working conditions were reasonably good and we were mostly under our own administration.

(d). I did not see any executions but beatings were frequent and being slapped across the face was a daily occurrence.

(e). Lt Cmdr. PAGE of the Royal Navy was beaten because he had made some enquiries about Red Cross parcels. Pte. Barney STRADLEY of the U.S. Marines was beaten unmercifully and the sight of one eye probably destroyed because he was found reading a newspaper. I was a patient at one time and during my treatment a new rule regarding walking on ones bed patch with boots on was introduced. On my discharge from hospital I went to my quarters and walked to my patch. I was slapped on the face and knocked to the ground with a rifle butt.

(f). I cannot remebor the dates of any of these events

(g). Pte. KATO was the only guard that I can remember as he was permanently stationed there. The other guards were changed about every week.

(h). The only other person that I can remember who could assist with information is Harold SHANNON of the 2/9 Fd. Amb. and he used to live at ALBURY, N.S.W. I do not know his number.

(i). Pte. KATO was a brutal guard and did not appear to have to answer to higher rank for his actions. He had a bad temper and committed the crime on Barney STRADLEY which is mentioned in para (e). I witnessed this assult and quite a number of other beatings but cannot remember the victims.

/s/ VBracken JP /s/ LGKelly.

PROSECUTION EXHIBIT 10

(j). Word was received that a visit was to be made by representatives of the International Red Cross and a Cantoon was immediately set up and well stocked. After the visit the Cantoon was closed. Also during this visit Barney STRADLEY was removed for the time as his condition was terrible. His face was battered and it was thought that the sight of one eye was gone. Up until I left this Hospital his sight was still doubtful.

(k). I do not know of any complaint being made to a Camp Commander as there did not appear to be one. There was Japanese Doctor who used to pay periodical visits and he may have been in charge.

SWORN by the above deponent Leslie George KELLY) /s/ LGKelly
at ARMIDALE on the fourteenth day of October,)
One thousand, nine hundred and fory six.) Signature of deponent.

BEFORE ME /s/ VBracken JP
A Justice of the Peace.

A CERTIFIED TRUE COPY:

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

VX 46277 Private Harold Rees SHANNON of 2/9 Australian Field Ambulance, 8 Australian Division, being duly sworn, gives the following evidence.

My full name is Harold Rees SHANNON and my home address is 612 Jones Street, ALBURY, New South Wales.

I was taken prisoner at SINGAPORE in February 1942 and was first imprisoned at CHANGI. Conditions were fairly good for a period except the food situation.

7.E.2 MB ~~During my period~~ of incarceration at CHANGI from February 1942 to April 1943, I was carrying out the duties as medical orderly. Shortly after captivity, an epidemic of dysentery broke out in the prison camp and I was continually employed 12 hours daily.

The food whilst at CHANGI consisted of rice, varying from twice to thrice daily. In addition, we also ate green grass stew.

I was drafted in April 1943 to JAPAN in "J"Force. The ship on which I travelled was named the "Weiles Maru" and carried 1200 Allied prisoners in addition to 1000 Japanese troops returning to Japan after 5 years service abroad. The food on this ship consisted of one meal per day (small quantity of rice with seaweed). Conditions on board were very crowded and unhealthy, all prisoners (1200) occupying one hold which was battened down and no ventilation. Dysentery was prevelant on board and several troops died. Occasionally, a very sick man was permitted on deck for a short period.

Two days off JAPAN, the ship which was in convoy, was torpedoed, but only slight damage was caused. The ship remained afloat and reached JAPAN 24 hours after the convoy. At no time of the trip were life-jackets issued.

On arrival in JAPAN, we were sent to KOBE CENTRAL CAMP and remained there for nine months. Conditions were fairly good at this Camp, but the guards were very brutal and beatings occurred every day. The worst of the perpetrators was Lieutant MEATAKI, who was a doctor. He delivered his own beatings personally till the victims fell unconscious. MEATAKI's weapons for beatings was either a sword scabbard or his belt, using the buckle end. One beating which I witnessed, was delivered to Private JEANS who I believe resides in VICTORIA, Australia. Beatings by MEATAKI usually lasted approximately five hours, as in the case of Private JEANS. Private JEANS was left unconscious and after MEATAKI had gone, ~~JEANS was rendered assistance but he suffered for many days.~~ 7.E.2 MB

I left KOBE in March 1944 and went to ITCHIOKA HOSPITAL at OSAKA where I remained for 3 months. This place was commonly known as the "DEATH CAMP". I was carrying out duties here as medical orderly with Doctor AKEROYD of 2/22 Battalion (Residing at FRANKSTON, Victoria) Whilst in this Camp, I witnessed many attrocities committed by Privates KATO and NAKAYAMA who were Japanese Staff Medical Orderlies at this Hospital. Both Doctor AKEROYD and myself were victims on several occasions of bad beatings, the worst being delivered by either KATO or NAKAYAMA. On one occasion, Doctor AKEROYD and myself were the victims of a particularly vicious beating carried out by both KATO and NAKAYAMA. This beating was the direct result of an effort to protect patients' Food ration which was being stolen by Japanese Staff. This beating lasted about 3 hours and we were struck with belts and wooden clogs and left in a very dazed condition.
This hospital was virtually a place where sick prisoners were sent to die. ~~The food ration here was very bad, rice being withdrawn and~~

7.E.2 MB

/s/ C.C. HWangar
A Commissioner for Affidavits

/s/ HRShannon

PROSE...

~~other substitutes issued in lieu~~, these being ~~Kibi Seed and~~ Barley which was issued daily and whether ~~it was eaten~~ in one meal or three did not concern the Japanese. The ration was so meagre that ~~it would~~ not suffice for even one poor meal. This ration, ~~as far~~ as I can remember, was ~~approx 500 grams, and of this, the Japanese invariably stole portion.~~

I witnessed, on several occasions, brutalities carried out by KATO and NAKAYAMA, such as kicking a prisoner who lay unable to move, in a despairately ill state. I also heard on occasions both the above KATO and NAKAYAMA and also other Japanese say after kicking a prisoner, "You die tomorrow". Invariably, these predictions would be correct. ~~Whilst at this hospital, many prisoners died daily due to malnutrition~~ and ill treatment.

My first issue of clothing was at KOBE, JAPAN and consisted of a working suit of left off clothing discarded by the Japanese Army.

Medicines, whilst in CHANGI, were fair as they were brought in by the Australians. At KOBE, Dr BOYCE of TOWOOMBA, BRISBANE, worked under very difficult conditions through lack of medicinal supplies. At ITCHIOKA, there was scarcely any medical supplies whatsoever. This ITCHIOKA Hospital, was a grandstand in a sports arena, in fair state of repair but a most unsuitable place for a hospital or sick personnel, about ~~eighteen inches to two feet bed space being allotted each patient.~~

I certify that the above evidence is true and correct.

/s/ HRShannon

/s/(Sworn by the abovenamed at Narrandera
HW (~~ALBURY~~, New South Wales, this
thirteenth day of November
1946
Before me

/s/ C.C. Hangar
A Commissioner for Affidavits

A CERTIFIED TRUE COPY:

John R. Pritchard

JOHN R. PRITCHARD,
Captain, Infantry

RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War By /s/ C. A. MUZZY, CWO, USA

For the WAR CRIMES OFFICE

Judge Advocate General's Department-War Department

United States of America

In the matter of the beating of patients and staff members at Itchioka Stadium Hospital, Osaka, Japan, 8 May 1944.	Perpetuation of Testimony of Cmdr. Ferdinand Victor Berley, MC, USN, # 73084.

Taken at: Civic Opera Bldg., 20 North Wacker Drive Chicago 6, Illinois.

Date: 15 February 1946.

In the presence of: Monroe Kroll, Special Agent, SIC, 6th F.

Questions by: Monroe Kroll, Special Agent, SIC, 6th F

Q. State your name, rank and permanent home address.
A. Ferdinand Victor Berley, Cmdr., MC, USN, 4153 West Congress Street, Chicago, Illinois.

Q. What is the date and place of your birth:
A. I was born September 9, 1912, at Chicago, Illinois.

Q. State your parents' citizenship.
A. My mother is an American born citizen and my father is a naturalized citizen of the United States.

Q. What is your marital status:
A. I am single.

Q. What educational institutions have you attended and for how long?
A. I attended Northwestern University, Evanston, Illinois, and received a B.S. degree in 1934. I graduated from the Northwestern University Medical School in 1938.

Q. State your experience after you graduated from medical school.
A. Immediately after graduating from medical school, I entered the United States Navy- July 24, 1938. I served an internship from July 1938 to July 1939. From September 1, 1939, to September 1940, I was medical officer for a destroyer division. Then I went to the Regiment Hospital of the 4th Marines in Shanghai, China, where I was in the G. U. Department from September 1940 to August 1941. In August 1941 I was assigned to the Navy Yard Dispensary at Cavite, where I remained until December 15, 1941. At that time I rejoined the 4th Marines as Battalion surgeon and was with them until I was captured on Corregidor in May 1942.

Q. Were you a prisoner of war?
A. Yes.

Q. When did you return to the United States?
A. I returned on October 2, 1945, entering at San Francisco, California.

Q. At what places were you held as a prisoner of war and state the approximate dates at each camp?
A. I was captured on Corregidor on May 7, 1942. I was held on Corregidor in the hospital until July 2, 1942, then taken to Bilibid Prisoner of War Hospital, Manila; from July 2, 1942, until October 2, 1943, I was on the staff there. I was then removed to Cabanatuan Prisoner of War Camp where I remained from October 2, 1943, until February 25, 1944. I was moved to Japan where I wound up at a place called Tsumori Prisoner of War Camp in Osaka. I was there two weeks, from March 26, 1944, until April 8, 1944. Then I was sent to Itchioka Stadium Hospital in Osaka. I was there from April 8, 1944, until July 10, 1944, at which time they formed a new hospital and moved the whole thing, added to the staff, etc. This was known

PROSECUTION EXHIBIT 12

WAR CRIMES OFFICE
Washington 25, D.C.
Incl. #

RESTRICTED /s/ CAM

as Kobe Prisoner of War Hospital in Kobe, Japan. We remained in this location until June 6, 1945. We were bombed out and the hospital destroyed. We were moved to a camp site known as Maruyama near Kobe. There we remained until the 26th of August when we were removed to the International Red Cross Hospital in Osaka. On September 6, another doctor and I took the seriously ill patients by train to Yokohama where we were officially liberated.

Q. While you were on the staff at Itchioka Stadium Hospital, Osaka, Japan, did you witness any mistreatment of American POW's?
A. I witnessed ~~and was the victim of~~ a beating at the hands of the Jap guard at this hospital.

Q. When did this occur?
A. On May 8, 1944.

Q. State what you know of your own knowledge of the circumstances leading up to this beating.
A. At Itchioka Stadium Hospital, we received our meagre ration of food at regular times. Whenever our supplies came in, it was customary for one of the Japanese civilian guards to help himself to whatever he wanted. On May 8, 1944, we received some food and one of the guards helped himself an unusually large portion of same.

Q. Do you know the guard's name?
A. His name was Bando.

Q. Can you describe him?
A. He was a "gunzoku" and I believe his home was in Osaka. I would say he was in his thirties, about 5'5" tall and weighing 145 pounds. He walked with a limp which was the result of a nerve injury which I believe he received as a battle wound. I believe he had a "drop foot".

Q. Could he speak English?
A. No.

Q. What was Bando's official position at Itchioka Stadium Hospital?
A. He was assistant to the quartermaster.

Q. What was the name of the quartermaster at Itchioka Stadium Hospital?
A. Kitamura. He was also known as "The Snake".

Q. Where was Bando when you last saw him?
A. He moved to Kobe Work Camp where he became assistant to the quartermaster there and was still at this camp when I last saw him.

Q. What, if anything, happened on May 8, 1944, when Bando took some of your prisoner of war supplies?
A. Our chief cook protested.

Q. What was your chief cook's name?
A. James Kelleher. He was a leading stoker for the Royal Navy and I believe his home was, 137 Beacon Park Road, Swilly, Plymouth, Devon, England.

Q. To whom did Kelleher protest?
A. First to Bando and then to Kitamura, the quartermaster.

Q. What did Kitamura do?
A. Nothing. Kitamura was a trouble-maker. He never hit anyone but in his underhand way was always stirring up trouble. On this occasion, he merely stated that there was enough food left for everyone to get something, and with that he left the area and returned to his office.

Q. Was Bando there at the time?
A. Yes.

Q. What, if anything, happened after Kitamura left?
A. Bando was furious at Kelleher for having reported him to his superior. He turned on Kelleher and struck him in the face many times with his open hand. He then made Kelleher stand in the corridor (in front of my office) with his arms outstretched sideways. Every few minutes Bando would scream at Kelleher at the top of his voice and then slap him in the face.

Q. Who was the senior allied officer at the camp?
A. Major Akroyd, MC Australian Army.

Q. Did Major Akroyd know of this incident?
A. I told him about it and after some discussion, it was decided that Akroyd would see the socho, whose name was Okono, and see what could be done.

Q. Did Major Akroyd see socho Okono?
A. Yes. Okono was there and Lt. Ohashi, doctor in charge of the hospital, was also present. Akroyd spoke to them about the matter.

Q. State what happened next.
A. Dr. Ohashi sent for Bando and gave him a verbal lacing down. Kelleher, who had been standing in the corridor for about fifteen minutes, was ordered released immediately.

Q. Was this the end of the incident?
A. No. It was resumed that evening.

Q. State what happened.
A. That evening as was usual, we had tenko. During this ceremony, Akroyd, 2nd Lt. Genie (Dutch Army) and myself would stand in front of the morgue. In front of each sick bay would be standing one of the auxiliary staff (if on were able to stand) and he would give a report of the patients in that particular bay. One of the Japanese guards would take the report. On the evening of May 8, 1944, a Jap named Kato, who was a medical corpsman, came to take the bed check. When Akroyd gave him the salute, he refused to respond. Coming immediately after Kato was Bando. Bando had two leather slippers in his hand. He went up to Akroyd and started striking him across the face with the slippers- first one cheek and then the other. The whole time he was screaming at the top of his voice. He hit Akroyd about twelve powerful blows across the face. He then went down the line striking every one in a similar manner. When he had made the rounds, he came back and started on Akroyd again.

Q. Did you receive any blows at this time?
A. No.

Q. How do you explain that?
A. During that period I used to go in to see Ohashi every afternoon. They did not want to mark me up.

Did any of the other Japanese strike any of the prisoners at this time?
Yes. While Bando was hitting the men with his slippers, several other corpsmen came into the hospital. One of these, a man named Nagima, was particularly bad. He took off his leather belt which was about two and one-half inches wide and with this would do one of two things. He would either have the men lean forward and then flail them across the face or he would get up on a table and strike them in the face from there. He hit each man about ten blows with his belt. Several other of the Japanese corpsmen also hit the prisoners at this time but Bando and Nagima were the worst offenders this night.

Q. What if anything, did Bando do next?
A. He took Major Akroyd and made a tour of the different sick bays. I could hear him screaming every now and then "All sick men die-OK". On this tour, Bando struck several patients whom he thought were well enough to be standing. We had many patients who were critically ill and the noise and confusion of this evening had a very bad effect on them.

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Q. How long did this whole incident last?
A. I would say about two and one-half hours. When the whole thing was over, Kato, who had not taken an active part in the beatings, took Akroyd, Gonie, and myself into our office and said, "Now you see you speak to doctor- no good". He then warned us not to mention the incident to Dr. Ohashi.

Q. To the best of your knowledge, was this incident ever brought to Dr.Ohashi's attention?
A. No. I would like to say here that Dr. Ohashi was very fair in his treatment of us and he tried to do everything in his power for the prisoners. He was blocked however in many instances by higher authority.

Q. Do you know the names of any of the other men who witnessed this incident?
A. It was witnessed by Pvt. Allen Verne Beauchamp, USMC, 1756 North Prospect, Milwaukee, Wisconsin.

Q. Who were Dr. Ohashi's superiors?
A. Dr. Nosu, a chui in the Japanese Army, who was chief doctor for the Osaka area. Colonel Murata was Senior Officer in Charge of POW's in the Osaka area.

Q. Do you have anything further to say concerning this incident?
A. No.

/s/ Ferdinand Victor Berley
Ferdinand Victor Berley, Cmdr, MC, USN

State of: Illinois)
) SS
County of: Cook)

I, Ferdinand Victor Berley, Cmdr, MC, USN, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Ferdinand Victor Berley
Ferdinand Victor Berley, Cmdr, MC, USN

Subscribed and sworn to before me this 1st day of March 1946.

(SEAL)
PERRY A. BALL
NOTARY PUBLIC
COOK COUNTY ILL.

/s/ Perry A. Ball
(Notary Public)

My commission expires: Dec. 30, 1948

CERTIFICATE

I, Monroe Kroll, Special Agent, SIC, 6th SC, certify that Ferdinand Victor Berley, Cmdr, MC, USN, personally appeared before me on 15 February 1946 and testified concerning war crimes; and that the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

Place: Chicago, Illinois

Date: 1 March 1946

/s/ Monroe Kroll
MONROE KROLL, Special Agent, SIC, 6th SC

A CERTIFIED TRUE COPY
Claude A. Muzzy
CLAUDE A. MUZZY
C.W.O., U.S.A.

I, Wilfred Brian ASHWEIRTH, of Emu Street, Maidstone, in the State of Victoria, formerly, VX 56344 L/Cpl W.B. ASHWEIRTH of 6 Line Sect Corps Sigs, make oath and say:-

1. I was taken prisoner of war at SINGAPORE on 15 February 1942.

2. On approximately July 1943, I was moved to ITCHIOKA HOSPITAL.

3. This hospital was the underneath portion of a concrete grandstand, at the ITCHIOKA Sports Stadium.

4. In the summer, it was like a furnace, and in the winter, like an ice box.

5. Lice were always plentiful, and bugs were present in large numbers, in the summer.

6. Food consisted mainly of rice and vegetable stew. Meat was provided about once a month, but when it did come in, Sgt. KATO took half of it for the Japanese staff, for whom he cooked.

7. When cooked, the amount of meat received by each man, was approximately half an ounce.

8. KATO also took half our fish ration each month, for the Japanese staff.

9. In August 1944, complaints were lodged to the Japanese doctor, about KATO taking our fish supply. This matter was satisfactorily rectified, but as soon as the doctor left, the whole of the hospital staff was lined up, and we all received a severe bashing, administered with boots, belts, clogs, fists and bamboo sticks. KATO was responsible and present while the above ill treatment was proceeding.

10. Major G.F. AYCROYD received the worst bashing. KATO belted him with everything he could lay his hands on. His face was red raw, and remained swollen for about a month afterwards. I witnessed this ill-treatment of Major AYCROYD.

11. KATO was a short, stocky, big headed Japanese, with short neck and protruding forehead. He also had a gruff voice, and small pig-like eyes.

12. Sleeping quarters at the Hospital were also very poor. A space of 12 feet by 8 feet accomodated 14 people.

13. These conditions were made all the worse, as the cramped space was occupied by men suffering from beri-beri, T.B., Scabies, amputated limbs, and gangrene.

~~14. Medicines were always in very short supply, and at no time were they sufficient to meet requirements.~~

15. KATO was definately responsible for the maltreatment of prisoners of war at ITCHIOKA HOSPITAL.

Sworn at Melbourne in the State of Victoria this 4th day of October 1946. W.B. ASHWEIRTH

Before me, H.F. GUI
A Commissioner of the Supreme Court of Victoria for taking Affidavits
A CERTIFIED TRUE COPY

CLAUDE A. MUZZY,
C.W.O., U.S.A.

PROSECUTION EXHIBIT 13

On this first day of April, One thousand nine hundred and forty-six, Robert Arthur Wickens , of 27 Comotrow St., Drummoyne, in the State of New South Wales, rubber technician, makes oath and says as follows:-

1. As NX57298 L/Sjt WICKENS R.A. of 2/19 Inf Bn I was taken prisoner of war at Singapore on 15 Feb 42.

2. I was transferred to ITCHIOKA, Japan, on 6 Feb 44 for medical treatment. The Officer in charge at ITCHIOKA was Surgeon Lt.C.V. JACKSON RNVR (Hong Kong). He was later succeeded by Major J.F. AKROYD, AAMC, who was taken POW at RABAUL.

3. The Japanese in charge at ITCHIOKA was S/Major OKANA. He was Assisted by CATO and NAKAYAMA, both Second Class Ptes and KITEMURA and BANDO, who did not belong to the Jap regular army but were returned soldiers carrying out garrison duties. The description of these Japs is as follows:-

~~OKANA - height about 5', [illegible] build, good teeth,~~ clean shaven, ~~very~~ jovial, aged about 35 yrs, did not wear glasses, and could ~~speak only~~ a little ~~English. His home was in OSAKA.~~

CATO - height about 5', medium build, cross-eyed, was nicknamed "North and South" because of this. His age was about 30 yrs, did not wear glasses and his home was in KYOTO.

~~NAKAYAMA - height about 5', small build, prominent~~ teeth, gold-filled, very short-sighted and wore ~~glasses.~~ He had a cast in one eye which was only noticeable when he had his glasses off. His age was about 24 yrs and he lived in KYOTO.

KITEMURA - height about 5' 6", his left leg had been badly wounded and as a result he often wore a metal support and had a definite limp. He did not wear glasses. He had bad teeth with many fillings. His age was about 40 yrs, slim build, was very shrewd and was a sadist. He lived in Osaka.

BANDO - height about 5', muggety build, had a pleasant face. He had a definite limp, was quite ~~intelligent and his home was in Osaka.~~

4. I was a patient at ITCHIOKA for about six weeks and after recovering I was requested by Major AKROYD to stop and assist him in the Hospital. Patients in this hospital were prisoners of war sent by the Japs when the Japs considered they were going to die. Treatment given to the Prisoner of war patients at the hospital by the aforementioned Japs was bad inasmuch that they endeavoured to make conditions as unbearable as they possibly could.

5. On 8 May 44 I experienced a severe bashing at the hands of BANDO, CATO and NAKAYAMA. The incident arose through BANDO stealing half of the hospital fish ration. The entire ration weighed no more than ten pounds. The PW cooks accused BANDO of the theft and after doing so were penalised by him by being made stand to attention for about two hours. Major AKROYD reported the matter to OKANA who gave him no satisfaction. OKANA went down to BANDO's office and was seen laughing and joking with BANDO. Approximately one hour later OKANA left the camp. The climax occurred at 2000 hours when we were lined up for roll-call. BANDO, CATO and NAKAYAMA came into the hospital and after ordering the PsW to salute them commended to bash first of all Major AKROYD and the remainder of the PW hospital staff in turn. The bashing was given with belts, slippers or bayonet scabbards. I was next to Major AKROYD and

/s/ R A Wickens /s/ L Shifoer J.P.

PROSECUTION EXHIBIT 14

was the next to receive a bashing which lasted about a quarter of a hour and which was given with the heel end of a slipper. The bashing of the staff lasted about half an hour after which BANDO, CATO and NAKAYAMA proceeded to the sick bays where the sick and dying men were lying and proceeded to kick and ill-treat them. When Major AKROYD tried to intervene he was hit several times and the Japs called out to him in Japanese which I understood, "All men die, Okay." This phrase was repeated right throughout the bashing of the sick men.

6. The three Japs finally came back to us and dismissed the staff with the exception of Major AKROYD, myself and a Dutch Lieut E.M. GONIE. They then bashed the three of us for about half an hour with belts and kicked us on the shins with their boots.

7. Major AKROYD contracted Pulmonary T.B. shortly after this and I consider that owing to his weak condition due to continued treatment such as experienced on this occasion was the cause of him contracting T.B.

8. A number of the sick men kicked and ill-treated that night subsequently died, their hastened death being definitely due to the treatment they received that evening.

9. This hospital was originated in Oct 42 and was disbanded in Jun 44. During this time there were 759 admissions and of these over 250 died.

10. Other Australian PsW who witnessed this bashing are - VX --, H.R. SHANNON of Albury, NSW, NX 59496 R.M. DEAN, and VX W.B. ASHWEIRTH of Emu Street, Maidstone, Victoria.

11. ~~OKAMA, KITEMURA, BANDO, CATO and NAKAYAMA are guilty of systematically stealing stores such as PW rations, medical stores and any Red Cross stores that came into ITCHIOKA.~~

12. On many occasions I have seen all the aforementioned Japs leaving the camp with stores they have stolen from us. The most popular of our rations to be stolen were rice and oil. Any of the PW hospital staff who requested the Japs not to take the stores finished up being punished in some manner.

13. There was never any sugar received by prisoners of war at ITCHIOKA hospital and the only explanation of this is that the aforementioned Japs stole it. Cough medicine, Portussin, which was received at the hospital was confiscated by the Japs and used ~~by them to sweeten their tea with when they realised its sweetness.~~

SWORN by the abovenamed deponent, Robert Arthur WICKENS, at Sydney, this first day of April, One thousand nine hundred and forty-six

/s/ R A Wickens

BEFORE ME /s/ L Shifcor J.P.

A Justice of the Peace

A CERTIFIED TRUE COPY

Robert Pritchard

JOHN R. PRITCHARD
Captain, Infantry

1-Q. How long you were with Bando, Bunhachi at Ichioka POW Hospital?
Ans: He came u to Ichioka around July 1943 to around Sept. 194[illegible]. I was with him about 10 months in Ichioka.

2-Q. Did you know Okano, Onji Nakata, Asai, Kitamura at Ichioka while you were there?
Ans. Yes, I knew them at Ichioka.

3-Q. Do you know underwood?
Ans: I don't know

4-Q. Did you ever beat any body in Ichioka?
Ans. No, I did not.

5-Q. Did you know a person name by GRANGER?
Ans. No. I did not know.

6-Q. Did you know Major Ackroyd?
(acting as could not recall his name.)
Ans. I could not remember who he was.

7-Q. Did you ever hear or know Bando Bunhachs steal food ration from camp.
Ans. No, I did not hear nor did know of it.

8-Q. Did you know Kelleher while you were at Ichioka?
Ans: I heard about him was at K.P. duty at Ichioka.

9-Q. Do you remember that did you beat anybody?
Ans: I did not rember but once in Ichioka camp, I had fights with Asai, 1st class Pvt, Medical Corps. At that time, I was drunk, so I did not know what I did to him, There were so many high ranking men and they told me I was wrong and I remembered that I approgized to Asai.

10-Q. Are you sure that you did not beat anybody else except you fought with Asai at Ichioka?
Ans: Yes, positively, I did not beat anybody else.

11-Q. Did you know commander Burley?
Ans Yes, I did.

12-Q What did you know about him
Ans. He was a Doctor, he was a small and short. I did not know him well but as far as I know, he was giving medical treatments to all the prisoners.

13-Q Did you know anybody else beside Doctor Burley at Ichioka?
Ans. Yes, I knew one 3 English doctor name by Peize and Pharmacist GOMIE. I only knew 3 prisoners while I was at Ichioka.

14-Q Did not you ever beat anybody?
Ans: No, I did not beat anybody potively, I wish I could see Lt. Ohashi or any other people who were with me at Ichioka that I can swear I did not beat anybody.

15Q. Did you beat GOMIE
Ans. No, I did not beat him at all.

PROSECUTION EXHIBIT 15

/s/ Japanese Characters

City of Tokyo
Eonshu, Japan

Affidavit

I, Kato, Masayoshi, do solemnly swear that I have had read to me the foregoing transcription and of my interrogation and all answers contained therein consisting of 4 6 /s/ E.I. pages and that I understand it and it is true to the best of my knowledge and belief.

/s/ Japanese Characters

Subscribed and sworn to before me this day 17 of July, 1945.
17

/s/ Tasuo Inouye
Invest. Legal Section
GHQ SCAP.

A CERTIFIED TRUE COPY

Claude A. Mulzy

CLAUDE A MULZY
C.W.O., U.S.A.

Statement taken at Sugamo Prison on 7 August 1946
by Franklin E. Morris

Q. What is your name

A. Masayoshi Kato

Q. Did you ever serve in the Japanese Prison Camps, if so when and where

A. Yes. From 20 January 1943 to 10 March 1943
at Osaka Main Camp.
From 11 March 1943 to 15 June 1943
at Kawasaki Sub-Branch.
From 16 June 1943 to 10 July 1944
at Schioka Hospital, Osaka.
From J 10 July 1944 to 3 February 1945
at Kobe Branch (Fusoku Hospital)
From 3 February 1945 to 11 May 1945
at Yokkaichi Branch Prison.

Q. What was your duties at the different camps

A. I was a Medical Orderly at all the Camps.

Q. How old are you

A. 32 years of age

Q. How tall and what is your weight

A. 5' 2½" tall and weigh about 125

Q. Did you beat any prisoners of War at Yokkaichi Prison

A. Yes, one evening in March 1945, after work, the prisoners returned ~~and~~ and stolen articles were found in their possession. The N. C. O. in charge, namely, Sergeant Yamazoka discovered this fact and ordered me to beat ~~the~~ two or three ~~American~~ Prisoners. I proceeded to beat them with a rubber sleeper four or five times. I don't know the names of the prisoners nor their nationality

Q. What was your rank in the Japanese Army

A. I was a Medical Corpsman and wore two stars on my uniform

Q. Did you ever beat any other prisoners at any Camp

A. No.

Witness - Hitoshi Mizokawa /s/Japanese Characters
I, Hitoshi Mizokawa hereby certify that I have translated the above statement (2 pages) from English to Japanese and read same to Masayoshi Kato this 7th day of August 1946 and that Masayoshi Kato stated he understood the facts therein stated and that the same are true.

/s/ Hitoshi Mizokawa
Interpretor

A CERTIFIED TRUE COPY
Claude A. Muzzy
CLAUDE A. MUZZY,
C.W.O. U.S.A.

PROSECUTION EXHIBIT 16

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War By /s/ C.A.MUZZY,CWO,USA

STATE OF CALIFORNIA :
COUNTY OF Cape May New Jersey : ss:
San Francisco :

ROBERT D. SOLLENBERGER, T/Sgt, ASN 69778457, 207 East Fern Road, Wildwood, New Jersey, being first duly sworn, deposes and says:

While I was detained by the Japanese as a prisoner of war at Camp #5 Nagoya, Yokkaichi, from 4 September 1944 to 4 September 1945.

During the early part of July 1945, I witnessed the severe beating and torture of 1st. Sgt. John Kristapalis, Jr. Private Edward Raskiewicz, and Private Edward Sheehan, all American soldiers, by Private KATO (phonetic), Corporal TANABE (phonetic) and Corporal SHEROKI (phonetic), all Japanese guards. These American prisoners were accused by the Japanese of having stolen some saki (rice wine) from the Japanese quarters during an air raid about 2:00 o'clock in the morning. These men were taken to the guardhouse and severely beaten. I could hear the licks from the Japanese guards and the yells of the American prisoners from the barracks, but I did not see this beating; however, the next morning I witnessed a further beating which lasted for about forty-five minutes before we went to work. The Japanese used leather belts and clubs about 6' long and about 2" in diameter, and beat the men over their heads and about the face and body. They were knocked down several times, and were kicked by the Japanese while they were on the ground. These men were beaten and tortured in various ways intermittently for about fifteen days. Once they were stood on boxes that were placed between ladders in the barracks, and their wrists tied firmly to the ladders, then the boxes were removed and they were left hanging by their wrists. The Japanese guards then took ropes about 1" in diameter, with knots about 1" apart, dipped them in the rain barrel until the rope was thoroughly soaked and severely beat the men for about half an hour across their naked bodies and over their heads. After this begting the men were left hanging for about half an hour, during which time they begged the Japanese to shoot or bayonet them and get it all over with. When the Japanese finally cut the ropes I heard the men slumped unconscious to the ground, where they lay for about another half hour, after which time the Japanese guard poured cold water over their bodies to revive them, and then took them back to the guardhouse. After this

 /s/ RDS

DEFENSE EXHIBIT A

eating the American prisoners were black and blue all over their bodies. Their faces and lips were swollen out of proportion, and their eyes were black and almost closed from the swelling. Kristapalis and Raskiewies were kept in the guardhouse for about three weeks and Sheehan remained in the guardhouse until we were liberated. I heard that Sheehan stole some rice at the same time they were accused of stealing Saki.

The Japanese camp commander, whose name I do not know, witnessed this torture and was well aware of what was going on. Captain Thompson, American camp commander witnessed this severe punishment and tried in every way he could to get it relaxed, but to no avail. All of the prisoners in the camp witnessed it, and are well aware of this incident.

/s/ Robert D. Schlenberger
ROBERT D. SCHLENBERGER, T/Sgt.

Subscribed and sworn to before me this 18th day of December 1945

/s/ William T. Dayton

Notary Public
My Commission expires July 8, 1946.

Interviewed by: Jefferson D. Corr
Agent, SIC.

(SEAL)
William T. Dayton
Notary Public
Cape May County, N. J.

CERTIFIED TRUE COPY

Paul A. Muzzy

PAUL A. MUZZY,
1.C., U.S.A.

[illegible]AKA P. O. W. CAMP PERSONNEL [illegible])

LIST OF SERVICES

No.	Name	Rank	Service Period From - to	Position Location Remarks
26.	Yoshio Ishihara	Superior Pte	30/10/44 - 15/ 8/45	
27.	Daikaku Matsumaga	"	" - "	
28.	Yoshisuke Kimura	"	" - "	
29.	Kiyoshi Mitsui	"	" - "	
30.	Tatsuo Kato	"	" - "	
31.	Gemroku Asada	"	" - "	
32.	Tokujiro Nishimura	L/Cpl	1/ 7/45 - 15/ 8/45	Kobe

LIST OF TRANSFERRED SERVICE MEN

1.	Yasujiro Idobata	Pfc. M. C.		
2.	Onji	A.Cpl M.C		Kobe Hospital
3.	Tadao Asakura	Sup. Pvt.		
4.	Tatsuo Kato	" "		
5.	Tanji Karosaki	" " M.C		
6.	Masateru Kamimura	" " "		H. Q.
7.	Akira Asai	" " "		"
			- 28/ 1/45	Kobe
			28/ 1/45 - 3/ 4/45	Funatsu

LIST OF INTERPRETERS

1.	Shigetoku Ishido	Treated as "Soninkan"		H. Q. & Noda
2.	Kikutaro Matsumoto	"		H. Q.
3.	Hisakichi Hayashi	Treated as "Hanninkan"	24/11/42 - 15/ 8/45	"
4.	Haruki Fujimoto	"	25/ 9/42 - 25/ 5/43	"
			1/ 7/45 - 15/ 8/45	Rokuroshi
5.	Hioshi Ikeuchi	"	-/ -/45 - 15 8/45	H. Q. Kobe
6.	Koichi Higashiguchi	"		H.Q.& Wakinohama
			20/ 5/45 - 15/ 8/45	Motogawa

CERTIFIED TRUE COPY:

/s/ Henry T. Omachi
Henry T. Omachi
2d Lt. Inf.
A G Casualty Clearance
Japanese P W Information Bureau

CERTIFIED TRUE COPY:

Bourton K. Philips.
William T. Martin, Jr.
Major, JAGD

DEFENSE EXHIBIT B

RESTRICTED

Classification changed from "CONFIDENTIAL" to "RESTRICTED" by order of the Secretary of War By/s/ C.A.MUZZY,CWO, USA

For the WAR CRIMES OFFICE

Judge Advocate General's Department -- War Department

United States of America

In the matter of the beating of Dr. C. A. Jackson, a British subject then held as a prisoner of war, by the Japanese Army Quartermaster and others at Ichioka Prisoner of War Hospital, Osaka, Japan.	*	Perpetuation of the testimony of HARVEY D. WEIDMAN, Major, CE, ASN 0-890422.

Taken at : Bruns General Hospital, Santa Fe, New Mexico.
Date : 4 February, 1946.
In the presence of: Maurice R. Bullock, Special Agent, Security Intelligence Corps, Eighth Service Command.

Questions by : Maurice R. Bullock

Q. State your name, rank, serial number and former organization.

A. Harvey D. Weidman, Major, 0-890422, formerly of the 61st Division, Philippine Army.

Q. What is your present army assignment, if any?

A. Member of Detachment of Patients, Bruns General Hospital, Santa Fe, New Mexico.

Q. ~~State your age, marital status, your permanent home address, your educational~~ background, your civilian occupation.

A. I am 52 years of age, married, and have three children. My permanent home address is 212 - 10th Avenue, Baraboo, Wisconsin. I was graduated from the School of Mines of the University of Wisconsin in 1916. My civilian occupati was that of mining engineer. I was employed in such capacity by the International Engineering Company in the Philippines from 30 April, 1937, until 8 March, 1942, when I was re-commissioned in the Army and assigned to the ~~Philippine Army.~~

RESTRICTED /s/ CAN

DEFENSE EXHIBIT C

Classification changed from "CONFIDENTAIL" to "RESTRICTE by order of the Secretary of War By/s/ C.A.MUZZY,CWO, USA

~~Q. When were you returned to the United States?~~

A. I arrived at San Francisco, California, 28 October, 1945.

Q. Were you a prisoner of war? If so, state the approximate dates and places of your confinement?

A. We were ordered to surrender at Cebu, Cebu, 17 May, 1942. I was confined in Cebu Provincial Jail until 3 October, 1942. From 3 October, 1942, until 7 October, 1942, I was enroute to Bilibid Prison in Manila, where I remained until 13 October, 1942. From 13 October, 1942, until 26 October, 1942, I was enroute from Manila to Kobe, Japan. I was confined to Kobe House Prison, Kobe Japan, from 26 October, 1942, until 15 April, 1943. From 15 April, 1943, until 26 September, 1943, I was confined to the Ichioka Prison Hospital, which is also known as the Osaka Stadium Hospital, returning to Kobe House Prison the latter date, where I remained until 30 March, 1945. From 30 March, 1945 until 22 August, 1945, I was at Ikuno Prison Camp about thirty miles from Kobe on the Mitsubishi Mining Property. On 22 August, 1945, I was returned Kobe and assumed charge of the contingent of American prisoners of war at Kobe remaining there until liberated 7 September, 1945.

Q. Do you have any information regarding the alleged beating of Dr. C. A. Jackson and others while held as prisoners of war in Ichioka Prisoner of War Hospital, Osaka, Japan?

A. Yes, I do.

Q. State fully what you know of this matter and its surrounding circumstances.

A. I was a patient at Ichioka Hospital, Osaka Japan, as a prisoner of war of the Japanese Imperial Army from 15 April, 1943, until 26 September, 1943. I was ~~suffering from pneumonia, but had full control of all my mental faculties.~~

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~~Dr. C. A. Jackson of the Royal Navy Volunteer Reserve was the medical officer~~ in charge of the hospital on behalf of the prisoners of war by appointment of Colonel Murata. Murata was the Japanese Commander for the Osaka Area. Jackson's permanent home address is Coldland Farms, Haroldslea, Horley, Surrey, England. I became well and personally acquainted with Jackson while I was a patient at Ichioka Hospital. To my knowledge this hospital was organized and activated and Jackson was placed in charge on or about 1 December, 1942. The food stocks provided for the prisoners of war in the Ichioka Hospital were stored separately from those provided for the Japanese Army staff and personnel at the Camp. During most of the time I was a patient in the hospital I was in a position to observe the storeroom where the prisoner of war rations were kept. It was located in a room adjoining the bay or ward in which I was kept as a patient. On at least five separate occasions I observed different members of the Japanese Army hospital staff take portions of the prisoner of war rations consisting of rice, soya sauce and cabbage and take it with them to their quarters. I never saw any of them return any of these provisions or deliver or make them available to any of the prisoners of war. At this time the total quantity of rations issued for consumption of the prisoners of war was so limited that it was impossible to provide each patient with more than an average of one small bowl of thin rice and barley gruel known as lugao in the morning, 150 grams of white bread and mild, weak tea at noon, and a small bowl of cooked rice (the equivalent of about fifty grams of dry rice) and about fifty grams of cooked vegetables and vegetable juices at night. About once per week each of us got about an ounce and a half of fish and about an ounce and a half of fried soya bean curd. This diet was not nearly enough to maintain ~~the health of a well man, much less to enable a sick man to regain his health~~ the strength.

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The only one of the Japanese soldiers I personally saw appropriating to his own use prisoner of war rations whom I can identify was the regular quartermaster in charge of the hospital food supply. I do not recall his name or official army rank. He appeared to be about 38 years of age, heavy set, with broad, mongoloid features. His head was a little larger than that of the average Japanese. He was of average height for a Japanese. He was the quartermaster during all the time I was there.

About the early part of July, 1943, I heard and saw this Japanese quartermaster and two Japanese Army guards whom I cannot now identify come into the hospital ward where I was and started shouting to Dr. Jackson and two British prisoner of war cooks, whom I cannot now identify, to come to the Japanese staff office in the hospital. This office was the next room adjoining the section where I lay, separated only by a thin pine board petition. I could hear plainly everything that went on in this other room. One of the three Japanese could speak some English. When Jackson and the cooks arrived there, he asked Jackson whether Jackson and the British cooks had reported to the No. 1 Camp that they, the Japanese, had been stealing prisoner of war rations. All three replied that that was the truth and that they had so reported it to the No. 1 Camp, which was under the command of Colonel Murata. The Japanese then demanded that they deny and retract this accusation. This they refused to do. Then for a period of about an hour and a half I heard repeated hard blows which sounded as if the Japanese were beating Jackson and the two cooks with wooden clogs. This was broken intermittently by repeated demands on the part of the Japanese that Jackson and the cooks deny and retract these accusations. This was accompanied by much cursing and shouting on the part of the Japanese. Over about an hour and a half I heard the English speaking Japanese say that it would be necessary to shoot if they did not retract their accusations. I

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then heard Jackson say in substance that they could go ahead and shoot, but what they had accused them of was the truth and he would not deny it. I heard noises indicating that rifles were being loaded, but I heard no shot. The Japanese then dismissed Jackson and the cooks and left.

Dr. Jackson and one of the two cooks each told me the next day that they had been beaten by the Japanese quartermaster and guards because they had reported thefts of prisoner of war rations by the Japanese quartermaster and others. Each showed evidences of having been severely beaten, but so far as I know none of them suffered any permanent injuries.

Q. Do you have any further information regarding this matter.

A. No, sir, that is all I recall.

/s/ Harvey D. Weidman
Harvey D. Weidman, Major, CE, ASN
0-890422.

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Harvey D. Weidman, of lawful age, being duly sworn on oath, state that I have read the foregoing transciption of my interrogation and all answers contained therein are true to the best of my knowledge and belief.

/s/ Harvey D. Weidman
Harvey D. Weidman, Major, CE, ASN
0-890422.

Subscribed and sworn to before me this 7 day of February, 1946.

/s/ A. M. Newcomb
A. M. Newcomb
WOJG USA
Asst. Adjutant
Army Service Forces
BRUNS GENERAL HOSPITAL
Santa Fe, New Mexico

A CERTIFIED TRUE COPY

[signature]
CLAUDE A. MUZZY,
CWO., U.S.A.

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[redacted]
RESTRICTED

CERTIFICATE

I, Maurice R. Bullock, Special Agent, Security Intelligence Corps, Eighth Service Command, certify that HARVEY D. WEIDMAN, Major, CE, ASN 0-890422, personally appeared before me on 4 February, 1946, and testified concerning war crimes; and the foregoing is an accurate transcription of the answers given by him to the several questions set forth.

/s/ Maurice R Bullock
Maurice R. Bullock
Special Agent, Security Intelligence Corps, Eighth Service Command

Place: Albuquerque, New Mexico

Date : 7 February, 1946.

A CERTIFIED TRUE COPY

Claude A. Muzzy

CLAUDE A. MUZZY,
C.W.O., U.S.A.

[redacted]
RESTRICTED /s/CAM

AFFIDAVIT

Yokohama
(Place)

Sept 10, 1945
(Date)

I Alfred M. Underwood ASN 6970832 of

Baton Rouge, La, serving in the grade of Sgt with the

17th Bomb Sq, U. S. A. armed forces at the time of

my capture on 4-9-42 at Bataan, P.I. do hereby depose and say

1. Japanese prisons, camps or hospitals in which I was confined are as follows:

Name and Location	Date	Japanese Commander
Camp # 1, Cabanatuan, P.I.	June '42	Col Maury
Yodogawa, Osaka, Japan	Nov '42	Col Murata
Itchioka Hosp., Osaka	Sept. '43	Col. Murata
Oeyama #3	May 17, 1945	Col Murata

2. Conditions in each camp, hospital or prison with respect to food, medical care, clothing, sanitation and required work were as follows:

Food in all work camps was barely sufficient to sustain life. Clothing was filthy, ragged and there was never enough of it to protect one from severe cold in winter time. Medicla care was non-existent. Food in Hosp. (130 gms rice daily) meant slow starvation. In work camps, impossible heavy manual labor was exacted from all men regardless of physical condition. Although a great deal of Red Cross food and medical supplies was recieved in camps little of it was ever received by prisoners.

3. I have personal knowledge of killings, tortures, beatings, other cruelties (including starvation or improper punishments as indicated:

Name of victim	Date	Place	Japanese Perpetrator
A. M. Underwood	Oct '43	Itchioka Hosp	Bando-San Beating (severe)

DEFENSE EXHIBIT D

Name of Victim	Date	Place	Japanese Perpetrator
Grant, W. T.	July '45	Oeyama	Itchiba
unknown	" "	"	Akamatsu Gunso

Brief description of each atrocity:

1. Beating with belt, slipper, sticks for asking for more rice.

2. Torture for taking Red Cross Box

3. Extreme torture for taking vegtables..

4. I have heard of and have reason to believe the following atrocities were also commit ted:

Name of victim	date	Place	Japanese Perpetrator

Brief description of each atrocity:

5. I do (not have) a diary or other documentary evidence. It is presently located at _____.

Alfred K. Underwood
(Signature)

Subscribed and sworn to before me this 10th day of Sept 1945 at Yokohama.

R. J. Hollaway 2d Lt
(Army or Navy Officer authorized to take oaths)

0928283 RPT 58
ASN Organization

A CERTIFIED TRUE COPY

/s/ Brooks L Harman
BROOKS L. HARMAN
2d Lt AC

A CERTIFIED TRUE COPY:

EVERETT CHECKET
Major, Infantry

(9405)

VOLUME III

CLEMENCY PAPERS

TO

RECORDS OF TRIAL
(5TH ORIGINAL CARBON)

IN THE CASE OF

UNITED STATES

VS

MASAYOSHI KATO

CASE NO. 124

MILITARY COMMISSION

APPOINTED BY

COMMANDING GENERAL, EIGHTH ARMY

TRIED AT

YOKOHAMA, HONSHU, JAPAN

HEADQUARTERS EIGHTH ARMY
JUDGE ADVOCATE SECTION
WAR CRIMES DEFENSE DIVISION
APO 343

11 August 1947

AG 000.5 (XXD)

SUBJECT: Defense motion in case of United States of America vs Hanayoshi Kato, No. 124

TO: Commanding General, Eighth Army, APO 343
Attention: Staff Judge Advocate.

(1) Attached are seven copies of defense motion for modification of sentence in the above case for the record.

(2) Upon service of motion on the prosecution on 18 July 1947, a copy was delivered to the Review Branch.

(3) Transmission of copies for the record has been delayed because acknowledgment of service by prosecution was not received until this date.

Gustav R. Philips
GUSTAV R. PHILIPS
Major JAGD
Chief, War Crimes Defense Division

HEADQUARTERS EIGHTH ARMY
JUDGE ADVOCATE SECTION
WAR CRIMES DEFENSE DIVISION
APO 343

UNITED STATES OF AMERICA

vs

DOCKET NO. 124

MASAYOSHI KATO

ACKNOWLEDGEMENT OF SERVICE OF DEFENSE MOTION

Receipt is acknowledged of copy of defense motion for modification of sentence in the above case.

One copy of this receipt is retained for Prosecution files.

Dated this 18th day of July 1947.

Leo G. Blackstock

LEO G. BLACKSTOCK
Chief, Prosecution
Division, Legal
Section, SCAP

HEADQUARTERS EIGHTH ARMY
JUDGE ADVOCATE SECTION
WAR CRIMES DEFENSE DIVISION
APO 343

16 July 1947

AG 000.5 (YPD)

SUBJECT: Defense motion in case of United States of America vs Shunyeshi Kato, No. 124

THRU: Commander in Chief, Far East Command, APO 500.

TO: Supreme Commander for the Allied Powers, APO 500.
Attention: Chief, Legal Section, Prosecution Division.

1. Attached is a copy of defense motion for modification of sentence in the above case.

2. Eight copies of receipt should be signed, seven of which are to be filed with copies of the record and one for the files of this division.

Burton K. Phillips
BURTON K. PHILLIPS
Major, JAGD
Chief, War Crimes Defense Division

HEADQUARTERS EIGHTH ARMY
JUDGE ADVOCATE SECTION
WAR CRIMES DEFENSE DIVISION
APO 343

DEFENSE MOTION FOR

MODIFICATION OF SENTENCE

in the case of

UNITED STATES OF AMERICA

vs

MASAYOSHI KATO

Case Docket 124

Tried before a

MILITARY COMMISSION

Appointed by

COMMANDING GENERAL, EIGHTH ARMY

at

Yokohama, Honshu, Japan

23 January 1947 - 5 February 1947

HEADQUARTERS EIGHTH ARMY
JUDGE ADVOCATE SECTION
WAR CRIMES DEFENSE DIVISION
APO 343

14 July 1947

UNITED STATES OF AMERICA

vs

Case Docket No. 124

MASAYOSHI KATO

DEFENSE MOTION FOR MODIFICATION OF SENTENCE

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DEFENSE MOTION FOR MODIFICATION
OF SENTENCE

I. ASSIGNMENT OF ERROR

The Defense respectfully submits to the Reviewing Authority that the finding of the Commission as to the accused MASAYOSHI KATO should be set aside and modified for the following reasons:

1. The Commission erred in overruling the motions of the accused Kato at the end of Prosecution's case
   (a) to strike the name of Lt. Gonies from Specification One,
   (b) to strike Specification Four, and
   (c) to strike Specification Seven.
2. The finding of the Commission is against the weight of the evidence and against the law as applied to Specifications One, Two, Four and Seven.
3. The Commission erred in accepting and receiving evidence offered by the Prosecution which was irrelevant to the charge against this accused and which was without any probative value but which was highly prejudicial to the accused.
4. The sentence imposed by the Commission is excessive and unreasonable.
5. Specifications Four and Seven do not state any offense against the Laws and Customs of War and do not apprise the accused of the offense with which he was charged.
6. The Commission had no jurisdiction in connection with Specifications One, Two and Seven.

II. STATEMENT

The accused Masayoshi Kato served as a medical orderly in the Imperial Japanese Army at the following assignments (Record, 94):

A. Nara, 67 Hakuta Unit - 15 January 1943 to 18 January 1943.

B. Nara Army Hospital - 18 January 1943 to 20 January 1943.

C. Okaka Main Prisoner of War Camp - 20 January 1943 to 11 March

1943.

D. Osaka Prisoner of War Camp, Kawasaki Branch - 11 March 1943 to 15 June 1943.

E. Ichioka Hospital - 16 June 1943 to 10 July 1944.

F. Kobe Prisoner of War Hospital - 11 July 1944 to 3 February 1945.

G. Yokkaichi Prisoner of War Camp - 4 February 1945 to 11 May 1945.

H. Nara Army Hospital - 12 May 1945 to 1 September 1945.

The accused was charged with violations of the Laws and Customs of War while at the Ichioka Hospital and at Yokkaichi Prisoner of War Camp.

He has been confined at Sugamo since 4 June 1946.

III. TRIAL AND VERDICT

The trial of the accused was held at Yokohama from 23 January 1947 to 5 February 1947. The finding of the Commission was Guilty of Specifications One, Two, Four, Five and Seven. As to Specification Six nolle prosequi was entered by the Prosecution at the commencement of the trial (Record, 3). Specification Three was dismissed on motion of the Defense at the conclusion of the Prosecution's case (Record, 76). Accused was found Guilty of the charge. The sentence imposed by the Commission upon the accused Kato was that he be confined at hard labor for a period of twenty-five years.

IV. STATEMENT OF CHARGE

That the following member of the Imperial Japanese Army, with his then known title MASAYOSHI KATO, Private, at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.

V. STATEMENT OF SPECIFICATION ONE

That between 16 June 1943 and 10 July 1944, at Ichioka Hospital,

Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat Hendrick J. Ritsma and Lieutenant Everett Manuel Gonies, Dutch Prisoners of War, by beating them with fists, belts and slippers and by otherwise abusing them.

VI. DISCUSSION OF SPECIFICATION ONE

As two persons, Ritsma and Gonies, are named therein, discussion of each will be separate.

A. As to Lieutenant Everett Manuel Gonies:

The Prosecution offered in evidence in support of this specification the affidavits of Major Ackeroyd, Exhibit 1, and Sergeant Wickens, Exhibit 14. The former has reference to this specification in two paragraphs. Paragraph 16 states:

"Kato and Nakayama also made Shannon, Ritsma and Lieut. Gonie, a Dutch Army Pharmacist, hold forms (sic) above their heads, for up to an hour at a time, on many occasions."

Paragraph 28 states:

"The staff and patients were then dismissed, with the exception of Lieut. Gonie, Sgt. Wickens of 2/19 Bn, and myself, who were stood to attention and beaten for some minutes, and then dismissed."

Paragraph 6 of Exhibit 14 states:

"The three Japs finally came back to us and dismissed the staff with the exception of Major Akroyd, myself and a Dutch Lieut. E. M. Gonie. They then bashed the three of us for about half an hour with belts and kicked us on the shins with their boots."

It will be noted that the accused Kato is specifically implicated only in Paragraph 16 of Exhibit 1 where the prisoners of war were made to hold forms above their heads. While this may

have been an inconvenience, there was no beating involved and it is submitted that the said action does not constitute a war crime.

Paragraph 28 of Exhibit 1 and Paragraph 6 of Exhibit 14 refer to the same incident occurring on the same evening. The evidence indicated three Japanese (Kato, Bando and Nakayama) to have been present. It is only by speculative inference that Kato specifically can be involved in this affair. There is no direct testimony to this effect.

There is direct testimony that although the three Japanese were present, the accused Kato did not participate in the mistreatment. Reference is made to the affidavit of Commander Berley (Exhibit 12), in which he states:

"...Kato...had not taken an active part in the beatings..." (Exhibit 12, page 4)

It will be noted that Commander Berley states that three Japanese (Kato, Bando and Nakayama) were present but continues to relate the specific role played by each in the events which transpired on the evening of 8 May 1944. It exonerates Kato from culpability. Commander Berley was not beaten and was at all times in a position where he could fully observe what took place.

There is no affidavit from the alleged victim Gonies.

B. As to Ritsma:

Reference had been made above to Paragraph 16 in Prosecution's Exhibit 1 and Paragraph 6, Prosecution's Exhibit 14, in which the alleged victim was only stood at attention holding forms above his head.

There is an affidavit from the victim Ritsma. While it does

not mention Kato's direct participation in any beatings on 8 May, he states that at a different time he was slapped by the accused Kato (Prosecution's Exhibit 3). This slapping is partially confirmed by the accused (Record, 82).

Hence as to the slapping, Kato can be found Guilty as to Ritsma, but the finding cannot be sustained as to Lt. Gonies.

VII. STATEMENT OF SPECIFICATION TWO

That between 16 June 1943 and 10 July 1944, at Ichioka Hospital, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat and abuse Surgeon Lieutenant Charles A. Jackson, Seaman Thomas Rhodes, Frank Gibbs, Jack H. Hoghieson and Marine John J. Quinn, British Prisoners of War, by beating them.

VIII. DISCUSSION OF SPECIFICATION TWO

The prosecution submitted in support of this specification the affidavit of Jackson, Exhibit 9. This affidavit names the accused with two others as the participants. There were some slaps. Affiant continues as follows:

"None of us suffered any permanent injury and I do not consider that the incident was a serious one apart from our loss of pride and respect."

Accused admits slapping three persons under orders, but not Jackson, in what may have been the same incident (Record, 83).

IX. STATEMENT OF SPECIFICATION FOUR

That between 16 June 1943 and 10 July 1944, at Ichioka Hospital, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, with others, did, willfully and unlawfully, mistreat numerous Allied Prisoner of War by beating them with fists, belts, slippers and shoes, and by otherwise abusing them.

X DISCUSSION OF SPECIFICATION FOUR.

Specification Four is a catchall omnibus specification charging that between 16 June 1943 and 10 July 1944 the accused, with others, mistreated numerous Allied Prisoners of War by beating them. It is submitted that this specification does not charge any offense against the Laws and Customs of War because it is vague, indefinite and does not apprise the accused of the offense with which he is charged. It is generally held by all authorities in military law and by all civil courts that in order to constitute a valid charge of violation of law that the indictment, charge or specification must allege with particularity the time, the place and describe the unlawful act committed. In this case, the time is stated as the entire period that accused was stationed at the Ichioka Hospital. No unlawful act is described so as to enable the Defense to possibly meet any charge. It is obviously impossible for the accused to produce witnesses to cover such a duration or period. Such a specification makes it impossible for the accused to prove his innocence. Furthermore, even in the event of finding him guilty, the accused still has no knowledge of which acts he has been found guilty.

XI. EVIDENCE UNDER SPECIFICATION FOUR

The Prosecution offered in support of this specification the affidavits of Major Ackroyd (Exhibit 1), Shannon (Exhibit 11), Ashweirth (Exhibit 13), Wickens (Exhibit 14), Kelly (Exhibit 10). The proof thereunder named four prisoners not covered by the other specifications. They were Shannon, Ackroyd, Wickens and Stradley. Ackroyd charges the accused with having struck Shannon some eight times over a three-month period and includes Shannon as one of the three men made to hold forms over their heads on 8 May 1944. Shannon confirms beatings by "either Kato or Nakayama" and on one occasion "by both Kato and Nakayama". The mistreatment of Ackroyd is covered in Prosecution Exhibits 1, 11 and 13, the nature of which have been previously discussed. Wickens was one of the persons mistreated during the incident of 8 May 1944. The incident of this evening has previously been discussed and attention is

again directed to the direct testimony of Commander Berley, Exhibit 12, that the accused Kato no active part in any mistreatment upon that occasion (see discussion under VI).

The most serious beating concerned in all the affidavits and evidence is the alleged beating of one Stradley. But one affidavit, that of Kelly, Exhibit 10, refers to this mistreatment. This affidavit is subject to serious attack. It states:

"Kato was the only guard that I can remember as he was permanently stationed there. The other guards were changed about every week."

Affiant also states, "I (Kelly) arrived at Ichioka hospital on 1 January 1944 and remained there until liberated." It is obvious that Kelly has someone else in mind. Kato was stationed at some seven different places (Record, 94) of which Ichioka was but one and had left Ichioka Hospital long before affiant was liberated. Had Kato been responsible for such a serious incident many would have remembered. Yet although there are other affidavits from personnel at Ichioka Hospital, there is no further mention of Kato in connection with this incident. There is no affidavit from the victim nor from any other source. Furthermore Kelly's affidavit fails to identify Kato except by name. Other affidavits or other prisoners identifying Kato refer to his being cross-eyed, a glaring fact which escaped no one's attention. Whether the Commission found Kato guilty of this act or not, there is no way of knowing under the catchall specification.

XII. STATEMENT OF SPECIFICATION FIVE

That in or about March 1945, at Yokkaichi Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, did, willfully and unlawfully, mistreat and abuse Vance Wendell Walsh, an American Prisoner of War, by beating him with a bolt, thereby knocking out a tooth.

XIII. DISCUSSION OF SPECIFICATION FIVE

The mistreatment charged under this specification is admitted by the accused, although the circumstances are at variance with the Prose-

cution's testimony. The accused admitted he struck said person under orders of Sergeant Yamasaki, ranking NCO at the camp. The order of his superior constituted a complete defense under the rules of land warfare (FM 27-10, Section 347) until the recent modification of this section. Now it is at least a circumstance which may and should be considered by the commission in mitigation.

XIV. STATEMENT OF SPECIFICATION SEVEN

That between 3 February 1945 and 11 May 1945 at Nagoya Sub-Camp Number 5, Nagoya Area, also known as Yokkaichi Prisoner of War Camp, Osaka Area, Honshu, Japan, the accused, Masayoshi Kato, did, willfully and unlawfully, mistreat and torture numerous Allied Prisoners of War, by beating them with clubs, belts and ropes and by otherwise abusing them.

XV. DISCUSSION OF SPECIFICATION SEVEN

This specification is also a catchall omnibus specification covering Yokkaichi Prisoner of War Camp and subject to the same difficulties previously covered in Statement of Specification Four.

For proof under this specification, the Prosecution offered the names of Sollenberger and two unknown persons who were together with Walsh in the incident covered by Specification Five. The accused admits striking several other persons at the same time as the Walsh incident. The Court found the accused Not Guilty as to the words "and torture" and other words and phrases.

XVI. DISCUSSION OF LACK OF JURISDICTION

The question of lack of jurisdiction was raised with regard to Specifications One, Two and Seven (Record, 131). Specification One refers to Dutch subjects. Specification Two refers to British subjects and the nationality of the persons involved in Specification Seven is unknown. The Commission considered itself without authority to rule on the question, merely assumed that jurisdiction existed and recommended

that the motion be made through the Commanding General of Eighth Army to SCAP (Record, 133). Hence this question was not determined by the Commission.

The essential point of the argument is that a belligerent has authority to try only those individuals alleged to have been guilty of crimes against its Nationals. (See Yale Law Review 1942-43, Vol. 32, page 715). This principle of law was recognized in the general initial policy relating to Japan in the first published directive to General MacArthur. This document prepared jointly by the Department of State, the War Department and Navy Department and approved by the President (on September 6, 1945) states in Part III Sec. 2 (War Criminals):

> "Those wanted by another of the United Nations for offenses against its Nationals shall, if not wanted for trial or as witnesses or otherwise by the Supreme Commander, be turned over to the custody of such other nation."

The above shows definitely that it is the policy of our Government not to try war criminals for offenses against the Nationals of other Nations but to turn them over to such other countries for trial. This is in conformity with the views regarding policy and jurisdiction of war criminals following World War I. At that time in the "Opinion of American Members, Commission of Responsibilities, 1919" the following is stated:

> "The United States could not institute a military tribunal within its own jurisdiction to pass upon violations of the laws and customs of war unless such violations were committed upon American citizens or American property."

It remained the principle and policy of the Allied Powers during the course of the War. Reference is directed to Declaration of Moscow, 1943, which in recognition of these principles provided that the United States of America should turn over to the USSR enemy Nationals who had committed offenses against the USSR and who were taken prisoner or came within the jurisdiction of the United States Armed Forces. Similar reciprocal provisions were provided among all the High Contracting Powers.

Moreover this principle has been recognized as a matter of common practice during the course of the war trials in the Far East. Japanese

Nationals have been requested by Allied Governments and have been sent out to face trial in Singapore, Batavia, Hong Kong, Shanghai, Sydney and other places for alleged offenses against Allied Powers.

It is certain that if the Governments of Great Britain and the Netherlands desired to prosecute Kato for crimes against their subjects, they may do so in their own military courts. Neither Kato or any other person accused of war crimes is protected by any constitutional guaranty against trial a second time for the same offense.

It is submitted that a military commission of the United States has no jurisdiction to try, and the United States has no power to prosecute, cases of alleged offenses against British and Dutch prisoners of war.

In accordance with the above, it is submitted that the Commission lacked jurisdiction over the offenses set forth in Specifications One and Two and said findings ought to be set aside.

XVII. DISCUSSION OF SENTENCE

The accused was found guilty of five specifications and sentenced to twenty-five years' imprisonment. It is submitted this sentence is so unduly harsh, excessive and unreasonable as to be unconscionable. There is no dispute concerning the power to impose such sentence. Under SCAP directives, the Military Commission has unlimited power to impose punishment up to death for any offense, for even one specification. But there is a difference between the power to impose punishment and the reasonable judicial determination of punishment. "Let the punishment fit the crime" is more than a mere line in an operetta; it summarizes the basic Anglo-American concept of justice.

In considering the punishment to be adjudged, it will be assumed that there is evidence to support each of the findings of guilty. Of what then is the accused guilty? Under Specification One, at the most, of slapping and making the victims hold forms above their heads. Under Specification Two, of slapping under orders. It will be noted again that the only affidavit in support of this specification refers to no

injuries but "a loss of pride." Under Specification Four, the catchall, there are four names mentioned, three of which are light affairs and the fourth incredible, (see discussion under XI). Under Specification Five, the victim suffered the loss of a tooth. Under Specification Seven, one of the victims (Sollenberger, Record, 22) has so little regard for this incident that it escapes his memory completely when making an affidavit regarding atrocities at the Prisoner of War Camp (Record, Exhibit A). Densmore who testified, and may or may not have been a victim (cf. Record, 22 and 29), was not touched.

The accused was found guilty of mistreatment. He was found Not guilty of "torture". Specifications Six and Seven charged accused with torture. Specification Six was Nol Prossed and in Specification Seven, the Court expressly found him Not Guilty of torture in the incident. So there is no torture involved in this case. Further, there is no question of permanent injuries involved except for the loss of a tooth. There remain only mistreatments in the form of beatings or slappings. And the sentence was 25 years.

Corporal punishment is repugnant to Americans. Yet less than one hundred years ago it was a generally accepted system of punishment, particularly in the armies and navies of the entire world. The dignity of man is an advancing concept, but its rate of advance is not parallel in all countries. With respect to corporal punishment, the West had advanced further than the East, although some remnants still remain; e.g., the criminal laws of the State of Maryland still provide for whipping for some crimes: the doctrine of "spare the rod and spoil the child" is still vigorously asserted. Fifty or one hundred years from now, practices which we consider normal may be condemned as barbarous. Some nations have already abolished the death penalty for crimes as a barbarous practice.

Shall then this accused bear the brunt of a system in which he was just a simple carpenter as a civilian and a Private, First Class in the Army? Corporal punishment was as much a part of the Japanese Army System as the manual of arms. To the Japanese, it was jurt one small part of

soldiering. It was their system, sanctioned from above, and therefore not questioned from below.

The evidence in this case names as a co-perpetrator one Bando. The affidavit of Commander Berley, Prosecution's Exhibit 12 and discussed in detail herein under discussion of specification one (Title VI), exonerates Kato completely from participation in the incident of 8 May 1944 (on which Specifications One and Four in the instant case are based) and names Bando as the main villain of the incident. This same Bando was tried (Case No. 108), found guilty of eight, not merely five, specifications and the sentence was six, not twenty-five, years' imprisonment.

While absolute uniformity in punishment is impossible because no two cases are exactly the same, it is highly desirable that the punishment imposed by the different Commissions for similar offenses should be commensurate. Bando was found guilty of offenses at least as serious as those charged against Kato (some of them the same) and of more offenses. The sentence given Bando is believed to be entirely adequate for his offenses. To be in line the sentence given Kato should be less than that given Bando, not four times as severe.

These trials are historic trials. The accused Kato, as an individual is of little consequence. But we, the triers, will be judged by these trials. The silence of the clash of arms has not stilled the battle of ideas. The main American weapon in this battle is its call to the world: "Justice for all, big and small." And whether we pay but lip service to our words or carry them out in practice will be watched by the entire world - and may decide the issue of the new battle. To paraphrase: "As we judge, so shall we be judged."

The unconscionable sentence rendered in this case should be drastically reduced.

XVIII. PRAYER

The defense respectfully asks the Reviewing Authority to set aside the findings of the commission or to commute, reduce and alter the sentence so that it may be reasonable and just punishment for the offenses committed.

M. A. Braun
M. A. BRAUN
Defense Counsel of Record

Wade P. Johnson
WADE P. JOHNSON
Defense Counsel
of Counsel

January, 27 1947.

To the Commander of the U.S. 8th Army,

THE PETITION

Name: Masayoshi Kato.

Past section: A private of the Japanese Army Medical Corps.

The above person who had been employed by me and worked as a carpenter, was summoned to the Japanese Army in the event of breaking out the late great war in Asia to serve as a private of medical corps. He is now being imprisoned in the Sugamo Penitentiary, Tokyo, on the charge of conducting violence to the prisoners while he was on duty in the No. 3 Prisoners' Quarters, Osaka, during the war.

In awaiting the time of passing the sentence upon him resulting from the court trial, his brothers, relatives and those in close friendship with him are all in full anxiety as to the decision upon him.

We beg to state that up to the time being summoned to the Army, he worked as a carpenter honestly and earnestly assisting his elder brother, also a carpenter, and associating with his friends in harmony. We believe that the act of violence conducted by him was not his [illegible] but was induced inevitably because of being obliged to the order of his seniors in presumption of his daily life before the war.

It is our earnest entreaty and prayer to your Excellency to be kindly bestowed by you to use your influence in his behalf to come to the decision of his crime being as slightest as possible taking into consideration of his character which we do hereby swear that it is true and correct to the best of our knowledge and information.

/s/ Japanese (Arafuku, Gensaku)

A TRUE COPY

JOHN F. TRACEY
Major AC

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO) 241J
(Reporting Office)

File Number T-138 Date of Report 20 February 1947

Title of case U. S. vs HASHIMOTO, Chogo

PART A

1. Names and Nationalities of Accused

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

Yokohama, Honshu, Japan

11 Feb 47 - 17 Feb 47

(Over)

Inclosure 2 to WD Letter (AGAM-PM 000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to Specific Accused)

GUILTY - 15 years imprisonment at hard labor.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP, (TOKYO)

(Reporting Office)

File Number T - 138 Date of Report 11 Nov 46

Title of case U.S. vs MASHIMOTO, Chogo

PART A

1. Names and Nationalities of Accused

MASHIMOTO, Chogo - Japanese

2. Nature, Place and Date of Offense

Beating, abuse

Tokyo POW Camp 5-B, Niigata, Honshu, Japan

Sept 1943 to Aug 1944

3. Names and Nationalities of Victims

Canadian:

Victor Joseph Wyatt
G. R. MacLaughlin (deceased)
Gerald Smeddin (deceased)
John R. Stroud
William Rankine Waltman
Arthur Milton Hunter
William Harvey Gagne
G. Woodward

4. Probable Place and Date of Trial

Yokohama, Honshu, Japan 15 Dec 1946

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P" 000.5 (20 Jun 46)WDSCA)21 June 1946

6. Judgment and Sentence (Relate to specific accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

9. Date and Place of Execution of Sentence

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSG, The Pentagon, Washington 25, D. C.

25-89621-300

6. Judgment and Sentence (Relate to Specific Accused)

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Commanding General Eighth Army - 30 January 1948

APPROVED

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

NONE

9. Date and Place of Execution of Sentence

17 February 1947 - Sugamo Prison, Tokyo, Japan.

One and one-half months confinement remitted.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. C.

25-89621-300

Reports Control Symbol WDSCA-2

WAR CRIMES TRIAL STATUS REPORT

LEGAL SECTION, GHQ, SCAP (TOKYO)
(Reporting Office)

File Number T - 198 Date of Report 18 February 1948

Title of Case [illegible] Chego HASHIMOTO

PART A

1. Names and Nationalities of Accused

Japanese: Chego HASHIMOTO

2. Nature, Place and Date of Offense

3. Names and Nationalities of Victims

4. Probable Place and Date of Trial

PART B

5. Place and Date of Trial

WD AGO Form R-5392
21 June 1946

(Over)

Inclosure 2 to WD Letter (AGAM-P-M 000.5 (20 June 46) WDSCA) 21 June 1946

VOLUME I

RECORD OF TRIAL
(4th Original Carbon)

in the case of

UNITED STATES

vs

CHOGO HASHIMOTO

Case Docket No. 139

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama Japan
12 Feb 1947 - 17 Feb 1947

(2415)

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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

4 March, 1947

SUBJECT: Transmittal of Record of Trial

TO: Commanding General, 8th Army, APO 343

Transmitted herewith is the completed record of trial in the case of United States vs Chogo Hashimoto, tried by Military Commission.

GLENN I EPPERSON
LA Col Cav
President

Incls:
Vol I - Record of Trial
Vol II- Exhibits, etc.

MILITARY COMMISSION DATA SHEET

Name (including aliases) - Nationality - Military status at time of alleged offenses

	Prosecutor Yes	Prosecutor No	Staff J.A. Yes	Staff J.A. No	Confirming Authority Yes	Confirming Authority No
1. Was the Commission ordered by proper authority?	✓					
2. Are all orders showing membership of the commission properly entered in record?	✓					
3. Are all official rules and regulations, or other directives, governing the proceedings of the court incorporated in the record?	✓					
4. Were there less than three members detailed or present at any meeting?		✓				
5. Was the law member designated by the convening authority?	✓					
6. Did the commission have jurisdiction of the person and the offense?	✓					
7. Does the record show the place, date and hour the commission convened?	✓					
8. a. Are all members of the commission and personnel of the prosecution and defense accounted for as present or absent?	✓					
b. If absent is reason for absence given?	✓					
c. Was accused asked whom he desired as counsel?	✓					
d. In case of filling of vacancy among members of the commission or alternates after trial has begun, was the substance of all proceedings had and evidence taken made known to the member or alternate in open court before the trial proceeds?	N/A					
9. Was accused given an opportunity to challenge for cause any member of the commission?	✓					
a. Was each member challenged for cause sworn for his examination on the challenge?	N/A					
b. Was the action of the commission upon challenges regularly and properly taken?	N/A					
10. Was the commission sworn?	✓					
11. Was any officer sitting as a member of the commission the accuser, a witness in the case, or did any such officer personally investigate the case?		✓				
12. Were the personnel for the prosecution sworn?	✓					
13. Were the reporters sworn?	✓					

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
14. Were the interpreters sworn?	✓					
15. Was the accused properly arraigned?	✓					
16. Are there copied or incorporated into the record:						
a. Charges and specifications?	✓					
b. Name, grade and organization of person signing the charges?	✓					
c. Affidavit to the charges and specifications?	✓					
d. Name of the person who administered the oath verifying the charges and his official capacity?	✓					
e. The order of reference for trial?	✓					
17. Does each specification state an offense?	✓					
18. Are the pleas of the accused regularly entered?	✓					
19. Are the findings properly entered?	✓					
20. Was the vote upon each finding in closed session?	✓					
21. Was the vote upon the sentence in closed session?	✓					
22. Did at least two-thirds of the members present at time vote on each finding vote to concur therein?	✓					
23. Did at least two-thirds of the members present at time vote was taken concur in the sentence?	✓					
24. Does the evidence sustain the findings of the commission?	✓					
25. Are the findings legal?	✓					
26. Is the sentence legal?	✓					
27. Does any ruling of the commission on the admission of evidence or other matters injuriously affect the substantial rights of the accused?		✓				
28. Is the record properly authenticated?	✓					
29. Does it sufficiently appear that the defense counsel accepts the record as correct?	✓					
30. After each adjournment during trial, is presence or absence of members of the commission, prosecution and defense, and the accused properly accounted for?	✓					

(Military Commission Data Sheet Cont'd)

	Prosecutor		Staff J.A.		Confirming Authority	
	Yes	No	Yes	No	Yes	No
31. Is action of the reviewing authority properly entered in the record and signed?						
32. In the action of the reviewing authority:						
a. In cases not adjudging death, if the action approves sentence in whole or in part, does it order execution of the sentence and designate a proper place of confinement, if confinement approved?						
b. In death cases does the action refer the case to SCAP for final action?						
33. Is clemency recommended by the commission?						

J D C Boland Major
Prosecutor

24 April 1947
Date

Staff Judge Advocate of Convening Authority

Legal Advisor of Confirming Authority

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

****

BEFORE THE MILITARY COMMISSION CONVENED BY THE COMMANDING GENERAL, UNITED STATES EIGHTH ARMY	)	UNITED STATES OF AMERICA VS CHOGO HASHIMOTO

****

CHARGE

That the following civilian foreman of the Rinko Coal Company, a Japanese concern employing Allied Prisoners of War:

Chogo HASHIMOTO, also known as "LIVERLIPS",

at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.

SPECIFICATIONS

1. That in or about November 1943, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, did willfully and unlawfully mistreat Victor Joseph Wyatt, a Canadian Prisoner of War, by beating him with fists, knocking him down, kicking him in the ribs, smashing him across the face with a stick, and otherwise abusing him.

2. That on divers occasions between 3 September 1943 and 1 August 1944, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, did willfully and unlawfully mistreat H. R. MacLaughlin, a Canadian Prisoner of War, by beating him with a club and otherwise abusing him, thereby contributing to his death which took place on 20 December 1943.

3. That on or about 1 February 1944, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, with unidentified Japanese guards, did willfully and unlawfully mistreat Gerald Shoddin, a Canadian Prisoner of War, by slapping him, punching him, knocking him down, kicking him and otherwise abusing him when he was ill and unable to work, thereby contributing to his death which took place on 8 February 1944.

4. That in or about September 1943, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, did willfully and unlawfully mistreat John R. Stroud, a Canadian Prisoner of War, by kicking him, hitting him severe blows with a stick, and otherwise abusing him when he fainted from physical weakness.

5. That in or about January 1944, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, did willfully and unlawfully mistreat William Rankine Maltman, a Canadian Prisoner of War, by beating him with a stick and otherwise abusing him when he was unable to carry a basket of coal due to a heart condition and by endeavoring to place his hands in the flames from a fire pot.

6. That in or about September 1943, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, did willfully and unlawfully mistreat Arthur Hilton Hunter, a Canadian Prisoner of War, by kicking him and striking him with a stick and otherwise abusing him when he fainted from exhaustion.

7. That between 1 January 1944 and 1 August 1944, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, with Katsuyasu Sato, did willfully and unlawfully mistreat William Harvey Gagne, a Canadian Prisoner of War, by striking him across the body and head with a stick and otherwise abusing him when he collapsed on the way to work.

8. That in or about September 1945, at or near Tokyo Prisoner of War Camp 5-B, Niigata, Honshu, Japan, the accused, Chogo Hashimoto, did willfully and unlawfully mistreat G. Woodward, a Canadian Prisoner of War, by hitting him with a stick and with his fists, knocking him to his knees, kicking him and otherwise abusing him.

2 November 1946

/s/ Alva C. Carpenter
ALVA C. CARPENTER
Chief Legal Section
General Headquarters
Supreme Commander for the Allied Powers

AFFIDAVIT.

Before me personally appeared the above named accuser this 2nd day of November 1946, and made oath that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John R. Frickhart

/s/ Captain, Infantry
Summary Court

A TRUE COPY

E. L. JONES
1st Lt. Inf.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Nov 46)LS

APO 500
5 November 1946

SUBJECT: Trial of Suspected War Criminal.

TO : Commander-in-Chief,
United States Army Forces, Pacific.

1. It is desired that a Military Commission be appointed for the trial of the following named person, member of or serving with the Imperial Japanese Forces, for the alleged offenses indicated on the attached charge:

Chogo HASHIMOTO

2. The trial will be held in the City of Yokohama, Honshu, Japan. All trials held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

BY COMMAND OF GENERAL MacARTHUR:

1 Incl:
Chg vs Chogo HASHIMOTO

/s/ R. C. Morgan
~~R. C. MORGAN~~
Lt. Col. AGD
Asst. Adj. Gen.

A TRUE COPY

M. L. JONES
1st Lt. Inf.

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (5 Nov 46)LS, 5 November 1946, subject: "Trial of Suspected War Criminal".

AG 000.5 (5 Nov 46) 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500, 5 November 1946.

TO: Commanding General, Eighth Army, APO 343.

1. Pursuant to authority delegated the Commander-in-Chief, United States Army Forces, Pacific, contained in letter, file AG 000.5 (5 Nov 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Trial of Suspected War Criminal", 5 November 1946, said power is redelegated to you and you are hereby directed to appoint a Military Commission for the trial of the following named person, member of or serving with the Japanese Imperial Forces:

Chogo WASHIMOTO

2. The trial will be held in the City of Yokohama, Honshu, Japan. The trial held under this authority will be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers.

3. The record of trial including judgment or sentence and the action of the appointing authority will be forwarded to General Headquarters, Supreme Commander for the Allied Powers. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named persons assigned to General Headquarters, Supreme Commander for the Allied Powers, have been made available to your command for service as prosecution personnel on the Military Commission to be convened by you for this purpose:

Captain J.D.C. Boland, Canadian Army, Chief Prosecutor
Mr. Vincent O. Esposito, Assistant Prosecutor

BY COMMAND OF GENERAL MacARTHUR:

1 Incl: n/c

/s/ R. C. Kersey
/s/ R. C. KERSEY
Lt. Col AGD,
Asst Adj. Gen.

A TRUE COPY

MARCUS L. JONES
1st Lt. Inf.

BASIC: Ltr, GHQ, SCAP, file AG 000.5 (5 Nov 46)LS, dated 5 November 1946, subject: "Trial of Suspected War Criminal".

AG 000.5 (YR) 2d Ind.

5 Feb 1947

HEADQUARTERS EIGHTH ARMY, APO 343.

TO: Lt. Col. Glenn I. Epperson, 0860539, Cav, President of the Military Commission appointed pursuant to Paragraph 1, Special Orders Number 31, this Headquarters, 6 February 1947, APO 343.

The attached charges against Chogo Hashimoto are referred for trial to you as president of the Military Commission appointed by Paragraph 1, Special Orders Number 31, this Headquarters, 6 February 1947, APO 343.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

1 Incl:
n/c

/s/ Otis N. Luckman
/s/ OTIS N. LUCKMAN
Capt. A.G.D.
Asst Adjutant General

A TRUE COPY
F. G. Bouch
F. G. BOUCH
Capt. WAC

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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 31

6 February 1947

EXTRACT

1. Appointment of a Military Commission.

Pursuant to authority contained in letter, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 6 December 1945, AG 000.5 (6 Dec 45) LS, Subject: "Detention, Interrogation and Trial of Suspected Japanese War Criminals", a Military Commission is hereby appointed to meet at Yokohama District Court Building, Yokohama, Japan on or about 7 February 1947, to try Chogo Hashimoto and such persons as may be properly brought before it.

DETAIL FOR THE COMMISSION

LT COL GLENN I [illegible], 0[illegible]60539, Cav, Hq Eighth Army
MAJ FRANK E. GEARHART [illegible]7639, TC, Hq 2d Major Port
MAJ MALCOLM S. WARDROP, [illegible]27438, TC, Hq 2d Major Port
MAJ WILLIAM H. ABRAMS, [illegible]1247, USMCR, SCAP, LAW MEMBER

FOR THE PROSECUTION

MAJ J. B. C. BOLAND, Canadian Army, CHIEF PROSECUTOR
MR VINCENT O. ESPOSITO, ASSISTANT PROSECUTOR

ADVISORY COUNSEL FOR THE DEFENSE

DR ROBERT W. MILLER
MISS E. C. GOODE
Accused are expected to provide individual defense counsel

The procedure of the Commission will be governed by letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945, AG 000.5 (5 Dec 45) LS, Subject: "Regulations governing Trials of Accused War Criminals", as amended by letter AG 000.5 (27 Dec 46) LS-L, General Headquarters Supreme Commander for the Allied Powers Subject: "Amendment to Regulations governing the Trials of Accused War Criminals", 27 December 1946, letter, this Headquarters, 5 February 1946, AG 000.5 (YO), Subject "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", as amended by letter this Headquarters, same subject, dated 16 January 1947, file number AG 000.5 (YR) and such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for Allied Powers. The employment of an onlisted or civilian court reporter is authorized. (AG 334)

(Case # 139 - C. Hashimoto)

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 343

SPECIAL ORDERS
NUMBER 79

4 April 1947

EXTRACT

3. Par 13, SO 64, this Hq cs announcing the appointment of the Military Commission to meet at the Yokohama District Court Building, Yokohama, Honshu, Japan, o/a 24 Mar 47, is amended as follows:

LT COL HARRY A CONROY, 0255076, [illegible], Hq 2d Major Port, is hereby detailed as a member of the commission vice MAJ COLIN A. DIXON, 0279473, FA, Hq Eighth Army, relieved. (AG 334) (Case #77 - M. Sato et 2)

4. Par 1, SO 31, this Hq cs announcing the appointment of the Military Commission to meet at the Yokohama District Court Building, Yokohama, Honshu, Japan, o/a 7 February 1947, is amended as follows:

Effective 12 February 1947, CAPT MURRAY F. GIBBONS, 01296848, Inf, GHQ, SCAP, is hereby detailed as assistant prosecutor vice MR VINCENT O. ESPOSITO, relieved. (WCCG) (AG 334) (Case #139 - C. Hashimoto)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

CLOVIS E. BYERS
Major General, GSC
Chief of Staff

HQ. EIGHTH ARMY
OFFICIAL COPY
LEGAL GEN'L'S OFFICE

OFFICIAL:

J. H. GLEASON
Colonel, AGD
Adjutant General

DISTRIBUTION:
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2 - CofS Sec
2 - PM Sec
5 - File
6 - CO, Hq 71st QM Depot
6 - CO, Hq 138th AAA Gp
6 - CG, Hq Eighth Army
6 - CG, Hq 25 Inf Div
6 - CO, Hq 2d Major Port
6 - CG, Hq USMC

RESTRICTED

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45)LS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces, Pacific, APO 500.
Commanding General, Sixth Army, APO 442.
Commanding General, Eighth Army, APO 343.
Commanding General, XXIV Corps, APO 235.

The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

RESTRICTED

SUBJECT: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CINC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CINC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nations of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

BASIC: Ltr, SCAP, File AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence:

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission

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shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the

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conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima-facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

c. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to

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submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of

REF: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFPac, CG 6th Army, CG 8th Army and CG XXIV Corps.

a convicted accused, deprive that accused of any stolen property or order its deliver to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULES AND FORMS.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

/s/ H. W. Allen
H. W. ALLEN,
Colonel, A.G.D.,
Adjutant General.

REPRODUCED HEADQUARTERS EIGHTH ARMY
APO 343, 10 December 1945.

CIVILIAN REPORTERS CERTIFICATE

DATE 5 March 1947

Case No. 139 U.S. vs Chogo Hashimoto

I, the undersigned hereby certify, that I reported the trial proceedings in the above case of which the attached record of trial is a true transcription, that I am a civilian court reporter, in the civil service of, and paid for my said services by, the United States.

[illegible]

War Crimes Div. Form #9 (Revised 3 Jan. 1947)

RECORD OF TRIAL

of

CHOGO HASHIMOTO

Case Docket 139

by

MILITARY COMMISSION

APPOINTED BY THE COMMANDING GENERAL

HEADQUARTERS EIGHTH ARMY

Tried at

Yokohama, Japan — 12 February 1947

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PROCEEDINGS OF A MILITARY COMMISSION

which convened at Yokohama, Japan, pursuant to Paragraph No. 1, Special Orders No. [illegible] Headquarters Eighth Army, United States Army, Office of the Commanding General, APO 3[illegible] dated 6 February 1947.

The Commission met at the Yokohama District Courthouse at 0900 hours, 12 February, 1947.

PRESIDENT: The Commission will come to order. This Military Commission is ready to proceed with the trial of such cases as may be properly brought before it.

PROSECUTION: The Prosecution is ready to proceed with the trial in the case of the United States against Chogo Hachimoto. The accused is present together with the defense counsel appointed by the convening authority. The Prosecution is ready to proceed.

PRESIDENT: You may proceed.

PROSECUTION: The reporter will be sworn.

Miss Gertrude Bloch was then sworn as reporter.

PROSECUTION: The interpreters will be sworn.

Mr. Teruen Fukuhara and Mr. Tetsuo Nakazawa were then sworn as interpreters.

PROSECUTION: The following members of the Commission, appointed by paragraph one, Special Orders No. 31, Headquarters Eighth Army, APO 343, dated 6 February, 1947, are present:

DETAIL FOR THE COMMISSION

LT COL GLENN I HEPPERSON, 0260539, Cav.
MAJ FRANK E GRANEART, 0179289, TC
MAJ MALCOLM S. VANDROP, 0197428, TC
MAJ WILLIAM H. ABRAMS, 01247, USMCR, Law Member

PROSECUTION: The prosecution submits for incorporation into the record of these proceedings, the following documents:

Letter Order AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: Regulations Governing the Trials of Accused War Criminals.

Letter Order AG 000.5 (5 Nov 46)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: Trial of Suspected War Criminal, to: Commander-in-Chief, United States Army Forces, Pacific. First Indorsement thereto, AG 000.5 (5 Nov 46)LS, from General Headquarters, United States Army Forces, Pacific, APO 500, to: Commanding General, Eighth Army, APO 343, redelegating the matter of the trial of Chogo Hachimoto. Second Indorsement thereto, AG 000.5 (Tr), from Headquarters Eighth Army, APO 343, To: Lt. Col. Glenn I. Hepperson, 0260539, Cav, President of the Military Commission appointed pursuant to Paragraph 1, Special Orders Number 31, this Headquarters, 6 February 1947, APO 343, referring the charges against Chogo Hachimoto for trial.

I should like to point out to the Commission that Captain Roland is now Major, and that Mr. Vincent O. Esposito is withdrawn from the case and is being replaced by Captain Gibbons who will be present later on.

PRESIDENT: Is he a Canadian?

PROSECUTION: No sir, he is an American officer. Captain Gibbons' orders appointing him assistant prosecutor are at present being cut and will be furnished for incorporation into the record at a later date.

The prosecution submits for incorporation into the record Paragraph 1 of Special Orders Number 31, Headquarters Eighth Army United States Army, Office of the Commanding General, APO 343, dated 6 February 1947, Appointment of a Military Commission.

DEFENSE: No objection.

PRESIDENT: There being no objection, the orders will be received and incorporated into the record of the proceedings. Does the Prosecution desire to challenge any member of the Commission for cause?

PROSECUTION: No sir.

PRESIDENT: Does the defense desire to challenge any member of the Commission for cause?

DEFENSE: The defense would like to question the panel of Commissioners at this time, and would prefer to have them placed under oath, according to page one of the review, questionnaire. There is a provision in there requesting whether or not the Commission was placed under oath, and I have been instructed to request that the Commission be placed under oath for purposes of answering those questions. That is on page one of the review sheet that goes up with the record to the reviewing section.

PRESIDENT: The prosecution will place the Commission as a whole under oath at the proper time. If you wish to challenge any individual member of the Commission, he will be placed under oath; otherwise, we will not be placed under oath at this time. That is the customary procedure.

DEFENSE: That is satisfactory, sir.

DEFENSE: Has any member of the panel been a prisoner of the Japanese? -- Let the record indicate the negative answer.

Has any member of this panel been a prisoner of war in any other theatre? Negative answer.

Was any member of this Commission engaged in active combat against forces of the Japanese Imperial Government during the war?--Let the record indicate a negative answer.

The present case involves a portion of the POWs formerly held at the Tokyo Prisoner of War Camp S-B, Niigata, Japan, who worked at the Niigata Coal Company where the accused was employed. Has any member of this panel a relative or close friend who was a POW in this camp? -- Let the record indicate a negative answer.

Did any member of this panel serve on the Commission trying Case No. 89, entitled U.S. vs. Kenzo Yoshida, et al, which involved Camp S-B, Tokyo area? -- Let the record indicate a negative answer.

Have all the members of this panel served on other Commissions trying Japanese nationals on charges of violating the laws and customs of war? -- One negative answer.

Would the fact of your previous experience on such Commissions cause you to take extra judicial notice of facts or conditions gained thereby which would properly not be a part of the record of this trial? -- Let the record indicate a negative answer.

Do you feel that the accused is entitled to hear and understand all of the evidence which is adduced for and against him upon which the finding in this case is to be based? -- Let the affirmative answer be indicated on the record.

Have you formed either consciously or unconsciously any preconceived preference or beliefs with regard to the veracity or lack thereof of Japanese army or Japanese civilian personnel, as would render it impossible for you to judge their testimony impartially? -- Let the record indicate a negative answer.

The burden of proof in a criminal case rests with the prosecution, and not with the defense. It is fixed at the outset of the trial, is constant, does not change. Proof is effective evidence. The mere fact that a man has been arrested is not evidence of guilt. Similarly, the fact that charges and specifications have been filed against him is not evidence of his guilt, nor proof of the truth of such charges. Rather, the charge and specifications are merely procedural means by which he is formally presented to trial. Would the mere fact that this accused has been arrested, confined to Sugamo Prison, and is now presented for trial on charge and specifications, prejudice you against him in judging the evidence hereafter to be introduced? -- Let the record indicate a negative answer.

As you well know, a person accused of crime is clothed with a mantle of innocence until his guilt has been established beyond a reasonable doubt. We call this a presumption, presumption of innocence. Practically it means that in considering the evidence offered in the case, all reasonable doubts must be resolved in favor of the accused. Are you prepared to weigh the evidence with this presumption as a constant guide, and require the prosecution to establish his charge and specifications beyond a reasonable doubt? -- Affirmative answer.

It is the desire of all concerned that the accused be given a fair and impartial trial. Is there any reason known to you, not specifically inquired about, why you should not sit as a member of this Commission? -- Negative answer.

The defense has no challenge for cause.

PROSECUTION: The prosecution is ready to proceed with the arraignment of Chogo Hashimoto.

PRESIDENT: The Commission will be sworn.

The members of the Commission and Major Roland, Chief Prosecutor, were then sworn.

DEFENSE: The charge and specifications were received by the defense counsel, and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 (b) of Letter AG 000.5, 5 Dec '45 LS, General Headquarters, Supreme Commander for the Allied Powers, entitled "Legal items governing the trials of Accused War Criminals" heretofore introduced into the record of these proceedings.

PRESIDENT: Then does the accused desire to introduce as defense counsel?

DEFENSE: The regularly appointed defense counsel, and Mr. Sunjo Higuchi of the Tokyo Bar.

PRESIDENT: The charge and specifications will be read to the accused.

The Prosecution then read the charge and specifications in open court.

PROSECUTION: The prosecution will now read the reference for trial.

The prosecution then read Special Orders No. 21, appointment of a military commission, in open court.

PRESIDENT: Now, as to the charge and specifications, does the prosecution desire to incorporate these in the record of these proceedings?

PROSECUTION: Yes sir.

DEFENSE: No objection.

PRESIDENT: There being no objection, the charge and specifications are received and will be incorporated into the record.

The charge and specifications were received, and are appended to the record.

PRESIDENT: Are there any special pleas by the defense?

DEFENSE: By verbal order of the Commanding General, Major H.A.Francis is here today to present a jurisdictional plea, realizing, of course, the jurisdiction is one question that this Commission can pass upon, and the further fact that this case being entitled U.S. of America, any criticism that might lie in the future concerning the trial of non-nationals would be directed at the United States of America, and not at any of the Allied Powers. Therefore, I would like at this time to introduce Major H.A.Francis. Major Francis.

PRESIDENT: "The Advisory Counsel for the Defense" as indicated in Special Orders Number 21 does not appoint him to present this plea. There is no personal objection to Major Francis presenting this plea, but for the record why is it that someone who has not been duly appointed present the plea?

DEFENSE: It may be presented by verbal order of the Commanding General, sir.

PRESIDENT: I did not understand that. Very well; proceed.

MAJOR FRANCIS: Mr. President, and gentlemen, with your permission I am going to address a few remarks directed solely at jurisdiction. The question is not entirely new. It has been raised before in these courts, but I do think that from the very nature of the present case now before you, the question assumes considerable importance. You will see from the title of the case which is now before you that the United States alone is prosecuting the defendant for violation of the laws and customs of war. All of the eight specifications allege offenses committed against Canadian nationals and not against persons who are subjects of the United States either now or at the time these offenses were committed. The regulations for the trials of war criminals drawn up for the Supreme Powers, dated 5 December, 1945, authorize international commissions. These commissions may consist of the representatives of several nations or of each nation concerned in the offense being tried.

With due respect, the question now raised before you is that the Supreme Commander for the Allied Powers is not empowered to authorize or establish such international commissions unless by specific agreement between such allied powers he has been granted or delegated the power to do so, the authority to do so. I submit that after diligent search of all available documents and sources of authority, we have not found anything which may, directly or by

implication be construed as asserting the view that the Supreme Commander possesses the power to establish an international court as we have it here today. The position, gentlemen, in short, is, that although these regulations give authority to establish an international court, there is in fact no legal authority in the Supreme Commander to set up international trials for the violation of the laws and customs of war. Whenever and wherever there has been set up an international tribunal it is the result of an allied agreement of the powers concerned. I am referring to the agreement of August 8, 1945; there it can be seen that the principal allied powers come to an agreement. Here we see that special offences; crimes against peace, preparation for aggressive war, crimes against humanity, an especially new procedure was created and provided for the trial of major war criminals. It was considered that these criminals by reason of their rank, position, and conduct, was such that all allied nations had interest in their prosecution and in their trial, and it was not the concern of one single nation. It was therefore under the specific agreement that the Nuremberg trials were set up; and no doubt for the Tokyo trials there is also a charter to which all nations have agreed, and that is an international court.

I submit, therefore, that this military court which is sitting here today is a national tribunal, and not an international court. The injured parties are not nationals of the United States, which is named as the prosecuting party in the heading to the charge sheet. One may ask, what sort of right has the United States been violated, or the subjects of the United States; what interest has the United States in these offences which are now being tried, being committed against Canadian nationals, beyond its own territorial limits. What interest has the United States?

The jurisdiction of a military tribunal of a person accused of the violation of law and custom of war is required firstly, I think there can be no question about this, when the offence was committed on the territory of the nation creating the military tribunal, or when the person or property injured by the offence is of the same nationality as the military court or the military tribunal trying that offence. It is recognized that every belligerent has according to international law both the power and the authority to try individuals alleged to be guilty of the violation of the laws and customs of war committed against itself; and if such persons have fallen into its power each belligerent has the right to set up courts, civil or military, to try these offenders.

I therefore submit that this military court sitting here today is a national tribunal, set up by the United States in accordance with this principle of international law, and it is by no means an international court, and there does not appear to be any agreement or authority which would make it an international court, or bring it to existence as we have it today. You are familiar with the Kharkov trial. That was a Russian military court that was trying solely offences committed against Russian nationals or against Russian property or Russian soil. I invite your attention to the regulations attached to the Royal Warrant dated 16 June 1945. It will be seen from these regulations that they provide for the trial by British military courts of persons accused of war crimes in a war in which his Majesty has been engaged. The procedure there set out in these regulations is based on the Manual of British Military Law. In New Guinea similarly the Australians have set up courts. These courts are functioning in those territories where Australian nationalities and property is situated. You might have read in the papers that in China the Chinese military court is functioning, trying offences committed against Chinese on Chinese soil. There have been Belgian and French national courts, and it was never contended that these courts set up by these countries were at all international courts. I therefore submit that this military court is of national character, coexistent with these other national

military courts, and it is by no means vested with any international charm.

It might be argued, and I think quite feasibly where British, Australian or Canadian nationals are the injured parties, what guarantee is there the sentence imposed by these Commissions will meet with the approval of all these countries; British, Canadian, Australian. As the matter stands, there is no power, I think, for these countries to set up Commissions right here in Japan to try these same offenders for offenses committed against their own nations.

In view of these facts, gentlemen, the defense moves for a dismissal of the charge and specifications on the grounds that this Commission is without jurisdiction to determine the issues now before it.

PRESIDENT: Does the prosecution have any reply?

PROSECUTION: Yes sir, I have a very short reply to this. In the first place, if there is any validity in the argument advanced by the defense counsel, this is not the proper authority to present this argument to; this argument should be presented to the Commanding General of the Eighth Army. I have another answer. You gentlemen are military officers; you have been ordered by the Commanding General to try this accused on these specifications. As such, you must obey that order.

PRESIDENT: The plea of the defense is well taken; however, subject to objection by any member of the Commission, the motion is denied. Are there any other special pleas?

DEFENSE: No other special pleas, sir.

PRESIDENT: Chogo Hashimoto, at this time the Commission will hear your plea to the charge and specifications which have been read to you. You may plead either guilty or not guilty.

ACCUSED (through interpreter): I plead not guilty.

PRESIDENT: The prosecution will make its opening statement.

PROSECUTION: Mr. President and members of the Commission, the charges against the accused involve certain alleged atrocities committed against Canadian prisoners of war at Niigata 5-B camp. The Canadian prisoners of war were taken prisoner at Hong Kong in December 1941. They stayed in Hong Kong, or this group stayed in Hong Kong, until September 2, 1943, when they arrived at Niigata City, and were placed at 5-B camp there. This was a camp run by the Tokyo Prisoner of War Administration. The prisoners of war were divided into three groups; one group, the only group with which the Commission is concerned, were sent to work at the Rinko Coal Company, a civilian organization. There they had various jobs including loading coal in cars, pushing cars, and unloading coal from barges into cars, very strenuous work. They were conducted to the Rinko Coal Company each day by gunsoku guards; that is, civilians attached to the army of 5-B camp. Also assisting these guards were certain civilian guards, civilian foremen, among whom was the accused, Chogo Hashimoto. Hashimoto, in addition to helping conduct the prisoners to and from the Rinko Coal Company, also stayed at the Rinko Coal Company during the day, and had the position there as foreman. It was during this time, his job was foreman, supervising the prisoners of war, that these alleged atrocities took place. The accused stayed in this position until the summer of 1944 when he left to become a member of the Japanese army.

With this background, I believe the Commission should be in a position to hear the affidavit evidence in this case. Prosecution has for its case some 15

affidavits and two death certificates showing the deaths of the personnel, the two personnel, MacLaughlin and Sheddin, alleged in the specifications. Prosecution will undertake to prove beyond a reasonable doubt that these beatings alleged in the specifications were committed by this accused who, in addition to being known by the name of Hachimoto or Hachimoto-san, variations of that -- Hatamoto and Hatamoto-san -- was generally known to the prisoners of war by the nickname of Liverlips.

The prosecution at this time would request a short adjournment until 1330 hours this afternoon. The prosecution has been prosecuting a case since January 8 of this year, which case finished late yesterday afternoon; and for that reason is unable to have the documents in proper shape for presentation to this Commission until this afternoon's session. So with respect, I would ask the Commission and defense for adjournment.

PRESIDENT: Any objections to this request?

DEFENSE: No objections, sir.

PRESIDENT: The Commission will adjourn, to meet at 1330 today.

The Commission then took a recess until 1330 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats. Captain Gibbons, absent when the Commission convened previously was now present.

PRESIDENT: The Commission is in session.

PROSECUTION: Captain Gibbons, the associate prosecutor in this case is now present in the courtroom, and I will ask the Commission to be good enough to have him sworn at this time.

PRESIDENT: The assistant prosecutor will be sworn.

Captain Gibbons, assistant prosecutor, was then sworn.

PROSECUTION: The prosecution now will continue with offering affidavit evidence in so far as the prosecution is aware, none of the affiants at the present time is present in either the Philippine Islands, the Ryukyus, Japan or Korea.

The prosecution offers as its Exhibit 1 the original affidavit of Victor Joseph Wyatt.

DEFENSE: Defense has no objection to this affidavit.

PRESIDENT: For the benefit of the Commission, will you tell us to which specification this will apply?

PROSECUTION: This will apply to Specification one, sir. I will furnish the Commission by tomorrow morning typewritten list of these affidavits showing to which specifications they refer.

LAW MEMBER: The exhibit will be received.

Affidavit, Victor Joseph Wyatt, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No.1.

PROSECUTION: Now, there is an exhibit to that affidavit which is in the hands of the Commission, and the prosecution merely calls attention to death number 36.

LAW MEMBER: This is a part of Exhibit 1?

PROSECUTION: Yes; that is part of Exhibit one, sir, death number 35 which refs. to Specification two. Maclaughlin, George Pte (W.O.) — that stands for Winn Grenadiers, Camp No. 264. Nationality, Canadian. A.S. No. H-[illegible]. Relation, Mrs. W. L. Maclaughlin, mother, Manitoba, Manitoba, Canada. Date of death: Dec. 20, 1945. Cause: Chronic Diarrhea. (dys). If you will notice, sir, in the lefthand margin, that is number 35. I don't think the pages are numbered. Then number 70, sir, and that is prisoner of war number 177, Sandlin, John J [illegible], Royal Rifles of Canada, Feb. 8, 1944. Mrs. Reginald Sandlin, mother, 535 Dover Court Rd, Toronto, Ont., Canada. Debility - dry gangrene; and the death is marked at Shimoton, indicating that it took place at the Shimoton Hospital.

PROSECUTION: At this time the prosecution submits the deposition of Samuel Burden, Canadian, as Exhibit No. 2.

DEFENSE: Defense moves to strike the last two sentences of page one, the first sentence on top of page two, on the ground that it expresses the medical opinion or conclusion that this witness is presumably not qualified to express, and therefore would have no probative value and be of no assistance to this Commission.

LAW MEMBER: The motion is denied. The deposition of Samuel Burden is admitted in evidence as Prosecution's Exhibit No. 2 for such probative value as it has.

PROSECUTION: This deposition will be in support of Specification two.

Affidavit, Samuel Burden, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 2.

PROSECUTION: Prosecution presents as Exhibit 3, of prosecution's case, the original affidavit, the original supplementary affidavit of Samuel Burden.

DEFENSE: Defense moves to strike the last sentence of paragraph three on the ground that this affiant who states himself to be a janitor is giving a medical opinion and conclusion and is obviously unqualified to do so.

LAW MEMBER: The motion to strike is denied. The supplementary deposition of Samuel Burden will be received in evidence as Prosecution's Exhibit 3 for such probative value as it may have.

Affidavit, Samuel Burden, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 3.

PROSECUTION: Now, there is a photograph attached to the original affidavit; unfortunately, the photo supplies are in short supply at [illegible], but I have the original here if the Commission would care to see it.

DEFENSE: Defense at this time is willing to stipulate the accused admits that is his photograph.

LAW MEMBER: The stipulation is accepted.

PROSECUTION: At this time the prosecution submits the affidavit of Rifleman John Raymond Stroud as Prosecution's Exhibit No. 4.

DEFENSE: The defense has two objections to this affidavit. First, beginning with the 22nd line of the first paragraph of page five, reading, "Apparently he had been ...", move to strike that sentence on the ground it contains a medical conclusion. The second objection deals with the second paragraph on page five, with the third sentence, to the end of the paragraph, reading, "While unconscious

this Japanese, ...". The second objection is based on the ground that by the affiant's own testimony he has no personal knowledge of what happened, and he is only reporting what others told him happened. Therefore, we think both of these particular sentences should be stricken, one on the ground of medical conclusion, the other on the ground of no personal knowledge on the part of the affiant.

LAW MEMBER: The motion is denied. The affidavit will be accepted as Prosecution's Exhibit No. 4 for such probative value as it may have.

PROSECUTION: This affidavit is in support of specifications three and four.

Affidavit, John Raymond Stroud, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit Number 4.

PROSECUTION: Prosecution presents as Exhibit No. 5, the supplementary affidavit of John Raymond Stroud.

DEFENSE: No objection.

LAW MEMBER: The supplementary affidavit of John Raymond Stroud is received in evidence as Prosecution's Exhibit No. 5 for such probative value as it may have.

PROSECUTION: This refers to Specifications three and four against Hachimoto.

Affidavit, John Raymond Stroud, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 5.

PROSECUTION: Prosecution offers the affidavit of Rifleman Frederick Orland Chapman, Canadian army, as Prosecution's Exhibit No. 6.

DEFENSE: I should like to request the law member to take Prosecution's Exhibit number four, Stroud, turn to page five, and then turn to page four of Chapman's affidavit now being offered, the last paragraph from which it then becomes apparent that the wording of these two affidavits are identical, as regards what happened or allegedly happened to Saddin. That is one of those things that cause the defense counsel to look with a great deal of suspicion towards affidavit evidence generally. Beyond that, you will note that Chapman on about the middle of the paragraph on page five admits that he did not see the beating, or was told about it by Stroud. Now, inasmuch as Stroud's affidavit and Chapman's affidavit are identical in words, descriptions as to what went on, we believe that both of these affidavits should be stricken in the interest of a fair trial. Certainly, the paragraph beginning on the bottom of page four, and continuing to the middle of page five, Chapman's affidavit, should be stricken on the ground that it is hearsay twice removed. Stroud has already stated that he did not know, he stated what he was told. Now we have Stroud telling Chapman, and Chapman adopting Stroud's language verbatim; the affidavits given on different dates. So at this time the defense moves that Chapman's affidavit be excluded and that Prosecution's Exhibit Number four be stricken.

LAW MEMBER: The motion to strike will be denied, and this affidavit will be admitted for such probative value as it may have in the minds of the Commission as reasonable men in accordance with the rules of SCAP.

Affidavit, Frederick Orland Chapman, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit Number six.

PROSECUTION: Prosecution presents as Exhibit Number seven to the prosecution's case the supplementary affidavit of Frederick Orland Chapman.

DEFENSE: No objection to supplementary affidavit.

LAW MEMBER: It will be received in evidence.

PROSECUTION: This refers to Specifications two and three.

LAW MEMBER: Striks the first and second paragraph of Exhibit 7; it will be received in evidence as supplemental affidavit for such probative value as it may have. Paragraph three might as well be stricken.

Affidavit, Frederick Orland Chapman, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 7.

PROSECUTION: At this time prosecution submits the deposition of Private William Rankine Maltman as Prosecution's Exhibit No. 8.

DEFENSE: No objection to this affidavit.

LAW MEMBER: It will be received in evidence as Prosecution's Exhibit No. 8 for such probative value as it may have.

PROSECUTION: This exhibit is submitted in support of Specification No. 5.

Affidavit, William Rankine Maltman, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 8.

PROSECUTION: Prosecution presents as Exhibit No. 9, the original affidavit of Sergeant Arthur Hilton Hunter.

DEFENSE: The defense moves to strike beginning with the 11th line of paragraph seven on page two.

PROSECUTION: What does it say?

DEFENSE: Beginning, "I was told ..." and continuing for four sentences; beginning with "I was told ...", and ending, " ... sit on a bench for possibly five or ten minutes;" on the ground that the affiant admittedly had no personal knowledge, he is merely repeating what somebody else had told him; that while this is hearsay which we admit, the defense still objects to it because we fail to find any SCAP directive specifically stating that hearsay evidence is admissible; and for the further reason that simply because somebody relates what they have heard and puts that in affidavit form, we still do not believe that under SCAP rules that it would have probative value and should be received by this Commission.

LAW MEMBER: The motion is denied. The affidavit will be received as Prosecution's Exhibit No. 9 for such probative value as it may have.

PROSECUTION: This refers, sir, to Specification 6.

Affidavit, Arthur Hilton Hunter, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 9.

PROSECUTION: Sir, I think the last portion of the second paragraph of Exhibit 9 could be stricken, "I remained a patient in this hospital ...", until the end of that paragraph.

LAW MEMBER: The sentence the prosecutor just mentioned, begining, "I remained a patient ..." will be stricken.

PROSECUTION: Prosecution offers as Prosecution's Exhibit 10 the supplementary deposition of Arthur Milton Hunter, Canadian Army.

DEFENSE: No objections to supplementary deposition.

LAW MEMBER: The supplementary affidavit of Hunter will be received in evidence as Prosecution's Exhibit No. 10 for such probative value as it may have.

PROSECUTION: This exhibit 10 is also offered in support of specification six. I will dispense reading the first paragraph, and start with paragraph two.

LAW MEMBER: The first paragraph will be stricken.

Affidavit, Arthur Milton Hunter, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 10.

PRESIDENT: At this time the Commission will take a ten minute recess.

The Commission then took a recess until 1445 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, Reporter, and Interpreters resumed their seats.

PRESIDENT: The Commission is in session.

PROSECUTION: Prosecution presents as Exhibit 11 the original affidavit of Sergeant Robert Manchester.

DEFENSE: No objection to this affidavit.

LAW MEMBER: It will be admitted in evidence as Prosecution's Exhibit 11 for the probative value it may have.

PROSECUTION: This refers to Specification six.

LAW MEMBER: How does Maite apply to this accused; does it have any bearing on this case?

PROSECUTION: The only bearing it has, sir, is that this Maite is identified in one of the beatings in connection with Hunter later on in this affidavit, and it was considered by the prosecution that it should be left in for that purpose. Now I talked this over with the defense counsel, and they are agreeable that it be left in.

LAW MEMBER: Very well.

Affidavit, Robert Manchester, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 11.

PROSECUTION: Prosecution offers as Exhibit 12 the affidavit of Rifleman William Harvey Gagne, Canadian army.

DEFENSE: No objection.

LAW MEMBER: It will be received in evidence as Prosecution's Exhibit No. 12 for such probative value as it may have.

PROSECUTION: Exhibit 12 is offered by prosecution in support of Specification 7.

Affidavit, William Harvey Gagne, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 12.

PROSECUTION: Prosecution presents as Exhibit 12 the original supplementary affidavit of William Harvey Gagne.

DEFENSE: No objection to this supplementary affidavit.

LAW MEMBER: The supplementary affidavit of Gagne is received in evidence as Prosecution's Exhibit No. 12 for the probative value it may have.

PROSECUTION: This refers to Specification 7, sir. The photograph affidavit attached to that affidavit is the same photograph that I have already shown the Commission.

Affidavit, William Harvey Gagne, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 12.

PROSECUTION: The prosecution submits the deposition of Private George LeBlanc, a member of the Canadian army as Prosecution's Exhibit No. 14.

DEFENSE: No objections.

LAW MEMBER: The affidavit of LeBlanc is received in evidence as Prosecution's Exhibit No. 14 for such probative value as it may have.

Affidavit, George LeBlanc, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 14.

PROSECUTION: Prosecution presents as Exhibit 15 the original supplementary deposition of George LeBlanc.

DEFENSE: No objection to this supplementary deposition.

LAW MEMBER: The supplementary deposition of LeBlanc is received in evidence as Prosecution's Exhibit No. 15 for such probative value as it may have.

PROSECUTION: This refers to Specification 8.

Affidavit, George LeBlanc, was then received in evidence, read to the Commission except those portions lined out, and is marked Prosecution's Exhibit No. 15.

PROSECUTION: At this time the prosecution offers as Exhibit 16, certified copy of the death certificate of George Robert Maclaughlin, Canadian Army.

DEFENSE: No objection to this Exhibit.

LAW MEMBER: It will be received in evidence as Prosecution's Exhibit No. 16 for such probative value as it may have.

Death certificate, G. R. Maclaughlin, was then received in evidence, and is marked Prosecution's Exhibit No. 16.

PROSECUTION: Prosecution presents as Exhibit 17 the certified copy of the death certificate of John Gerald Smaldin.

DEFENSE: Before passing those out, would you care to call attention to a typographical error; that should be Kagy, should it not?

PROSECUTION: Yes, but apparently it's wrong on the original.

DEFENSE: No objection to this exhibit.

LAW MEMBER: The death certificate of Sheddin will be received in evidence as Prosecution's Exhibit No. 17 for such probative value as it may have.

PROSECUTION: Prosecution at this stage rests its case.

PRESIDENT: Is the defense prepared to make its opening statement at this time?

DEFENSE: At this time the defense would like to move for a finding of not guilty to the specification and to the charge on the ground that the prosecution has failed to make a prima facie case as shown in the following analysis of the affidavit stage of the prosecution's case.

PRESIDENT: All specifications?

DEFENSE: Yes sir. Specification one; the accused is charged with the beating of Victor Hyatt in or about November 1943. In support of the allegation the prosecution has offered one affidavit, that of Hyatt himself. According to Hyatt, the plaintiff was revived and then beaten by a civilian boss known only as Liverlips, and struck across the nose, after which he was unconscious for a half hour and had to be assisted back to camp. Hyatt actually worked at Rinko less than two weeks, during the time the accused was there. He does not know Hashimoto by name. He describes him as a civilian boss, was dark, swarthy complexioned, several gold teeth, and I believe he had a scar or groove running down from one cheekbone. Hashimoto was a guard and he is easily identifiable as such by the arm band he wore as did all the guards. There are no supporting affidavits to this beating which must have been witnessed by other POWs. There were 140 in the camp, and Hyatt has only his own to offer. It also seems odd that Hyatt who while he was not at the Rinko Coal Yards all the time, according to paragraph 20 of his affidavit, he received the complaints of the POWs, and yet he makes no mention of any of the other specifications in this charge.

Specification two; the accused is alleged to have contributed to the death of George Maclaughlin by beatings "on diverse occasions between September 1, 1943 and August 1, 1944," although Maclaughlin died December 20, 1943. In support of this allegation, the prosecution has offered two affidavits; one is the affidavit of former Private Samuel Burden. Burden admits that during his entire imprisonment he was never beaten, but he alleges that he saw "various civilian guards" beat Maclaughlin practically every day, and in particular one guard beat him every day, Hashimoto. He makes no effort to describe the other civilian guards, and yet he must either have known them or seen them since he did work in the Rinko Coal Yards every day from September on. Maclaughlin didn't die until December. He doesn't mention where the beatings took place, nor the circumstances under which they took place. Burden is in fact very vague except when he gives his medical opinion as to the direct cause of Maclaughlin's death. Then he points out that he is not a medical man; Burden is in fact a janitor and former housecleaner; but according to Burden, Maclaughlin was beaten and this was the direct cause of his death. I might note on the second page it says, affidavit paragraph 7, he refers to his memory as being rather hazy. According to Burden, Maclaughlin was beaten practically every day, and in particular Hashimoto, and yet the only other affidavit in support of this beating which occurred every day is that of Chapman; Chapman's testimony, which is found in his supplemental affidavit, is to the effect that he saw Hashimoto beating Maclaughlin in February, two months after Maclaughlin was dead, and that he visited Maclaughlin in the hospital in March, three months after Maclaughlin was dead. It seems odd that out of 140 prisoners where a man was beaten practically every day for September, October, November, part of December, and

in particular by one guard, the prisoners could all see one another and the guards in the area in which they worked, that no other affidavits have been offered on this. The prosecution does offer two other affidavits with respect to beatings and Maclaughlin's death. These are Victor Wyatt and George LeBlanc, but these two affidavits cover that Sato was the person whose beating of Maclaughlin contributed to his death. LeBlanc worked at Rinko during September 1943 to December 1943. He describes seeing Sato beat Maclaughlin. He makes no mention of Mashimoto having beaten Maclaughlin, although in the preceding paragraph he does discuss a beating by Mashimoto to another POW. He also, I might note, mentions that Maclaughlin was subject to beatings and general abuse, but again following that statement makes no mention of Mashimoto. Wyatt in his affidavit, page 14 says he was familiar with most of the entries in the death record "which we have" and that he made this record part of his affidavit. Wyatt notes that in some cases, some of the death entries were inaccurate; that is, that they did not paint the true picture. But in this, his affidavit, he is giving a true picture as he knew it. He knew it as the person who made these entries and to whom the complaints were made. Wyatt says in his affidavit he had "pointed out the real contributing causes of these deaths and the circumstances surrounding many of them". One of these deaths he complains is Maclaughlin's, and as the contributing cause he puts the blame on the beatings given by Sato. This is on page 6 and 7 of Wyatt's affidavit. Wyatt doesn't even mention Mashimoto as having beaten Maclaughlin, although again Wyatt is one of the people who refers to Mashimoto.

Specification three; in support of this specification the prosecution has offered the affidavit of Private John Raymond Stroud. Private Stroud describes in some detail a beating given to Sneddin by Mashimoto whom he identified as the civilian chief of guards. Mashimoto was not the chief of guards. And he goes on to say, "Two other civilian guards whose names I do not know, and who I cannot describe". Stroud does not say whether he was actually present. If he were present, why was he unable to describe these guards, if not by name at least by features; guards whom he had seen every day from September to February. If he were not there, his testimony is hearsay and should be considered as such. Further, on this testimony, according to Stroud, it was these two other guards who beat Sneddon with a stick, "he was knocked unconscious", but he doesn't say by whom. How is the blame to be apportioned between the two unnamed and undescribed guards and the accused? Without stating on what grounds he bases his medical knowledge, Stroud goes on to explain that apparently Sneddin died following this beating. "Apparently, he had been badly frostbitten as gangrene set in his legs and he died as a result of the beating, dysentery and chronic starvation"; but how does he know? He gives no explanation for his knowledge; when he describes the beating, he doesn't say he was beaten on the leg, it was his feet which became frostbitten. He doesn't describe how he became frostbitten; he just arrives at a medical conclusion, and puts the blame on one man although there were three men who were in the place. The other affidavit in support of this specification is that of Private Chapman. Private Chapman just repeats, and admits he repeats, what Stroud told him. In other words, if Stroud had gone out and gathered in 15 men and repeated what he knew of this beating, each of these 15 men might give his affidavit. That is all the value Private Chapman's affidavit could have. The other affidavit giving evidence on this specification is that of Victor Wyatt, and again Wyatt speaking as the POW who was responsible for making the death entries of POWs who died at camp and who was taking this opportunity to point out the real contributing causes of these deaths and the circumstances surrounding them holds Sato to be the one responsible as having been the contributing cause, of Sneddin's death.

Specification 4, the only evidence in support of this specification is that of Stroud himself. In describing his own beating, Stroud says he fainted, and while he was unconscious, "Matsumoto and some other Japanese civilian guards whom I do not know, nor can I identify them, beat me up ...". He was told of the beating

by the other POWs. He doesn't mention the names of the other POWs. He doesn't describe the guards as described to him by the POWs. There were no other affidavits of the POWs who told him of this beating; just the word of a man who was unconscious. Nor can Stroud remember the name of the medical orderly who was in the hospital where he allegedly spent three days as a result of this beating.

Specification 5, to support the alleged mistreatment of Maltman, we have the affidavit of Sergeant Arthur Milton Hunter. That is his supplemental deposition dated January 15, 1947. We also have the account of the beating by Maltman himself. Maltman in describing his beating says that he was beaten with a hard wood stick in the shape of a heavy sword and forced to take up the bucket; and then he goes on and says Hachimoto "thought that the trouble was because I was cold and he put my hands into the flames from the fire-pot, but I was able to pull them out before they were burned." That is on page three of Maltman's affidavit. Did Hachimoto hold his hands in there until Hachimoto was burned? Hunter makes no mention of that. In his original 4½ page affidavit which was dated March 26, 1946, Hunter does not even refer to this alleged beating and this mistreatment of Maltman. He says on page five, "Except as herein stated I do not at this time recollect any further information of atrocities or incidents of mistreatment of Allied Prisoners of War." And then ten months later he suddenly recalls each and every detail of this beating. What jogged his memory? If Hunter had failed to have this sudden awakening of memory there would be no supporting evidence on this allegation. Again, what awakened Hunter's memory?

Specification 6; this involves the alleged beating of Hunter himself. According to Hunter, he fainted, and while he was unconscious he was beaten. Obviously, a self-acknowledged unconscious man can have no personal knowledge of what happened to him. But he was told about this by the other POWs; he doesn't mention the other POWs. We do not have the affidavits of the other POWs except one from Manchester, and Manchester's account of this beating varies a little with Hunter's. According to Hunter, when he recovered Hachimoto and Saito were standing over him, and Saito was the one who poked at him with his club, but Manchester doesn't even mention Saito. He just goes on to say that Hachimoto poked at Hunter with his club. There seems to be quite a discrepancy.

Specification 7; Private Gagne alleges he collapsed on the way to work. Hachimoto and Sato gave him eight or ten blows with their sticks. Which one gave him how many blows? Sato hasn't been joined in this action. He can recall the number of blows he received, but the only time he can remember for the beating was some time during 1944. Apparently no one else remembered this beating either because there is no supporting testimony offered. According to Specification 7, Gagne was mistreated by the accused, and a guards by the name of Sato. How can this Commission apportion the responsibility when Sato is not before them?

Specification 8; this is the beating of Woodward. We have no affidavit from Woodward himself to support his allegation. The only affidavit we have is that of a man who says "I recall". This is the affidavit of George LeBlanc. Certainly this Commission will not go on record as accepting that type of affidavit, that type of evidence as being capable of establishing a prima facie case where it is made out on such nebulous evidence.

In conclusion, I would like to put this together and ask that the Commission give a finding of not guilty on the vagueness and indefiniteness and unsupported testimony offered which does not create a prima facie case.

One, Myatt. One affidavit, his own.

Two deaths. We have no medical testimony on specifications two and three. In fact, just the death record which we have seen. In support of MacLaughlin's

death, Kashimoto having been a contributing cause, we have the affidavit of Burden, and one of Chapman; but Chapman's has already been discredited. Burden, a janitor, is hardly qualified to give medical evidence. As against their two affidavits, we have the affidavit of Wyatt and LeBlanc who saw Sato having beaten Maclaughlin and attributing the beating Sato gave as a contributing cause. Smeddin; we have the affidavit of Stroud. Chapman's affidavit has been put in, but it just repeats what Stroud told him. Again, Wyatt's affidavit which has also been put in attributes this death to Sato.

Specification 4; Stroud; he was unconscious. He names no other POWs who can support his testimony. None of the other affidavits offered mention him.

Maltman. Hunter in his affidavit had a certain jogging of the memory ten months after he had given all the evidence that he knew of mistreatment of Allied Prisoners. Maltman seems a little confused himself, and not too clear. He describes the man as having beaten him with a club shaped like a sword, and having held his hands in fire, without explaining how his hand could be held in the fire without the guard keeping his hands there. Perhaps he put them over the fire to warm them.

Specification 6, Hunter. He was unconscious. His testimony is supported by Manchester, but Manchester fails to describe the same circumstances as Hunter.

Specification 7, Cagne. No supporting affidavits; although Cagne allegedly was beaten on the way to work, and there must have been a group of men there.

Specification 8, Woodward; one piece of testimony, by a man who recalls. There were 140 POWs, at least, working at Rinko, and there were only nine affidavits, with some of them having had supplemental affidavits offered later.

There is no medical testimony offered on the two most important counts; the death charges.

PRESIDENT: Before the reply by the prosecution, we will take a ten minute recess.

The Commission then took a recess until 1545 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session. Does the prosecution have any reply to defense's motion?

PROSECUTION: In reply to the motion by counsel for the accused, prosecution will be very brief; we will not take this opportunity to argue our case, but will merely make a general statement or two to the effect that it is an accepted rule of law that once the prosecution has submitted some evidence on which the Commission might find against the accused, it has established a prima facie case, and the prosecution submits that in this instance there is evidence before the Commission upon which they might convict. There is evidence before this Commission that each of the victims listed in each specification were prisoners of war and were employed by the Rinko Coal Company, of which the accused was a guard. Each affidavit in support of each specification identifies the accused, either by name or by description or by his nickname, which was Liverlips. At this time, it is not the duty of the Commission to apportion blame upon the accused or other guards who were there in the beatings. The matter of credibility and weight of evidence

DIRECT EXAMINATION

DEFENSE: May I request the Commission at this time to warn the witness of his rights?

PRESIDENT: Is the witness in confinement at this time?

DEFENSE: No.

PRESIDENT: Is he in jeopardy in any way?

DEFENSE: I believe so, sir; he was a guard up there.

PRESIDENT: Has he been tried?

DEFENSE: No sir, he has never been arrested or in Dagupan.

PRESIDENT: But he was a guard in this camp?

DEFENSE: He was, sir.

PROSECUTION: Sir, I should like to ask at this time what rights does this witness have, that defense has in mind, for which he must be warned. Is that the right of self-discrimination?

PRESIDENT: Yes.

DEFENSE: That is the only one.

is not to be decided; it merely has been evidence submitted to the Commission upon which they might convict the accused, and the prosecution submits that they have submitted that evidence and have established a prima facie case.

PRESIDENT: Subject to the objection by any member of the Commission, the motion for the defense is denied. Is defense prepared at this time to make its opening statement.

DEFENSE: If the Commission please, the defense in this case is a rather simple one. The accused is going to rely upon his plea of not guilty. We will produce fellow guards who served with him at the Kinko Coal Company, who are prepared to testify that on no occasion did they ever see him strike, beat, or in any way abuse a prisoner of war. The accused, at his own request, at the appropriate time, will take the stand himself to testify to that particular fact.

We will be prepared at this time to call as our first witness Takeshi Kondo.

PROSECUTION: If it please the Commission, at this time the prosecution moves to amend specification two to delete the date 1 August 1944, and substitute therefore 15 December 1943. The specification as amended will read, "That on divers occasions between 5 September 1943 and 15 December 1943 ...". The "1 August 1944" is obviously an error.

PRESIDENT: Are there any objections?

DEFENSE: No objections.

PRESIDENT: So ordered.

Takeshi Kondo, witness for the defense, was then sworn and testified through the court interpreter, as follows:

PRESIDENT: Kondo, the Commission at this time will warn you that if you testify, in the event you are ever brought to trial as a suspected war criminal, any testimony you may give now may be used against you. Therefore, you are warned that you are not required to give any testimony at this time that may incriminate you. Do you understand?

WITNESS (through interpreter): I understand.

Questions by the defense:
(Answers through the court interpreter)

Q. Will you state your name?
A. My name is Tadashi Kondo.

Q. How old are you?
A. 35 years old.

Q. By whom are you employed?
A. Rinko Land and Water Transportation Co.

Q. When did you go to work for the Rinko Company?
A. I do not know the exact month, but it was in the year 1937.

Q. What were your duties during the month of September, 1943?

LAW MEMBER: You can ask him if he was a guard at that camp. Ask him leading questions as long as you don't put the answers in his mouth, so that you can expedite it with these people; if you wish.

DEFENSE: I should like to let this question stand.

LAW MEMBER: Follow your own procedure. I was just trying to speed it up for you, because leading questions are allowed as long as you don't answer.

DEFENSE: I will lead very shortly.

WITNESS: I was a guard for the prisoners of war.

Q. How long were you a guard at this company?
A. I believe it was from September 1943 to October 18, 1943.

Q. And after that time, were you a laborer at the Rinko Company?
A. That is correct.

Q. And while you served as a laborer, did you work in the area in which the POWs were employed?
A. Yes, I was working where the POWs were working.

Q. During the time that you were a guard, did you go from the Rinko Company to the POW camp to secure the POWs?
A. Yes, I did.

Q. About how often did you draw that detail?
A. Four times a week, I believe it was.

Q. And at the close of the day, did you return from the Rinko Company to the POW camp with the prisoners?
A. Yes.

Q. And while a guard did you during the day supervise the work of the prisoners.
A. Yes, I was supervising the prisoners of war while I was guard.

Q. Are you acquainted with Hashimoto, the accused in this case?
A. Yes, I know him.

Q. What were his duties in September '45?
A. He was a guard.

Q. Did he do the same kind of work that you did?
A. Yes.

Q. And do you know how long he remained a guard?
A. I do not know exactly.

Q. Did he ever go up to the prisoner of war camp with you with the prisoners in the morning and return the prisoners back to the camp at night?
A. Yes.

Q. And did you observe Hashimoto during the work day while he was working?
A. Yes, I did have occasion; I could observe his work.

Q. Did you at any time ever see Hashimoto slap, beat, kick or otherwise abuse a prisoner of war?
A. No, I have never seen him do those things.

Q. Did you ever hear of his having done such a thing?
A. No.

Q. Based upon your observations of Hashimoto, would you say that he is a type of person who would abuse a prisoner of war?

PROSECUTION: I object to that question. If the defense withdrawn that question, I would point out to them that it is character evidence that they are receiving from this witness, and as such they are opening the gate to any character evidence which the prosecution may see fit to call, with reference to this witness.

LAW MEMBER: The objection is overruled. The Commission will accept it for whatever probative value it has.

WITNESS: No, I do not think he is such a person.

Q. While you were a guard, who was your immediate superior?
A. I do not know his full name, but his surname was Kato.

Q. Do you know where Kato is today?
A. After he was inducted in the army, his whereabouts has been unknown.

Q. Didhe have the position of chief of the guards?
A. That is correct.

Q. Do you know who succeeded him after he went into the army?
A. Hirose took over.

Q. And where is Hirose today?
A. He died.

Q. And do you know who succeeded Hirose?
A. It was Inuga.

Q. And do you know where Inuga is today?
A. He too was interned, and hasn't come home yet.

INTERPRETER: That is all; you may cross-examine.

CROSS EXAMINATION

Questions by the prosecution:
(Answers through the court interpreter)

Q. How many times did you help conduct the prisoners of war from the camp to Rinko and back from Rinko to the camp?
A. Since I worked as a guard for about one and a half months, and I went to get the prisoners of war about four times a week, it would be about 24 times that I went over to fetch the prisoners of war.

Q. And during that time, Kondo, would it be fair to say that Hashimoto conducted the prisoners of war to and from the camp about the same number of times?
A. I believe so.

Q. And during the day time at work, Hashimoto would come in contact with the prisoners of war, is that not correct?
A. That is correct.

Q. Do you know anyone else by the name of Hashimoto who occupied the same position as the accused at Rinko?
A. There was another fellow by the name of Hashimoto.

Q. And he worked in another part of the camp, is that not correct?

INTERPRETER: Camp?

Q. He worked in another part of the Rinko Coal Yards?
A. That is true.

Q. And he didn't come in contact with the prisoners, did he?
A. He had no connection with the prisoners of war.

Q. And he was quite a short man, is that not correct?
A. Yes.

Q. Very much shorter than this accused, is that not so?

DEFENSE: If the Commission please, we are perfectly willing to stipulate the fact that the other Hashimoto, we are perfectly well aware, is a little short fellow, he didn't come into contact with him, and I believe we can shorten the trial if we do agree on this question of identity.

PROSECUTION: The only difficulty, I want to establish that this particular accused was the only Hashimoto that did come in contact with them, because I do wish to convince the Commission when the affiants are referring to Hashimoto they mean this particular Hashimoto, and no other.

LAW MEMBER: I don't think there is any question about that, and the defense isn't disputing it.

DEFENSE: We don't care to dispute that fact, sir.

Q. Are you the same person who gave evidence on behalf of the accused, Sato, within the past three weeks?
A. That is correct.

Q. When you were asked under oath how many times you saw the accused Sato commit any beatings, how many times did you testify that you saw the accused Sato commit two beatings?
A. I said I saw twice.

Q. Do you know that this Sato was convicted yesterday by the Commission for committing over 20 beatings?

DEFENSE: I object to that as improper cross-examination.

LAW MEMBER: It is irrelevant and immaterial whether he knows it or not. Objection sustained; no probative value whether he knows it or not.

PROSECUTION: I don't want to argue with the Commission, but on the credibility of the witness he has testified he did not see the accused commit any beatings. Now, this same witness has admitted he testified before a Commission recently that he saw the accused Sato only commit two beatings. Now I would wish to draw the attention of the Commission that the accused Sato was found guilty of committing over 20 beatings and as such I would think that that would have probative value in determining the credibility of this particular witness.

LAW MEMBER: This witness may not have known the results of that trial unless he was in there when it was read off. That is the whole thing. That is the reason it was sustained.

PROSECUTION: No further questions.

DEFENCE: That is all, sir; no further questions.

PRESIDENT: Any questions by the members of the Commission? There appear to be none; the witness is excused.

There being no further questions, the witness was excused and withdrew.

PRESIDENT: Due to the fact that an emergency has arisen requiring the absence of the Commission, the Commission will adjourn and reconvene at 0900 hours, Friday, February 14th.

The Commission then, at 1615 hours, on 13 February, 1947, adjourned to meet at 0900 hours on 14 February, 1947.

J.D.C.Boland
Major, Canadian Army
Chief Prosecutor

HEADQUARTERS, EIGHTH ARMY

Yokohama Courthouse
Yokohama, Japan
Friday, 14 February 1947

The Commission met, pursuant to adjournment, at 0900 hours on 14 February 1947, all the personnel of the Commission, prosecution, and defense who were present at the close of the previous session in this case being present.

PRESIDENT: The Commission is in session.

DEFENSE: Defense calls as its next witness Ichisaku Kojima.

Ichisaku Kojima, witness for the defense, was then sworn and testified through the court interpreter as follows:

DIRECT EXAMINATION

DEFENSE: This man is at present awaiting trial at Sugamo Prison. Will the Commission please advise him as to his rights.

PRESIDENT: Kojima, in the event you are ever brought to trial as a purported war criminal, any testimony you may give may be used against you. Therefore, you are warned you are not required to give any testimony at this time that may incriminate you.

Questions by the defense:
(Answers through the court interpreter)

Q. What is your name?
A. Ichisaku Kojima.

Q. How old are you?
A. 46 years old.

Q. Before coming to Sugamo Prison, were you associated with the Kairiku at Niigata?
A. Yes.

Q. Is this company also known as the Rinko Coal Company?
A. Yes.

Q. What was your position in September 1943 at the Rinko Coal Company?
A. I was the Branch Office Head of the Rinko Company.

Q. As Branch Office head were you in charge of the laborers at Rinko?
A. Yes.

Q. Who recommended the civilian guards who were to be used at Rinko to the army?
A. I was the one.

Q. Were these guards all former laborers at Rinko?
A. That is right.

Q. How many civilian guards were selected in September 1942?
A. I remember it was ten men.

Q. From among how many laborers were these ten guards selected?
A. About 150 men.

Q. Was the accused Hashimoto one of the guards selected?
A. Yes.

Q. How long had you known the accused, Hashimoto in September 1942?
A. It was over ten years.

Q. Why did you select Hashimoto to be a guard?
A. He was an honest man and was diligent in his work.

Q. Were reports made to you by the chief of the civilian guards?
A. He reported to me every day.

Q. If there had been trouble between the POWs and the civilian guards, would this have been reported to you?
A. I had ordered them to report it to me.

Q. Was it ever reported to you that Hashimoto had mistreated a POW?
A. No.

Q. Did you ever hear of any mistreatment by Hashimoto of the POWs?
A. No.

Q. About how often did you personally check up on the POWs while they were at work?
A. I personally went around once a day.

Q. Every day?
A. There were days when I could not go around.

Q. About how often did you actually go around?
A. I went around at least five times a week.

Q. Did you ever see the accused Hashimoto mistreating a POW by hitting, slapping, pushing, dragging, kicking, or using his club on a POW?
A. No.

DEFENSE: That is all; your witness.

CROSS EXAMINATION

Questions by the prosecution:
(Answers through the court interpreter)

Q. Kajima, when you say you had known Hashimoto for over ten years, do you mean that Hashimoto had been employed by the Mitsubishi people for ten years prior to the time that he was selected as a guard to the POWs?
A. That is right.

Q. During this time, did you know him personally, or did you just know that he was employed by the company?
A. I knew him well.

Q. Now, were you in charge of the guards of the POWs known as Kaikoshin?
A. That's right.

Q. Did you have any charge of the guards?
A. No.

Q. What type of labor did the prisoners of war perform that were guarded by Hachimoto?
A. Transporting of coal.

Q. And how often would Hachimoto be in the same area each day with the prisoners in the coal yard?
A. Stayed with the prisoners of war six hours a day.

Q. Is that every day during the working week?
A. Every day on the days that he was on duty.

Q. And how many days a week was he on duty?
A. Seven days a week.

Q. Now, you stated that you have heard of no mistreatment of the POWs by Hachimoto, is that correct?
A. Yes.

Q. Did you ever at any time have reported to you any mistreatment of any POWs by any of the Kaihatsin?
A. It was once reported to me that one of the company employees mistreated the prisoners of war.

Q. And what was this company employee's name?
A. Kaisaku Kobe.

Q. And is this the only instance of mistreatment of POWs that was ever reported to you during the time the POWs worked in the Rinko Coal Yard?
A. There were no others.

Q. Do you recall a Canadian prisoner of war named Nyatt?
A. Yes, I know him.

Q. Do you recall Nyatt's job in the Rinko Coal Yard?
A. Yes, I remember.

Q. And what was his job?
A. He was in charge of the prisoners of war.

Q. Did Nyatt ever lodge a complaint with you that the prisoners under his supervision were being mistreated by the guards?
A. No.

Q. Do you remember a time when a Canadian prisoner of war named Jarvie was beaten and kicked less than 20 feet from where you and Nyatt were standing, and Nyatt pointed that incident out to you?
A. It was not a mistreatment.

Q. Then you remember this incident?
A. I do remember.

Q. Will you tell the Commission what did happen at that time?
A. I do not remember the Canadian POW's name. However, this fellow was loading coal on to a coal car whenhe slipped and fell off the board, walking board. I therefore asked the civilian guard whether this prisoner of war was hurt. The reply was that he was not hurt, he was not injured; that was all.

Q. Did Myatt say anything at this time about the prisoner being hurt?
A. No, he did not.

Q. Rajim, the incident that I am talking about is an incident that happened when a prisoner of war named Jarvis was beaten, and you and Myatt were standing together, and Myatt turned to you and asked you if you considered that as fair treatment of a prisoner of war; do you recall that incident?

DEFENSE: I am going to object to that on the ground it's outside the issues of this case, any reporting of Myatt of a beating of a prisoner of war; it certainly is not relevant as to whether Machimoto mistreated the POW.

PROSECUTION: And, sir, I submit on proper cross-examination, I may test the credibility of this witness by referring to any incident that did occur at the time at which he says he was familiar with the activities of Machimoto at the Rinko Coal Yards.

LAW MEMBER: Are you prepared to prove that Myatt made such a statement?

PROSECUTION: Sir, I am quoting from an affidavit by Myatt, which is Exhibit 1, paragraph 19.

LAW MEMBER: What page?

PROSECUTION: Page three. That has been stricken from the affidavit, sir, but the prosecution intends to ask that that paragraph be reinstated in view of Rajim's testimony.

LAW MEMBER: It goes to the credibility of this witness. You are making a motion at this time to reinstate paragraph 19?

PROSECUTION: Yes sir, in view of this witness's testimony on direct examination.

DEFENSE: May I be heard on that, sir? We have agreed to strike those portions of this affidavit on the basis that the contents of these affidavits have been given to the accused. Now for some apparent reason the prosecution wants to go out and put in other portions with which this accused is not familiar. It seems to me it's improper at this time to take a portion of an affidavit to test the credibility of a witness other than the accused, and there is no showing merely by virtue of the fact that Myatt says something in this affidavit that it's literally true. It will not test the credibility, sir.

LAW MEMBER: I think it has some probative value as to the credibility. The paragraph 19 of Myatt's affidavit will be admitted in evidence for such probative value as it has, and the objection to the question propounded to the witness will be overruled.

WITNESS: All I know about is what I had testified previously.

Q. Do you mean to say you do not recall this incident that Myatt refers to, is that correct?
A. That is correct.

Q. And if this Canadian prisoner Myatt says that you saw a Canadian prisoner of war brutally beaten and kicked wi thin 20 feet of you, would you say that Myatt was mistaken?
A. I do.

Q. Do you remember a Canadian prisoner of war named Manchester?
A. Yes, I do remember him.

Q. What was his job at the Rinko Coal Yards?
A. He was also one of the supervisors under Myatt.

Q. Was he a supervisor under Nyuki or did he take the place of Nyuki in charge of this group of prisoner workers?
A. Nyuki was in charge of all the prisoners of war. Manchester was in charge of just a portion of them.

Q. And do you recall Manchester ever complaining to you that the prisoners of war under his care were being mistreated by the guards?
A. No.

PROSECUTION: No further questions.

PRESIDENT: Any redirect?

REDIRECT EXAMINATION

Questions by the defense:
(Answers through the court interpreter)

Q. Mr. Kajima, do you speak and understand English to any conversational level?
A. Yes.

Q. If Nyuki said to you, "Is this your idea of fair treatment", would you understand that?

DEFENSE: May I ask that he answer that question without interpretation?

The witness was so instructed.

WITNESS: I did not listen to you now.

PRESIDENT: Repeat the question.

Q. If Nyuki should say to you, "Is this your idea of fair treatment", would you understand what he said?

WITNESS (without interpreter): I am very poor in hearing; I can speak English and read, but very poor in hearing.

LAW MEMBER: He says he can read it, but he doesn't understand it.

DEFENSE: He does not understand it, apparently. That is all.

PRESIDENT: Any recross?

PROSECUTION: I didn't understand; does he say he could nothear well, or he did notunderstand English well. Will you ask him that in Japanese?

The interpreter translated as requested.

WITNESS: (through interpreter): I cannot understand well.

PRESIDENT: Any questions by the Commission? Apparently none; the witness is excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: The next witness is Keiji Higuchi.

PRESIDENT: The Commission will take a ten minute recess.

The Commission then took a recess until 0945 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

DEFENSE: Defense will call as its next witness Keiji Higuchi.

Keiji Higuchi, witness for the defense, was then sworn and testified through the court interpreter, as follows:

DIRECT EXAMINATION

PRESIDENT: What is the status of this witness?

DEFENSE: He is not an accused; he works at the Rinko Coal Company. Will the Commission please advise him as to his rights?

PRESIDENT: You think he should be advised?

DEFENSE: He has not been accused, has not been at Sugamo.

PRESIDENT: Unless you feel it is necessary for him to be advised, we will not do it.

DEFENSE: I just thought you might advise him as to the fact he need not say anything that will tend to incriminate him since he is working at the same company, and was during the time that machinate was.

PRESIDENT: Very well; Higuchi, in the event you are ever brought to trial and suspected war criminal, the testimony you are about to give may be used against you. Therefore, you are warned that you are not required to give any testimony at this time that may incriminate you.

Questions by the defense:
(Answers through the court interpreter)

Q. Your name is Keiji Higuchi?
A. Yes.

Q. You are 42 years old?
A. Yes.

Q. You are at present employed by the Rinko Coal Company, is that right?
A. Yes.

Q. When did you go to work for Rinko?
A. Since April 1943.

Q. You were made a civilian guard in November of 1943, is that right?
A. Yes.

Q. How long were you a civilian guard?
A. From November, 1943, to August 1945.

Q. Before you were made a guard, you worked as a laborer, is that right?
A. That is correct.

Q. How often did you go to the POW camp to get the POWs for work?
A. Three or four times a week.

Q. Did the accused, Hachimoto, go with you to the POW camp on these occasions?
A. Yes, he did.

Q. What were your duties in connection with the POWs at Rinko Coal Company?
A. I was civilian guard as well as work instructor.

Q. The guards all worked in the same area with the POWs, is that right?
A. That is right.

Q. Could you see the accused, Hachimoto, at work?
A. Yes, I could.

Q. What were Hachimoto's duties?
A. Assistant to the civilian guard chief.

Q. Did you ever see Hachimoto kick, strike, slap, push, or use his club on any POW on the way to work, at work, or on the return to the POW camp in the evening?
A. No.

Q. Who was your superior as a guard?
A. He was Hirose.

Q. Where is Hirose now?
A. That fellow has died.

Q. Who took Hirose's place?
A. Iwaya.

Q. Where is Iwaya now?
A. After he was inducted, he joined the army, his whereabouts has become unknown.

Q. How long had you known Hachimoto?
A. From April 1943 until August 1944.

Q. Based upon your observations and contact with Hachimoto, would you say that he was the kind of man to abuse or mistreat POWs?
A. I do not think so.

DEFENSE: You may cross-examine.

CROSS EXAMINATION

Questions by the prosecution:
(Answers through the court interpreter)

Q. Higuchi, did you ever see any of the civilian guards or keikaiin mistreating any prisoners of war?
A. No.

Q. So if any beatings took place at Rinko you never saw them, is that so?

DEFENSE: I object to that; I'd like to make one objection to that question; he asked if there were any beatings by the factory guards at Rinko. Now, we know there were military guards also at Rinko; hence this question doesn't necessarily follow.

PROSECUTION: I will limit that to the civilian guards then.

LAW MEMBER: The question is altered to read civilian guards.

WITNESS: I have never seen any such incident.

Q. Did Machimoto carry a stick in his duties?
A. Yes.

Q. Has anyone from the Rinko Coal Company approached you within the last few months about giving evidence on any case?
A. No.

Q. Did Kajima ever speak to you about beatings taking place at Rinko before he was apprehended by the military authorities?
A. No.

Q. Are you still employed by the Rinko Coal Company?
A. Yes.

PROSECUTION: No further questions.

PRESIDENT: Any redirect?

DEFENSE: No sir.

EXAMINATION BY THE COMMISSION

Questions by the Commission
(Answers through the court interpreter)

Q. What kind of stick did Machimoto carry; describe it.
A. It was a stick about one meter long, and about the size of this. (indicating)

LAW MEMBER: The record will show about an inch and a half.

Q. Was it a chisel or rod?
A. It had the shape of a sword.

Q. Now, why did he carry this rod?
A. The POW camp commandant had set forth some regulations to be followed by the civilian guards. I do not know the exact details of the regulations. However, one of them stipulated that in case the prisoners of war banded themselves together to cause a riot, and when the guards tried to stop them peacefully but they would not stop, and when it was inevitable, then they would use the clubs on them. Also, in case the prisoners of war began destroying the equipment and the buildings in that vicinity, and although the guards tried to stop them the prisoners of war would not stop, then they could use these sticks on them. Also, when the prisoners of war tried to escape, these sticks could be used on them.

PRESIDENT: Any other questions by the Commission? Apparently none; the witness is excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: Defense calls as its next witness Morikado Kobayashi.

Morikado Kobayashi, witness for the defense, was then sworn and testified through the court interpreter, as follows:

DIRECT EXAMINATION

DEFENSE: Will the President of the Commission advise this man also as to his rights? He is not at present at Sagamo, but he is at present at Rinko Coal Company, and was a guard during the years in question.

PRESIDENT: Kobayashi, in the event you are ever brought to trial as a suspected war criminal, the testimony you are about to give may be used against you. Therefore, you are warned that you are not required to give any testimony at this time that may incriminate you.

Questions by the defense:
(Answers through the court interpreter)

Q. Your name is Morikado Kobayashi?
A. Yes, my name is Morikado Kobayashi.

Q. How old are you?
A. 39 years old.

Q. Are you employed at present by the Rinko Coal Company at Higuto?
A. Yes.

Q. When did you go to work for the Rinko Coal Company?
A. April 1938.

Q. Were you made a civilian guard in September of 1943?
A. Yes.

Q. How long were you a civilian guard at Rinko?
A. Until June, 1945.

Q. Did your duties include going to the POW camp in the morning to get the POWs for work?
A. Yes.

Q. Did you do this about every other day?
A. Yes.

Q. Did the accused, Hashimoto, go to the POW camp with you on these trips?
A. Yes, he did.

Q. What were your duties with the POWs at Rinko Coal Company?
A. I was a civilian guard as well as work instructor.

Q. Did the guards all work in the same area?
A. That is right.

Q. Then you could see Hashimoto at work, is that right?
A. Yes.

Q. What were Hashimoto's duties?
A. He was the assistant to the chief of the civilian guards.

Q. Did you ever see Hashimoto hit, strike, beat, abuse, kick, or use his club on any POW?
A. No.

Q. Did you ever hear of such an incident?
A. No.

DEFENSE: That is all. Your witness.

CROSS EXAMINATION

Questions by the prosecution:
(Answers through the court interpreter)

Q. Kobayashi, what was the nickname the prisoners of war had for you?
A. No nickname was given to me by the prisoners of war.

Q. Don't you recall the prisoners of war referring to you as Alley Cat?

DEFENSE: I am going to object to that question. It's highly improper. This witness stated he knows of no nickname. I think the injection of a nickname here has no bearing on the issues in this case.

LAW MEMBER: It has no probative value; the objection is sustained.

Q. Were there any other keimain at Rinko named Kobayashi?
A. No.

Q. Were you a keimain who escorted the prisoners of war to work the very first day they went to the coal yards?
A. Yes, I did go on the first day.

Q. Was Nashimoto a civilian guard on that first day?
A. Yes.

LAW MEMBER: Now, for the purpose of the record, you'd beter clear up what this keimain is. You have used it a half dozen times and talk about civilian guards and you use this Japanese phrase. You'd better get in the record as to what that is.

INTERPRETER: That is a civilian guard, sir.

PROSECUTION: So that I will not be in a position of giving evidence, I will ask the interpreter to explain to the Commission the term keimain and guards.

LAW MEMBER: Ask him the question.

Q. What is a keimain?
A. Keimain are people hired by the company. Their duty is to guard the POWs while at work.

Q. Do you recall seeing any beatings of the prisoners of war by the keimain?
A. No.

Q. Recalling your memory to the first days of March to the Rinko Coal Yards, do you recall the prisoners of war, several of them, collapsing on the march to the coal yards that first day?
A. No, I do not remember.

Q. Do you remember a Canadian prisoner of war who was in charge of the Rinko work group by thename of Hyatt?
A. Yes, I knew him.

Q. And you stated that whenever Machimoto was at work guarding the prisoners you were also there, isn't that true?
A. Yes, I did.

Q. Now, do you remember an incident in November of 1943 when Myatt passed out as he was going up the coal car trestle and Machimoto threw water on him to revive him, and then beat him?
A. I do not know of that incident.

Q. Do you remember a tall Canadian prisoner of war named MacLaughlin?
A. No, I don't know him.

Q. Do you remember a Canadian prisoner of war named Saeddin?
A. No, I do not remember.

Q. And do you recall a Canadian prisoner of war named Stroud?
A. No.

Q. Do you remember a Canadian prisoner of war, Sergeant Hunter?
A. No, I don't know him.

Q. Now, has any official of the Rinko Coal Company approached you in regard to giving testimony at trials?
A. No.

Q. Has Kojima said anything to you about testifying as to beatings prior to the time he was appr ehended by the American authorities?
A. No, he did not.

Q. Are you still employed by the Rinko Coal Company?
A. Yes.

PROSECUTION: No further que stions.

PRESIDENT: Questions by the defense?

DEFENSE: No sir.

PRESIDENT: Questions by the Commission? Apparently none; the witness is excused.

There being no further questions, the witness was excused and withdrew.

DEFENSE: If the Commission please, the defense is prepared to call two more guards whose testimony will be the same as those past three guards. It will be merely using time. If the prosecution is willing to stipulate, we will gladly read the names of these two guards into the record and not call them.

PROSECUTION: No objections.

LAW MEMBER: All right. Let the record show that it is stipulated by and between counsel for the respective parties that if the next two witnesses named were called to the stand and examined in the usual manner they would testify approximately the same as the two witnesses who had previously testified. These witnesses were civilian guards at the time of the incident for which the accused is being tried, or a part of the time. The names of the witnesses are Hoiichi Asukai and Morue Suzuki.

DEFENSE: Defense at this time will call Chogo Machimoto, the accused, to take the stand.

PROSECUTION: Sir, should he be warned of his rights before being sworn in as a witness?

PRESIDENT: Machimoto, you may take the stand as a witness, or you may remain silent. If you do take the stand, you may make a sworn or unsworn statement. In either case you will be subject to cross-examination on any statement made, and the examination will in no wise be limited to matters brought out on direct examination.

DEFENSE: May the record show, sir, that the accused is testifying at his own request.

LAW MEMBER: Let the record so show.

Chogo Machimoto, the accused, witness in his own behalf, was then sworn and testified through the court interpreter, as follows:

DIRECT EXAMINATION

Questions by the defense:
(Answers through the court interpreter)

Q. Please state your name.
A. Chogo Machimoto.

Q. How old are you?
A. 37 years old.

Q. Are you married?
A. Yes.

Q. Have you any children?
A. Yes.

Q. How many?
A. One.

Q. A boy or a girl?
A. A girl.

Q. How old is this girl?
A. 12 years old.

Q. When did you first go to Rinko to work, Machimoto?
A. As I remember, it was December, 1943.

Q. What was your position in Rinko until September of 1945?
A. Before that time I was just a laborer.

Q. How long were you a civilian guard?
A. It was about 11 months.

Q. Was your position changed somewhat as a guard in January or early February of 1944?
A. Yes, there was.

Q. In what way was it changed?
A. I worked as the assistant to the head of the civilian guards, and I was requested to take liaison between the company and the working party.

Q. How often did you go to the POW camp to get the POWs for work?
A. I do not remember the number of times I went.

Q. About how often did you go?
A. It was about every other day.

Q. How many civilian guards went with you?
A. Usually it was four to five guards.

Q. Who was in charge of these guards on their way to the POW camp?
A. In the beginning Sato was in charge.

Q. About how many POWs came to work with you each day?
A. I do not know the exact number, but I think it was about 150 to 180 prisoners of war.

Q. Did you wear an armband as a civilian guard?
A. Yes.

Q. Did all factory guards wear this arm band?
A. Yes, the civilian guard all had arm bands on.

Q. Describe them, will you please?
A. It was white, a strip of white cloth, about three inches wide, and in katakana, fu was written in black, Japanese character, fu.

Q. Did all the guards carry clubs or sticks?
A. Yes.

Q. Describe the stick which you carried for the Comm scion?
A. It was a stick about one meter long.

LAW MEMBER: Let the record show that the stick was about an inch and half in diameter.

PRESIDENT: Ask him whether or not it was a shinai; we all know what a shinai is.

INTERPRETER: I will finish what he said.

WITNESS: A portion of the handle was wider than the other end. No, it was not a shinai, it was much smaller than a shinai.

Q. Did you ever wear glasses?
A. No.

Q. Do you understand or speak English?
A. No, I can't understand at all.

Q. What were your duties from September 1943 to January 1944?
A. During that period I was just a regular civilian guard.

Q. What were your duties when you became liaison man in January of 1944?
A. I went to ask the company official what kind of work was to be done. Also, how many persons were to be allotted to each type of work.

Q. Was the chief of guards still your superior?
A. That is right.

PROSECUTION: Excuse me, you are referring to keikadin, are you?

INTERPRETER: That's right.

WITNESS: That is right.

Q. The military guard was the superior of all of them, was he not?
A. That is right.

Q. Who were the three chiefs of guards while you were there; that is, the civilian?
A. First it was Kato, then Mirose, and finally Iwaya.

Q. When did you leave Rinko to join the Japanese army?
A. I believe it was July 28, 1944.

Q. What was your rank in the Japanese army?
A. Superior Private.

Q. How long have you been at Sagamo?
A. About four months and a half.

Q. Have you your copy of the charge and specifications alleged against you?
A. Yes, I have.

Q. Will you please look at it. Please look at Specification 1, and tell the Commission what you know about this specification.

PRESIDENT: Before we proceed with this matter, I think we have time to take a recess.

The Commission then took a recess until 1065 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats.

PRESIDENT: The Commission is in session.

The accused, Chogo Nachimoto, resumed the stand, and was reminded that he was still under the oath previously taken.

Questions continued by the defense:
(Answers through the court interpreter)

DEFENSE: Will the reporter please read back the last question.

The reporter read back as requested.

WITNESS: There is nothing there I know of.

Q. Please look at specification two, and tell the Commission what you know of this incident.
A. In specification two also I know of nothing.

Q. Do you remember MacLaughlin at all?
A. It seems as though I slightly remember his features. However, I do not know him well.

Q. Specification three, please tell the Commission what you know of this specification.
A. In specification three also, there is nothing there that I did.

Q. Do you remember Gerald Snoddin?
A. I do not know that name. The only names I remember are those of Manchester and Myatt, people like that.

Q. Please look at specification four, and tell the Commission what you remember of this incident.
A. Specification four also, I have done nothing that is written there; so I do not know anything about it.

Q. Please look at specification five and tell the Commission what you know of that incident.
A. Specification five also, I do not know anything about it.

Q. Please look at specification six and tell the Commission what you know of that alleged incident.
A. There is nothing also in Specification six that I remember.

Q. Please look at specification seven, and tell the Commission what you know of that incident.
A. I do not know anything about specification seven.

Q. Do you recall Hunter in Specification six, Gagne in Specification seven?
A. No, I do not know them.

Q. Please look at Specification eight, and tell the Commission what you know of that incident.
A. I do not know anything about specification eight also.

Q. Do you know the man Woodward when it is alleged you beat?
A. No, I don't.

Q. Do you, Hachimoto, wish this Commission to understand that you never mistreated a prisoner of war at any time from September 1945 to August 1944?
A. Yes, that is right.

Q. Have you, Hachimoto, anything that you would like to say to this Commission in your own behalf?
A. Nay there is nothing I'd like to say.

DEFENSE: That is all. Cross-examine.

CROSS-EXAMINATION

Questions by the prosecution:
(Answers through the court interpreter)

Q. Hachimoto, when you were apprehended, what were you doing: what position were you occupying?
A. I was working as a laborer, and was in charge of the warehouse.

Q. You were still working for the Rinko Coal Company, is that so?
A. That is right.

Q. Who at the present time is keeping your family?
A. I do not know actually who is supporting them. I suppose they are supporting themselves.

Q. Isn't it so that the Rinko Coal Company are supporting your family now, Hachimoto?
A. I do not know the exact circumstances. When I was first apprehended, they were receiving some from the company. However, since then I have received no word, and therefore I do not know what the situation is now.

Q. Did Kajima before he was apprehended by the military authorities ever speak to you about the treatment of prisoners of war at Rinko Coal Company?
A. Is that after the prisoners of war had left?

Q. After the prisoners of war had left, yes.
A. No, he hadn't said anything to me.

Q. Did he ever give you any instructions while the prisoners of war were still at Rinko?
A. First when the prisoners of war arrived he gave us instructions. However, after the prisoners of war had left, he said nothing about them to me.

Q. Has anyone from the Rinko Coal Company at any time ever approached you since V-J Day and told you to deny seeing any beatings at the Rinko Coal Co.?
A. No.

Q. Nashimoto, you have stated that you recall Myatt, is that so?
A. Yes, I do remember him.

Q. And what were Warrant Officer Myatt's duties at Rinko?
A. He was the senior officer among the Canadians.

Q. And you would come in contact with Myatt every day that the prisoners of war worked at Rinko, is that so?
A. Yes.

Q. How well did you get to know Myatt?
A. No, I do not know him very well.

Q. Did you ever touch Myatt?
A. No.

Q. How long did you go to school, Nashimoto?
A. I went through six years of primary school.

Q. Did you ever have any difficulty with your memory?
A. No.

Q. Are you swearing that you never touched Myatt, or do you not recall ever having touched him?

LAW MEMBER: When you say, touched, do you mean abused?

PROSECUTION: Well, I was including the slapping, kicking, beating, and anything like that. I will change that question, then.

Q. Nashimoto, when you say that you never beat Myatt or kicked him, are you swearing that you never did so, or do you mean that you do not recall doing it. What?
A. I am swearing that I did not do those things.

Q. Did you come in contact with Myatt at all in November, 1945?
A. No.

Q. While Myatt was working at Rinko in November of 1945, you would see him each day, is that not so?
A. Yes, if he was working, I would see him.

Q. And if you would wish to, you were in a position to beat Myatt with your fist, and knock him down, and kick him in the ribs, is that not so?
A. No.

Q. Now, witness, I want you to listen to the question: you were in a position to inflict that punishment on Myatt if you had so wished, is that not so?
A. If I wanted to, I could have, perhaps, but it was against my conscience.

Q. Can you tell this Commission any reason that you know of, why Myoki should not tell the truth in so far as you are concerned?
A. No.

Q. And can you recall Sergeant Robert Manchester, a Canadian prisoner of war?
A. Yes, I do remember him.

Q. And he was head of one of the work parties, is that not so?
A. Yes.

Q. Did you see Manchester very often?
A. Yes, I did.

Q. Can you tell this Commission any reason that you know of, why Sergeant Manchester would not tell the truth in so far as you are concerned?
A. I do not believe that there was any reason.

Q. What were your hours of work at Rinko?
A. It was not fixed.

Q. Approximately what hours did you work during the day time?
A. As I recall it, the working hours were about six hours per day.

Q. And during those six hours, you would remain in constant contact with the prisoners, is that not so?
A. Yes, that is right.

Q. Do you know of any nicknames that the prisoners called you?
A. No, I don't.

Q. What did the prisoners call you, that you can remember?
A. They liked me, and they always told me that; you are the best.

Q. Did they call you Hashimoto-san or Matsumoto-san, something like that?
A. They called me Hashimoto.

Q. How long did you carry this stick, Hashimoto?
A. I had a stick every day.

Q. All the time that you were at Rinko; all the time that the prisoners of war were at Rinko?
A. Yes, that is right.

Q. Did you ever hit a prisoner of war with that stick, Hashimoto?
A. No, not once.

Q. And did you ever kick a prisoner of war, Hashimoto?
A. No.

Q. Did you ever slap a prisoner of war, Hashimoto?
A. No.

Q. You are stating to this Commission under oath that during all the time that you worked as guard at Rinko that you never slapped a prisoner of war, is that so?
A. Yes, I can swear that I have never done those things.

Q. Hashimoto, do you know any reason why any Canadian prisoner of war that you came into contact with would not tell the truth about you?
A. No, I can't think of any reason.

Q. Do you know any Japanese guard who came in contact with the prisoners of war at Rinko who had a name similar to Hashimoto?
A. No.

Q. Do you know of any civilian guard who came in contact with the prisoners of war at Rinko who resembled you in appearance?
A. No.

Q. Did you ever at any time, Hashimoto, see any of the other civilian guards beat any of the prisoners of war?
A. No.

Q. Did you ever see any of the prisoners of war faint while working at Rinko?
A. I have never seen any of the prisoners of war faint. However, there was once when I was in the rest room with two other prisoners of war firing up the place when a prisoner of war was brought in, and I was told that he had fainted.

Q. What did you do on this occasion?
A. When this particular prisoner of war was brought in, since I was working with two other prisoners of war in the rest room, I immediately warmed him by the fire.

Q. Did you place his hand in the firepot on this occasion, or attempt to place his hand in thefirepot?
A. No, I did not do such a thing. I laid a rug near the stove and laid him down.

Q. Hashimoto, do you believe it is correct to state the prisoners of war who worked at Rinko were in a very poor state of health?
A. Yes, I think that the physical condition of the prisoners of war was not so good.

Q. Do you agree that a severe beating inflicted on one of these prisoners of war would be likely to have a serious effect on the physical condition of the prisoners?
A. Yes, I believe so.

PROSECUTION: No further questions.

PRESIDENT: Any redirect?

REDIRECT EXAMINATION

Questions by the defense:
(Answers through the court interpreter)

Q. Hashimoto, do you have a criminal record here in Japan?
A. No.

Q. From whom did you receive your instructions as regards how the POWs were to be treated?
A. I received the instructions from Kojima, and also from Kato, the chief of the civilian guards.

Q. And just what were those instructions as regards treatment of POWs?
A. Kajima told me, Kajima instructed me not to mistreat the prisoners of war and not to kick or beat any of them.

Q. And you want this Commission to understand that you never discharged those instructions, is that correct?
A. Yes.

Q. You testified that you never saw a factory guard mistreat a POW; did you ever see a camp guard mistreat a POW?
A. I once saw Sato strike a prisoner of war with his palm.

DEFENSE: That is all. No further questions.

PRESIDENT: Recross?

PROSECUTION: Just one question, sir.

SECOND EXAMINATION

Questions by the prosecution:
(Answers through the court interpreter)

Q. Nachimoto, was that the only occasion when you ever saw Sato strike a prisoner of war?
A. There were three times when I saw Sato strike prisoners of war.

Q. Why did you tell your counsel about this one occasion, and not the other two occasions?

INTERPRETER: May I say something, sir? In Japanese sometimes you can't tell whether it's once or twice. There is no plural or singular, and therefore I took it to mean singular and gave it in the singular form. He could have meant two times, three times or any number of times, sir.

PROSECUTION: I will accept that explanation. No further questions.

PRESIDENT: Questions by the Commission? None. The witness is excused.

There being no further questions, the accused was excused and stepped down.

DEFENSE: Defense rests.

PRESIDENT: Does the prosecution have any rebuttal witnesses?

PROSECUTION: No, but the prosecution at this time requests that paragraph 32 of of the affidavit of Robert Manchester, Exhibit 11, be now reinstated in evidence in so far as the credibility of not only Kajima is concerned, but in so far as the credibility of other witnesses who testify there were no beatings which they saw which took place at the Rinko Coal Docks.

LAW MEMBER: Well, you have put in all of 11 except the last paragraph.

PROSECUTION: Paragraph 32; that is on page 20; particularly applicable is the part at the end of the paragraph, "He repeated this two or three times before Kajima and I reached the scene, thereupon he stopped. I told Kajima that no more work could be gotten out of the men with this kind of treatment and should be stopped immediately. I also suggested that Sellars should be

allowed off work for the day. Kajima told me at that time that what the guards did with the prisoners was their own business and walked away, whereupon, 'Big Legs' struck Sellers with his fists in the face two or three times more, and sent him back to work." But the whole paragraph, I submit, should now be considered by the Commission.

LAW MEMBER: It only goes to the credibility of the witness?

PROSECUTION: Yes sir, particularly in so far as Kajima is concerned, but to some extent as far as the other witnesses who say they never saw a beating.

LAW MEMBER: So far as this section is concerned, it refers entirely to Kajima, and will be admitted only as against him as to his credibility. It has no reflections on the credibility of the other witnesses who have testified for the defence. It may be reinstated, and introduced in evidence as prosecution's case.

PROSECUTION: No further rebuttal evidence.

PRESIDENT: Due to the fact that all the members of the Commission are required to attend a conference for the entire afternoon, the Commission will adjourn at this time to reconvene at 0900 hours, Monday, 17 February.

The Commission then, at 1155 hours, on 14 February, 1947, adjourned to meet at 0900 hours on 17 February, 1947.

J.D.C.Boland
Major, Canadian Army
Chief Prosecutor

HEADQUARTERS, EIGHTH ARMY

The Commission met, pursuant to adjournment, at 0800 hours on 17 February 1947, all the personnel of the Commission, prosecution, and defense who were present at the close of the previous session in this case being present, with the exception of Captain Gibbons, of prosecution, VOCS., and Sunie Miyazaki, Japanese defense attorney.

The accused, reporter, and interpreters were also present.

PRESIDENT: The Commission is in session.

DEFENSE: Let the record show, sir, that the Japanese attorney, Mr. Miyazaki, is ill, and will not be able to be here today, but with the consent of the accused, we will waive his presence.

PRESIDENT: We will proceed with the final arguments.

Oral arguments were then made by the defense and prosecution.

PRESIDENT: The Commission will be closed, and the findings of the Commission will be announced in open courts in approximately fifteen minutes.

The Commission was then closed until 1110 hours, at which hour all the personnel of the Commission, prosecution and defense, accused, reporter and interpreters resumed their seats, except those previously excused.

PRESIDENT: The Commission is in session.

FINDINGS

OHOGO MASHINOTO, the Commission, in closed session and upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of Guilty, finds you:

Of Specification 1: Guilty.

Of Specification 2: Guilty, except the words, "thereby contributing to his death which took place on 20 December 1945", of the excepted words Not Guilty.

Of Specification 3: Guilty, except the words, "thereby contributing to his death which took place on 8 February 1944", of the excepted words Not Guilty.

Of Specification 4: Guilty:

Of Specification 5: Guilty, except the words, "and by endeavoring to place his hands in the flames from a fire pot", of the excepted words Not Guilty.

Of Specification 6: Guilty.

Of Specification 7: Guilty.

Of Specification 8: Guilty.

Of the Charge: Guilty.

[illegible]

And again in closed session and upon secret written ballot two-thirds of the members present at the time the vote was taken concurring, sentences you:

To be confined at hard labor, at such place as the reviewing or higher authority may direct, for fifteen (15) years.

PRESIDENT: Is there any further business to come before the Commission?

PROSECUTION: No sir.

PRESIDENT: The Commission will adjourn to meet at the call of the President.

The Commission then, at 1110 hours, on 17 February 1947, adjourned to meet at the call of the President.

AUTHENTICATION OF RECORD

The foregoing typewritten record of trial, together with Prosecution's Exhibits No. 1 through No. 17, referred to, and identified therein, except such portions of the exhibits as have been lined out, deleted and initialed, constitute the complete record of trial in this case.

Glenn I. Epperson

GLENN I EPPERSON
Lt Col Cav
President

J.D.C. Bolland

J.D.C. BOLAND
Maj, Canadian Army
Chief Prosecutor

I examined the record before it was authenticated, and Prosecution Exhibits No. 1 through No. 17, referred to, and identified in the record are a part thereof except such portions of the exhibits as have been lined out, deleted, and initialed.

Robert W. Miller

DR. ROBERT W. MILLER
Defense Counsel

(2413)

VOLUME II

E X H I B I T S

to

RECORD OF TRIAL
(4th Original Carbon)

in the case of

UNITED STATES

vs

C H O G O H A S H I M O T O

Case Docket No. 139

MILITARY COMMISSION

Appointed by

Commanding General, Eighth Army

Tried at
Yokohama Japan
12 Feb 1947 - 17 Feb 1947

CANADA
Province of Ontario
To Wit:

(In the Matter of Canadian
(Prisoners of War at Hong
(Kong and Vicinity and Japan

I, P-36163 QMS (WOII) Victor Joseph MYATT, Corps of Military Staff Clerks, residing at 722 Desmarchais Blvd, Verdun, Quebec, make oath and say:-

1. I am a member of the Canadian Army, Permanent Force.

2. I was a member of the Senior Administrative Officer's Staff of "C" Force Canadian Army, which was the Canadian Force which took part in the defence of Hong Kong.

3. I became a prisoner of the Japanese Army on 25 December 1941 when the Island capitulated.

4. I was held prisoner in North Point and Sham Shui Po Camps in Hong Kong and Kowloon until 15 August 1943, when I was dispatched to Japan as a member of a labour draft. Our party was made up of 376 Canadians and about 100 British including some HKVDC and about 35 Dutch Naval Ratings. We landed at Osaka where the British and 180 Winnipeg Grenadiers were detached from our party and sent to a camp in that vicinity. I went with the main party by train to the city of Niigata on the West coast of Honshu Island, Japan. We were accompanied by Lieutenant BUSH of the HKRNVR and sjt A W RANCE HKVDC Artillery who was our interpreter.

5. Immediately on arrival Lieutenant BUSH was sent to TOKYO but RANCE remained with us. We arrived in Niigata on 3 September 1943 and were divided into work partics to be employed by three local concerns. We commenced work on 6 September, 1943. I remained in Niigata until 14 November, 1944, when I was sent to Shinagawa Hospital in Tokyo. I remained at Shinagawa ~~until 27 December, 1944, at which time I was sent to Omori Camp in the Tokyo area which was~~ the Headquarters Camp for Tokyo PW administration. I remained at Omori until 5 June 1945, when I was sent to Suwa Camp which is almost due west of Tokyo up in the mountains and in about the centre of the Island. I remained here until liberated 5 September, 1945.

6. Almost every member of our party which left Sham Shui Po on 15 August 1943, was suffering from Beri Beri, Pellagra, Dysentery and other manifestations of malnutrition. Some were just convalescing from diphtheria and a number had been discharged from hospital to make up the draft. I feel that there was not one really fit man on the draft.

7. We were crowded into two holds of a very small salvaged river boat and sailed for Formosa. The trip to Formosa took two days and we remained in port at Formosa for nine days. We then continued on to Japan to Osaka where we arrived 2 September, 1943. Conditions on this boat are almost beyond description or belief. There was not even room to lie down and any rest at all had to be taken by sitting with our knees hunched up. This is the way we slept. The heat was terrific and the air foul and stifling as the hatches were battened down most of the time. The only consideration we were ever shown was in port at Formosa when we were allowed on deck, 25 at a time and given a hosing down with salt water. The remainder of the 18 days of the trip we were battened down in the holds.

8. When we left Hong Kong I saw Red Cross supplies consisting of cases of Bully Beef and Meat and Vegetable rations loaded aboard the boat. Besides this there was a small quantity of bread which had been baked at Sham Shui Po. We estimated that the Bully Beef and M and V was sufficient to have provided us at a scale of ~~two ounces of beef or M and V per man per day for four days.~~

PROSECUTION EXHIBIT No. 1

~~However, we only received one issue of these supplies and were given~~ about a half of a Canadian mess tin full of rice twice daily for the remainder of the trip. The bread was not issued until it had gone very mouldy and thoroughly inedible. I saw a number of crew members and guards on the boat opening tins of M and V. They would drink the juice from the can and throw the contents overboard. We were allowed one Canadian water bottle full of topid, four smelling, rust-filled water once per day between two men. We suffered dreadfully from lack of water due to the terrific heat in the holds.

9. Latrine facilities were afforded by four toilet seats on the after-part of the main deck. We were only allowed to go to these toilets at specified times. As a great number had dysentery or diarrhea, conditions in the holds soon became beyond human belief. Men had no alternative but to relieve themselves right in the holds.

10. A Japanese by the name of "Takemi" who had been at North Point Camp was with us on board this ship in charge of the food. While in port at Formosa he had taken a collection of about 1500 Yen from us to buy food. He brought back about 125 pounds of reasonably fresh pork, some citrus fruit and some onions. It was obviously a small amount of food in return for 1500 Yen. We ate the fruit, some of the meat and onions that night and the remainder was stored on deck. We never received any more of this food except for the occasional onion which members of the crew sold back to us at exhorbitant prices.

11. On arrival at Niigata we were taken in trucks from the main railway station a distance of about two miles to a large two storey wooden building. This was known as Camp 5"B". The building had a high wooden fence around it which was only about ten feet from the building except at the front where it was about fifty feet from the building to provide a parade square. This building was new and reasonably well built. We were allowed bed space of 18 inches per man. We occupied both stories of the building which was divided into two rooms on the ground floor and five rooms on the upper floor.

12. We reached the camp about 2200 hours on 3 September, 1943, and were assembled on the parade ground. We were addressed by the Camp Commandant, Lieutenant Yoshida through our interpreter Sgt RANCE. He told us that we would be working for various local firms and would be expected to work hard and abide by all the regulations. If we broke the regulations we would be severely punished. He also stated that the sick people would be properly looked after and that we would be fairly treated. His subsequent conduct was such that I often wondered if RANCE had translated the proper meaning of his speech with respect to fair treatment and the looking after of the sick. I feel it may have been really intended as sarcasm, or he was indulging in a grim jest at our expense.

13. The following day we were paraded and told to sign an undertaking to the effect that we would not attempt to escape. Knowing what had happened in the case of Cpl PORTER at North Point who had refused to sign, we signed. We felt that this parole extracted under duress was not binding and we had previously signed a similar ~~certificate at North Point on the advice of our officers.~~

14. We were then broken into three groups for labour purposes. I was detailed to be in charge of the group to work for the Rinko Coal Company. This was in addition to still remaining as the W.O. responsible for the conduct of the prisoners in camp. There were 140 men in the Rinko party which included about 15 Dutch. A second party of about 50 was selected to work for the Marutsu Company which did general stevedoring work. The third party which was about 40 men were to work for the Shintitsu Company which was a foundry and hammer mill.

16. We started to work on 6 September 1943. ~~A number of men I believe about 14 of our Winnipeg Party were so ill when we got off~~ the boat at Osaka that they had to be carried to the train and into camp from the trucks. These were not required to commence work but were very severely beaten and kicked because of their inability to go. None of us were really fit to perform any sort of manual labour on our arrival but it was immediately obvious that Lieut Yoshida's speech concerning the care of sick had no meaning whatsoever, and that we would have to work anyway. As I have already stated! we were not fit when we left Shar Shui Po and the severe hardships of the trip made ~~us much worse.~~

16. On arrival at the Rinko Yards which were about a half a mile from camp we commenced to work. ~~"On the march to work about six or seven men at least had collapsed and had to be helped along. Our escorts made free use of their wooden swords on all who were unable to keep up the pace of the Japanese leading us.~~ About eighty of our group were detailed to the job of pushing coal cars which carried about a ton of coal along an over-head trestle to various dumping points. This trestle was about 30 feet high and was built in the form of a circle with a circumference of about 700 yards. Men were detailed one to each truck and had to push them from the loading point which was a mechanical hopper to dumping points along the trestle. They would then continue around the trestle to refull the subsequent loads. I was not detailed to a truck but it was my job to keep the truck moving smoothly.

17. I noticed that nearly everyone quickly showed signs of exhaustion and many collapsed. Almost a dozen men were seriously injured this first day by collapsing in the tracks and having the following car pass over them. Two other men fell off the trestle that day at the dumping points. One was H-6927 Pte D M CAMERON of the Winnipeg Grenadiers and the other was a Dutch Naval Rating. CAMERON had a broken knee and the Dutch sailor injured his spine.

18. The civilian bosses started in immediately on our arrival to boat, bully and terrorize us into working our utmost and more. How we ever completed the first days work I will never know. But the following day was even worse. It was a repetition of the first day with respect to our escorts beating, cuffing and kicking us from our camp to work and all that day. However, on arrival at Rinko the second morning we were all mustered in front of KOJIMA, who stood on the platform and ordered all of the party who worked on the trestles to remove their boots. KOJIMA, was the Japanese who wasin charge at Rinko. He told me he was the managing director of the company, I believe he was a member of the town council or some similar governing body. He had considerable influence in most of the business and industrial projects around the city and was treated with the utmost respect by our Camp Commandant Lieut Yoshida. He gave three reasons for his order to remove boots. Firstly, to remove the danger of men slipping from the trestles, secondly to remove the danger of fire which might be caused by some of our boots which were hobnailed striking a spark when they came in contact with metal. Thirdly to conserve the boots which were in very short supply for colder weather.

19. In my capacity as WO in charge of the Rinko gang I had many conversations with KOJIMA during the first week. His constant refrain was that the men must work hard. He stated on several occasions that the men must be treated fairly but like Lieut Yoshida's address was merely a gesture. I distinctly remember pointing out to KOJIMA the incident of H-20709 Pte T JARVIE of the Winnipeg Grenadiers being brutally beaten and kicked less than 20 feet from where we were standing. I asked KOJIMA if this was his idea of fair treatment. He ~~just laughed, turned around and walked away.~~

20. I was only on the Rinko job one week when I was detailed to remain in camp to give full time to my duties as senior PW in the camp. However, while at Rinko I was able to observe the type of brutal treatment that took place there. ~~I was also amazed at the lack of even the most elementary safety precautions which existed at Rinko.~~

21. I was asked by KOJIMA why there were so many accidents among the men. I pointed out that the lack of safety precautions would have led to numerous accidents even if the men had been in perfect physical condition, but that a greater number were inevitable under such conditions when our men were prone to faint or collapse from hunger, sickness and exhaustion.

22. I quickly realised that KOJIMA was a power in the PW administration and I began to see that our rations which consisted almost entirely of rice were increased. I explained on several occasions to both KOJIMA and Lieut YOSHIDA that if the rations were increased and some medicine supplied, the men would be able to do more and better work. I protested that the beatings were brutal, unnecessary anf far too frequent. (I have seen several men receive three or four beatings in one day). I pointed out that the men were not deliberately going slow on the job or making wilful mistakes, but that in their weakened physical condition they were incapable of keeping up the pace demanded by the local bosses. Because the men could not keep up the pace demanded by the bosses, they were beaten. Through these beatings and fear of beatings they became nervous and excitable. Through being forced to exert themselves to their utmost at all times and being mentally confused as well as not always understanding what was required of them, they made mistakes and had accidents. They were then beaten still more and were becoming so terrorised that they were incapable of carrying out the work demanded of them. I pointed out that the situation had become a vicious circle and would continue to grow worse and worse unless changes were made.

23. My efforts to obtain food, medicine and better treatment were fruitless. Both Lieut YOSHIDA and KOJIMA smilingly promised to comply with my requests, but no action was ever taken.

24. At the end of the week of working in the trestles in bare feet, the whole gang of about 80 men was almost completely crippled. Every foot was cut and bruised and many were turning septic. Then, at KOJIMA's orders, the men were issued with straw sandals of the type worn by Japanese coolies when working indoors. These sandals provided almost no protection to the feet and the sharp edges only aggravated the already raw and badly lacerated condition of the men's feet. These sandals are possibly satisfactory for Orientals who are accustomed to wearing them, but to our men they were most awkward and cumbersome. They would frequently fall off when men were pushing the coal cars. When this happened, a man would be beaten by the nearest boss if he stopped to pick them up. A great deal of the time a large number of men would still be barefooted even after the sandals had been supplied. These sandals frequently fell down through the gaps in the trestles and as they could not be recovered until work was stopped, they were often lost. The Japanese would not replace them and would also give the soldier a severe beating for having lost them.

25. This condition of working in bare feet lasted until the middle or end of November at which time those who owned boots were again allowed to wear them. The permission to wear boots was only granted after a number of men were incapable of working due to severe frostbite and the Japanese realized they would soon be without any ~~labourers.~~

~~29. KOJIMA was a most sadistic fanatic and I saw~~ 29
him walking along the trestle obviously gloating over the condition of the men. He turned to me, clenched his fists and teeth and muttered "You are in my power". KOJIMA spoke reasonably good English and conveyed the idea to me that he considered we were merely slaves. He told me that the buildings we were living in ~~were much too good for prisoners of war".~~

27. Around the latter part of October 1943, Major F I FELLOWS, Capt POULIS, Capt PARKER, Lieut BOONE and another Lieut whose name I do not now recall came to our camp with a party of about 200 US prisoners. These American officers took over the internal administration of the camp. ~~At that time I became very ill with Beri Beri and pellagra from which I had been suffering in common with the other prisoners since about September 1942. These two diseases became so bad that I was unable to walk and I remained in camp for about three weeks. I received no treatment or extra rations of any kind, but the rest and almost total abstinence from drinking water caused some improvement. I then returned to Rinko as an ordinary labourer on the orders of Lieut YOSHIDA. This time I only worked for four or five days and was again allowed to remain in quarters as I had received two very bad beatings and my Beri Beri had come back on me worse than ever.~~ 29

28. During the four or five days back at Rinko I worked at carrying two baskets of coal on a pole in the usual coolie manner. Each basket held about 50 pounds of coal, and on the insistence of the bosses were often loaded to as much as 70 pounds in each basket. My job was to carry this up a runway and empty the baskets into a railway coal car.

~~29. The first beating I received was from SATO SAN~~ 29
who was the senior civilian member of the camp staff. He acted in the capacity of S/M in the camp, escorted us to Rinko and often remained to observe us at our work.

30. Around the second day of my return to work which was in early November, 1943, I was in charge of a group of about 60 men for messing purposes, although I was only employed as a labourer on the job. While in the Mess Hall eating our lunch SATO began to beat F-41001 Rfn Leo J BOTTIE who had been reported by his boss as not working hard enough. BOTTIE had been very ill for some time with Beri Beri, dysentery, etc., and was unable to work very hard. I tried to intervene and accidentally pushed SATO down.

31. He sprang to his feet and gave me a terrible beating. He punched me with his fists, knocked me down, kicked me, dragged me to my foot and repeated the whole thing all over. I don't know how long he kept this up as I was dazed for the rest of the day. I was cut and bleeding around the face, my nose was bleeding ~~and I was bruised and sore all over my body.~~ 29

32. The second beating I received was on my last day of this four or five days' work. I had been working at my usual job for several hours in the afternoon, when I passed out as I was struggling up the runway with the load. I fell to the ground and the basket upset. A civilian boss known only as "LIVER LIPS" who was in charge of our party came over and threw water on me to revive me. He then began to beat me with his fists, knocked me down, kicked me in the ribs, attempted to kick me in the testicles, but I forestalled this by doubling up my knees. He finished up by smashing me across the face with the hard wooden stick normally carried by these bosses. This last blow probably broke my nose as

it bled profusely. It was broken either on this occasion or when I first received a beating from SATO. I have had my nose examined since returning to Canada and it shows signs of having been broken within the last three years. This blow on the nose knocked me out and I was unconscious at least a half hour. I had to be assisted back to camp.

33. I was off work suffering with Beri Beri for several months and also developed amoebic dysentery. I alternated between the Sick Bay and the Isolation Ward until June 1944. The Isolation Ward was little more than a latrine with sleeping space.

34. ~~While in hospital I was treated by Major W M~~ STEWART, RAMC, who had only a most meagre store of medicine. While there I was examined by Dr FUJI who was the Medical Officer from the Tokyo PW Administration and who made periodical tours of inspection of various camps. He gave orders to the Japanese medical personnel that on being discharged from hospital I was to be retained in camp on light duty. I was informed of this order by Major STEWART.

35. I had only been discharged from hospital for about six weeks when I was again sent out to Rinko. This was on the insistence of the Japanese Medical Sgt TAKAHASHI and over all objections of Major STEWART.

36. I worked at Rinko most of September, 1944, during which time I was employed shovelling coal and carrying it in baskets.

37. I noticed that conditions were not as severe as they had been during my previous tours, but that beatings were still common and brutal. I worked for about three weeks when I was ordered to remain in camp pending a move to SHINAGAWA HOSPITAL and remained there as Ration Accountant until 14 November, 1944.

38. I remember while I was confined to camp on the sick list early in January, 1944, an incident concerning the same Rfn BOTTIE I previously referred to. BOTTIE had also been excused work and ordered to remain in quarters by the Japanese Medical NCO on the advice of Major STEWART. Some time during the morning I saw a Japanese guard who normally escorted us to work come into the hut and force BOTTIE to get on his clothes and took him off to the job. That evening when the Rinko party returned from work, BOTTIE was half carried into camp. He showed every sign of having received a terrific beating. I was informed by a number of the men that SATO had given it to him when he collapsed at work. BOTTIE ~~died a few days later.~~

39. Although I did not spend much time at Rinko, I was in a position to know a great deal of what went on there as well as in the camp. The men had to report to me in order to go on sick parade. I then had to parade these men, usually to SATO, in order to obtain permission to take them to the MIR.

40. Time aftertime I have seen SATO beat these men in a most inhuman manner for reporting sick. I have seen him kick and stamp on the bare feet of men reporting with feet so swollen with Beri Beri and other causes that they could hardly stand up.

41. Due to this treatment the men who were sick would often prefer to try and work rather than be subjected to almost certain beating and brutality. Then when at work they would usually be badly beaten because they could not do what the Japanese considered to be the normal day's work.

42. Under these conditions I know the following men died:-

~~[illegible]~~	~~Rfn~~	~~[illegible], Frederick~~
[illegible]-44596	Rfn	GIBBONS, Harold E
E-30545	Rfn	KNAPP, William AG
E-30027	Rfn	MacNAUGHTON, Alden.
E-17046	Sgt	MARTIN, James
~~[illegible]~~	~~Cpl~~	~~PHILLIPS, Edward~~
[illegible]-68222	Pte	SNEDDEN, Jack G
~~[illegible]~~	~~Cpl~~	~~SIVERT, David~~
H-6626	Pte	McLAUGHLIN, George R
~~[illegible]~~	~~Pte~~	~~[illegible], Bertrand G~~
H-[illegible]833	Pte	ROUSELL, Leo
H-6057	L/Sgt	RUTHERFORD, Archibald R
L-22333	Pte	WATSON, Richard H
H-41770	Pte	YOUNG, Lewis E

43. My length of time at Rinko did not give me the opportunity of becoming fully acquainted with all the civilian bosses. I did hear considerable about them from the men over a long period, but my only first hand knowledge concerns KOJIMA, "LIVER LIPS" and DOMBA SAN. KOJIMA was about 5'5" tall, weighed about 125-130 pounds, was around 55 years of age, but I might state that ages of Japanese are most difficult to estimate. He wore a long carefully trimmed beard which was of almost a bluish colour shot with gray. This was the origin of his nicknames "WHISKERS" and "RASPUTAN". I never saw or hear of KOJIMA taking part in a beating, but he and Lieut YOSHIDA encouraged and condoned the conditions which led to the deaths I have referred to.

44. "LIVER LIPS", whose proper name I do not know, was a civilian boss at Rinko. He gave me my second beating which I have described. He was about 5'7" tall, weighed around 150 pounds, was about 42 years old. He had a dark swarthy complexion, had a loose thick-lipped mouth, several gold teeth in front and I believe he had a scar or groove running down from one cheek bone. Besides beating me, I have seen him beating many others, but I cannot now recall any specific instances.

45. DOMBA SAN was a big husky man, rather shortly in appearance and invariably wore a bowler hat. He was about 5'9" tall, weighed around 175 pounds. He told me he was 45 years of ~~age. He had a fresh complexion and a deep, rumbling voice which~~

[redacted] and continuously prodded the men to the utmost limits of their endurance. He inflicted many brutal beatings on those unable to keep up the pace. The only person I can now recall who received a brutal beating from him was H-6706 Pte T A McBRIDE of the Winnipeg Grenadiers. McBRIDE received this beating because he was unable to keep up with the work through having boils all over his arms and body.

46. There were about ten other civilian bosses who were equally brutal and whom I have seen administering beatings, but at this time I cannot recall their names.

47. Lieut YOSHIDA remained as our Camp Commandant until around 15 February, 1944. Some time around November, 1943, he gave me a picture of himself which had been taken two days previously and is a remarkably good likeness of him. I produce this picture as Exhibit "X" to this my affidavit. I received this picture from Lieut YOSHIDA because he had taken from me a picture of my family. At first I almost tore it up, but then decided to keep it as I felt it might be useful.

48. Lieut YOSHIDA was about 5'8" tall, weighed around 145 pounds, was about 24 years of age. He told me he had been trained in a German Military College. He was a very vain man and strutted around in well-kept uniforms. His manner was arrogant and condescending. He was drunk on numerous occasions.

49. Lieut YOSHIDA was succeeded by a Lieut who referred to himself as a Sub-Lieut in the Army. I cannot recall his name. He was about 5'6" tall, weighed 125 pounds. He was about 33 years of age, wore horn rimmed glasses. He had a quiet manner and we did not see him often. This Commandant effected some slight improvements in our camp life and working conditions, increased our rations slightly and under him the sick were given more consideration. He only remained about two or three months and I can not attribute any atrocities or ill treatment to this Commandant. However, the conditions concerning food, medicine and treatment still left a great deal to be desired.

50. The third Camp Commandant was about 5'7" tall, weighed around 135-140 pounds, was about 28 - 30 years of age. He was a Lieutenant of the Army. He wore light rimmed glasses. He was a distinguished looking soldier and I know of nothing in the nature of atrocities during his tenure of office. Under him conditions showed a further improvement. He made us lay out gardens on the understanding that we would have the produce. We did, in fact, get some of the vegetables.

51. The fourth and last Commandant was Sub-Lieut KATO of the Japanese Army. He came about September 1944 and was still in command when I left on 14 November, 1944. We understood KATO had come to investigate and correct the conditions in our camp on the orders of the Tokyo PW administration. He had formerly been at Omori Headquarters Camp in Tokyo.

52. KATO was about 5'6" tall, weighed around 140 pounds, had a fair complexion, wore dark rimmed glasses and was very athletic. He was around 35 years of age. On his first day in camp we were paraded before him and he gave a speech. During the speech 3-30470 Pte M O CAHON bent down to brush the flies off an open sore on his leg. KATO, on seeing this, jumped down from his platform and using his sword as a club, he knocked

DAMN down! He then kicked him several times. He was in a towering rage when he resumed his speech and in quite fluent English he promised to kill with his own sword any man who broke the camp regulations. His whole idea seemed to be to terrorise us on the first day. However, under KATO, conditions improved considerably. The days work hours were shortened by one hour and he ordered the civilian bosses to give us a holiday one day in every two weeks. Rations increased slightly and we received more and a wider variety of fresh vegetables. We also received more frequent issues of meat and fish, although the quantities were very small. Deaths since YOSHIDA's departure had almost stopped.

53. On one occasion we were all assembled in a hut for a concert which had been authorised by KATO. For some reason which I can only attribute to his desire to show his authority, he ordered a roll call during the concert and we began to move outside. However, it wasn't fast enough to satisfy KATO and he flew into a rage. He began striking out with his scabbarded sword at everyone who passed through the door. He swung at me and I ducked, but he hit H-6706 Pte A McBRIDE on the elbow and shattered the bones. Many others were badly hurt.

54. Members of the Camp staff who, by their brutality, contributed to the conditions which lead to many deaths were - SATO, ITO, KUDO and TAKAHASHI.

55. SATO was an ex-soldier and was the senior civilian guard at 5B when we arrived. He seemed to act in the capacity of a camp sergeant-major and also as liaison man between the camp military authorities and the civilian employers. He also was in charge of and handled the administrative details of the party which went to work at Rinko. On arrival at Rinko he would, in the absence of KOJIMA, frequently detail us to our work. He would remain at Rinko on occasions and would return for periodic visits during the day. I believe he went over to Camp 15D which handled the work for Shintetsu around February, 1944. SATO was known by the nickname "SATAN". He was about 5'6" tall, weighed around 135 pounds, was well developed and muscular. He was clean cut and soldierly in appearance and wore a Japanese decoration on his right breast. He dressed in the regular Japanese Army uniform, including boots and puttees and wore a distinguishing arm band. The band was white and had a Japanese character on it which closely resembled the figure 7. I understood this to be the official insignia of civilians having the custody of administration of PW. He was probably around 35 years of age. Besides the vicious beating SATO gave me, I have seen him beat others.

56. On one occasion I saw him beat H-17046 Sgt Jim MARTIN of the Royal Rifles of Canada around early October, 1943. I had paraded Sgt MARTIN to SATO as MARTIN's feet and legs had swollen so badly from beri beri that he could not put on his boots and was barely able to drag himself out to report. SATO was infuriated because MARTIN reported sick and he immediately stamped on his bare feet with his hob-nailed boots. He punched MARTIN in the face, knocked him down, kicked him the the body most brutally at least a dozen times, and after having kicked him into insensibility, SATO ordered me to help MARTIN back to his bed. I protested to SATO and attempted to stop his beating of MARTIN, but without the slightest success. MARTIN was only allowed off work for a few days when he was forced by SATO to go out again. He never got strength back and died early in the New Year.

~~57. On another occasion within a few days of Sgt~~ MARTIN's beating, I saw a soldier whom we called "Pop" POIRIER, and who I believe is E-30366 Rfn L J. POIRIER of the Royal Rifles, similarly maltreated by SATO. POIRIER had also been paraded sick by me. As well as giving POIRIER a severe beating with his fists, SATO hit him over the head with a heavy stick and used both his hands to wield this stick. POIRIER was knocked unconscious and the top of his head was laid open for several inches. POIRIER, being bald, this cut was plainly visible. I had to have POIRIER carried back to the hut, but he was not given any medical attention by the Japanese.

58. E-29079 Rfn D SYVRET was also beaten most brutally by SATO for collapsing on parade. SATO had just previously refused to allow SYVRET to remain off work and was apparently infuriated by SYVRET fainting. He kicked and beat SYVRET for about five minutes and rendered him completely unconscious. We carried him back to his quarters after the work party had marched off. SYVRET was forced out to work a few days later, although still very ill. His mind began to weaken and he died on 30 January 1944.

59. These are only three of too many instances to list or remember specifically wherein SATO showed himself to be a fiendish brute beyond belief and absolutely callous towards any human suffering.

60. ITO was a Sgt of the Japanese Army and acted as Secretary to Lieut YOSHIDA. He also kept the records of working party strengths for the Japanese. He was about 5'8" tall, heavy set and muscular, weighing about 155 pounds. He wore dark rimmed glasses. I would estimate his age at about 36 years. I have never seen ITO inflict anything more serious than slappings, but he was, to a considerable extent, responsible for a great number of beatings inflicted by SATO, KUDO and other work party bosses. He instructed thw work party bosses that the maximum number of men must go to the job each day and on sick parades would instruct the bosses that men could not be excused work. He encouraged and condoned the methods used by the bosses to ensure a maximum attendance at work. He was a well-educated man and was constantly humming tunes from operas. I cannot state that his desire to maintain large work parties was his or Lieut YOSHIDA's idea, but in any case he certainly did so with enthusiasm and what appeared to be a morbid delight. He is certainly partially responsible and to some extent guilty of causing numerous Canadian deaths.

61. KUDO had a position somewhat similar to SATO, but was inferior in rank or standing. He was in charge of the party which worked at Shintetsu. He was referred to by many nicknames, among which were "LITTLE CAESAR" "SLAP HAPPY" "SHORT STOP" "THE WEE" and alternative spellings such as OKUDA, CUTO, CUTO SAN. I did not have a great deal to do with this man, but I saw him around camp and with his work party on many occasions. He was about 5' tall, weighed around 140 pounds, seemed to be about 28 years of age and extremely muscular.

62. I remember one incident about KUDA which took place early in December, 1943. I was passing the small room used as a Sick Bay in one building and saw KUDO beating, punching and kicking several sick men to get them out to work. I could not linger to see the full event, but I did see that his actions were ~~most vicious.~~

63. ~~As senior Canadian PW, I received many reports~~ concerning his treatment from members of his work party and I repeatedly brought this to the attention of Lieut YOSHIDA and later on to the attention of Major FELLOWS in an effort to curb the brutality of this man. However, Lieut YOSHIDA turned a deaf ear as he always did to any such entreaties.

64. I have seen KUDO beating members of his work party on numerous occasions prior to taking them out to work. As these parades were in the early morning before sun rise, I could not see which individual soldiers were beaten. However, I saw the results of those beatings on occasions too numbrous to list and my impression is that KUDO was even worse, if that is possible, than SATO. He is certainly responsible for the deaths of many Canadians.

65. TAKAHASHI was a Sgt of the Japanese army and was at various times in charge of the Sick Bay. He exercised supervision over all medical matters and his decision as to a man's fitness for work was nearly always final even after the arrival of Major STEWART. I know of cases where men have been excused work by the Japanese Medical Officer who was nominally in charge at the camp, but who was frequently absent and by Dr FUJI, the Inspecting Medical Officer from Tokyo. Those men were often booted out of the hospital by TAKAHASHI and ordered to go to work as soon as these two Japanese Doctors had left. TAKAHASHI appeared to have much confidence in Major STEWART's ability as a Medical Officer, but would frequently ignore his recommendations to excuse men from work as he did in my own case.

66. TAKAHASHI was about 5'7" tall, weighed about 145 lbs, was around 26 years of age. He had very black hair, a swarthy complexion and wore dark rimmed glasses. I cannot recall the names of any men who were forced by him to go out to work and who died as a result, but I am sure that if TAKAHASHI had shown any consideration, a number of men would not have died.

67. One of the worst cases of death and torture was that of B-41307 Rfn James MORTIMER. MORTIMER and B-41908 Rfn H A SMITH were accused of stealing Red Cross food which the Japanese had stored away. This happened some time late in October or early November, 1943. I saw MORTIMER and SMITH tied to posts by the camp gate. They wore only a pair of light slacks each and no other clothing. The weather was around freezing temperature. They remained tied up for about two full days and were finally released. I was sick with Beri Beri and remained in camp at the time. They received neither food nor water and were not even allowed to go to the latrine. I was told by both SMITH and MORTIMER that when untied and taken to the guard room they had been offered food. However, being almost frozen and very weak, they were unable to eat. This infuriated the guards who gave them severe beatings. I was informed by the Japanese Interpreter, SHIGA, that they had been tied up for stealing Red Cross food, but he did not state who had issued the order. However, I assumed that it was on Lieut YOSHIDA's orders and I know he saw them while they were tied up, as he passed in and out of the gate on several occasions while they were tied.

68. Around the end of January, 1944, while I was in the Isolation Sick Bay, I could look out the window and see MORTIMER again tied up at the gate. On this occasion he was accom~~panied by an American soldier named TIMMAN and whom I believe to be~~

~~Pvt TITMAN, Gerald K, [illegible] No 1[illegible] of the 31 Infantry Division,~~ US Army. This time there was snow on the ground and the temperature was well below freezing. They were dressed only in slacks. I noticed after three days that TITMAN was no longer tied up and was later informed that he had died. MORTIMER remained at his post for six days. I never saw him moved during that time. A couple of weeks later I was moved to the Sick Bay where MORTIMER was confined. His feet had been terribly frozen and at the time I saw him gangrene was far advanced. The stench from this gangrene was almost overpowering. I was informed by Chief Pharmacist's Mate Dixon of the USN who was senior medical orderly in the Sick Bay that MORTIMER could not possibly survive. I spoke to MORTIMER on various occasions until he died on 7 March 1944. He stated that he had remained at the post without being moved for the entire six days. His last words to me and within a half hour of his death were that he had not stolen the Red Cross food for which he was punished. I regret that I never obtained a formal or last statement from MORTIMER as to the exact manner in which he came to receive this torturous punishment, but I am sure that it must have been on the orders of Lieut YOSHIDA who was Camp Commandant at that time.

69. On 1 January 1944 at about 0100 to 0200 hours, the neighbouring hut to the one in which I was quartered, collapsed. There were eight Canadian soldiers killed and about a dozen injured, some quite seriously. The men killed were -

E-29903	Sgt	SAUSON, L
B-95056	S/Sgt	SWORD, D L
F-42667	Rfn	JACQUARD, A J
H-6848	Pte	COLVIN, F J
H-6384	Pte	FUREY, J
H-6483	Pte	JONES, H B
H-6269	Pte	OLAFSON, B P
E-30555	Rfn	MAZEROLLE, E

70. This hut was of very flimsy construction with an extremely heavy tiled roof. It was built on sand and the uprights were only driven a couple of feet into the ground. There was no floor in the hut to add strength to the building and it was constructed with the minimum of bracing material. There was a strong wind blowing at the time of the collapse, but not sufficient to effect a reasonably constructed building. I happened to speak to KOJIMA a few days after the collapse of the hut and he was rather smug. He stated that if the hut had been built by Rinko, it would not have collapsed. From this I gathered the hut had been erected by or on directions from the Japanese Army.

71. I have described the first building or camp in which we were quartered on our arrival at Niigata. We moved from this camp to a new location some four miles distance and still on the outskirts of Niigata. This camp consisted of four main sleeping huts for prisoners and administrative buildings and was all entirely new. It was not even quite completed when we moved in on 24 December, 1943. It was the first of these sleeping huts ~~and designated Number 1 which collapsed.~~

72. Shortly after the collapse of the hut we were moved back and occupied the building which stood beside the building we had first occupied on our arrival at Niigata. At the same time as we moved to this third camp, our work gang which was employed at Shintetsu was detached to form a new camp closer to the Foundry. This became known as 15D.

73. About the last week in March, 1944, we moved back to the hutted camp where the huts had been reinforced by additional props and strengthened considerably. The PsW remained in this location until I left in November, 1944, and I understand they made no further moves until liberated.

74. After the collapse of the hut and our move to the building beside the building we had first occupied at Niigata, we were visited by Colonel SAZUKI from Tokyo. Colonel SAZUKI was the senior official of the Tokyo PW administration. Our camp at Niigata was under this administration. Colonel Sazuki addressed all the assembled PsW and the substance of his address which was made in Japanese and interpreted by SHIGA was as follows. "You are prisoners of the Imperial Japanese Army and as such you must work until you die. Although conditions are bad for you, you could expect nothing better as the war is of your making." From his speech I understood that his only concern was the efficient administration of the camp from the Japanese point of view and that he was not interested in the least in the welfare of the prisoners.

75. At Niigata we received even less food than we had at Sham Shui Po. Our daily allowance of rice would not half fill a Canadian mess tin. We would also receive about five or six ounces of so-called greens which were the leafy tops of various vegetables. This was divided into three meals and was our normal diet. On occasions we received a four ounce loaf of bread per man, but when this happened we received no rice for that meal. We seldom received bread more often than once in six weeks. The occasions when we received fish or meat were so rare that they are not worth mentioning.

76. I helped unload 48 individual British Red Cross parcels together with a quantity of medicine in November, 1943. We never saw these parcels after they were taken into the store room nor did we receive any of the contents. We did receive a small portion of the medical supplies for use in the Sick Bay. I did notice empty tins from the Red Cross parcels in the Japanese refuse dump and I have seen various members of the Japanese Army Camp Staff eating chocolate which had obviously come from these Red Cross parcels.

77. Sanitary conditions were always most deplorable and contributed in no small degree to the widespread prevalence of dysentry and diarrhoea, which were contributing factors to our high death rate.

78. Most of the winter of 1943-1944 our water pumps were frozen and water had to be brought into the camp in limited quantities for cooking purposes only. In order to clean our dishes we had to use snow. We could not bathe and quickly became covered with vermin and broke out in sores brought on by these conditions.

79. During the last months of 1943 it rained almost continuously with a great deal of sleet. We were forced to go to work in this weather without any protection whatsoever. On our return to camp, wet and chilled to the bone, we had no means of drying our clothes or becoming warm as fires were strictly prohibited on Lieut YOSHIDA's orders. Men were forced to go out daily in cold, wet clothes as none had a change of clothing. This treatment, together with the poor food led to many cases of pneumonia and subsequent deaths.

80. On the arrival of the American party around the end of October, 1943, they were quartered in the wing of our building which had not been completed. The roof of this wing was not finished in the same manner as the roof on our portion in that the usual tiles had not been put on and the roof was only partly shingled. The roof leaked very badly in numerous places and one portion of this wing was known as "Death Corner" because of the fact that nine American soldiers had caught pneumonia and died from being quartered in that portion of the hut. Due to the almost incessant rain dripping through the roof intthis portion of the building, the floor, straw and bedding on which the men slept was never dry. Regardless of this, the men had to sleep there due to the dreadful overcrowding in the building. When a soldier went down with pneumonia and was moved to the Sick Bay, another soldier was moved in to take his place on the orders of the Japanese staff. The nine soldiers who died from pneumonia contracted while sleeping in this corner, died over the period from 28 October to 20 December, 1943. The portion of the building occupied by the Americans was without doors or windows for about two months after their arrival and I have seen snow drifting into the places where they slept. I have also seen men lying in their quarters too ill to work and snow drifting over them. No heat of any kind was ever allowed.

81. Hereunto annexed to this my affidavit and marked Exhibit "Y" is a photostatic copy of the official "Death Record" of Hiinata Camp where I was confined as a PW. I am familiar with most of the entries in the said record, some of which were made under my direction during the time when I was the senior PW in the camp. I personally wrote on the outside cover of this record, when it was in my possession in Hiinata, the following words "This Book To Be Returned Without Fail To Major Stewart Tent No 6 Row 2". I would like to emphasize that although these records of death indicate the cause of death as from dysentry, pneumonia, beri beri and other natural causes, they do not reflect the true picture. I have already pointed out the real contributing causes of these deaths and the circumstances surrounding many of them. The cause of death herein stated is purely the ultimate cause from the physician's point of view and having been made while in captivity naturally could not give a case history of all contributing factors.

This affidavit of the deponent, Victor Joseph MYATT, consisting of this and the thirteen preceding pages, each signed by the deponent and by me, was sworn before me at the City of Ottawa this 12th day of February, 1946.

/s/ John D. C. Boland
A Notary Public in and for the Province of Ontario.

/s/ Victor J. Myatt
(F-38163 CM S (WO II) MYATT, V J)
Corps of Military Staff Clerks

Certified true copy of an original documents compared by me and certified this 4th day of May, 1946 at the City of Tokyo, Japan.

J. D. C. Boland
(J.D.C. Boland) Capt.
Member of Canadian War Crimes Liaison Detachment.

THE [illegible]
[illegible] TO BE [illegible]
WITHOUT FAIL TO MAI[illegible]
STEWART'S TENT No [illegible] I

DEATH RECORD

Prosecution's Exh. No. 1

Recorded death of Chris
of [illegible] number 5
[illegible]

1. HARRISON, Edmon Cameron. RFM.- Camp No 189
NATIONALITY - Canadian. A.S.N. E29882 - R.R.C.
DATE OF Death - September 9, 1943.
Relation - Mrs Isabel Harrison (mother)
BURY, Quebec Canada.
DIAGNOSIS - Amoebic Dysentry.

2. BENWELL, Marren [redacted] - Camp No 134
NATIONALITY - Canadian. [redacted] - R.R.C.
RELATION - Mrs Marg[redacted] (mother)
Port DANIEL, QUEBEC, CANADA.
DATE OF DEATH. September 10, 1943
DIAGNOSIS - Dysentry.

3. MALONEY, Joseph Eddie R.F.M. Camp No 46
NATIONALITY - CANADIAN - ASN-E29882 - R.R.C.
RELATION.- Mrs Peter John MALONEY (father)
Gaspy, QUEBEC - CANADA.
DATE-OF-Death. September 14, 1943
DIAGNOSIS: Dysentry.

4. CHANELL, Albert Joseph. R.F.M. Camp No 122
NATIONALITY - CANADIAN - ASN. E30292 - R.R.C
RELATION - Mrs CHANELL (mother)
ENTRY-ISLAND, Quebec, CANADA.
DATE-OF-DEATH. September 26, 1943.
DIAGNOSIS: [illegible]

[illegible] (mother)
[illegible] Canada
[illegible] Dys[illegible]

[illegible] U.S. R.C.
[illegible] Sgd. Camp No 53[illegible]
[illegible] (mother)
[illegible]
DATE-OF-[illegible]
DIAGNOSIS: [illegible]

7. LORIE, William Frederick. S/Mjr. Dutch Navy
N.S.N. ST-7358 - Submarine Service RNN
Relation — ? Mrs Marie Hendrika Loeb [illegible] Telatieweg Soerabaia. Del
Date OF Death - Oct 30, 1943.
DIAGNOSIS: Pneumonia.
CAMP. NO. 152 - NATIONALITY - DUTCH.

MacR[illegible] Al[illegible] Camp No 67.
[illegible]

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9. COLLETON, William Edward [illegible]
NATIONALITY - Canadian. ASN. E 30039.
RELATION - (Mot[illegible] Mrs Marion FINDLEY [illegible]
MATA Pedia. Quebec - CANADA
DATE OF - DEATH. Nov 2, 1943
DIAGNOSIS: Pneumonia ✓

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10. LAWERENCE, Alonzo. L. S/sgt. Camp No. 577
NATIONALITY - AMERICAN. A.S.No. 6642312 - U.S.A.C.
Relation - Mrs B.L. MacArthur
637 West-Leslie-Drive
ATLANTA, Georgia.
Date - OF - Death -
November 6, 1943.
DIAGNOSIS: Pneumonia

[illegible] (mother)
[illegible]

3. RAY, Irvin R. R.F.M. Camp [illegible]
Nationality - Canadian Service No. F-[illegible]
Relation - Mr Joseph RAY
St. Marys River.
Nova-Scotia Canada
Date-of-Death - November [illegible], 1943.
Diagnosis - Pneumonia

4 SARTY - Perry K. R.F.M. Camp [illegible]
Nationality - Canadian - Service No. F-4075[illegible]
Relation - Mother Mrs Aaron Sarty
Liverpool - Nova Scotia - Canada
Date of Death - November 15, 1943
Diagnosis - Pneumonia.

BALAKAS, Victor D. - [illegible]
Nationality - AMERICAN. Service No.
Relation - (Mother) Mrs Amelia BALAKAS.
South - 49th COURT
[illegible] ILLINOIS. U.S.A.
[illegible] 1943.

VISSER, Geert - Dutch. NSN - CAMP No. 297
Nationality - Dutch.
Relation - (Wife) Mr. C.P. V[illegible]

[illegible] Camp No. [illegible]
NATIONALITY - [illegible] Service No E-299[illegible] RRC
Relation - (Mother) Mrs Denora HALEY - (mother)
[illegible] Tapetia, Quebec. Canada
Date of Death - 21/11/43 -
Cause - Dysentery - Beri Beri

KNAPP, William. L/cpl. R.R.C. CAMP-NO-#48
NATIONALITY - CANADIAN A.S.N. E30545 R.R.C.
Relation - Miss Vivian Tremaine (Guardian)
#46 SAUNDERS St.
Quebec, Canada
Date Of Death. November 22, 1943
Cause - Pneumonia

BREEN, Frederic, Cpl. RRC. [illegible]
NATIONALITY - CANADIAN A.S. No. E-30299 R.R.C.
Relation - (Wife) (Mrs Frederic Breen (wife)
44A Prospect Ave
19 Berl-Berl KIRKLAND LANE. Cause -
ONTARIO, CANADA. Berl-Berl
DATE OF DEATH NOV. 22, 1943

20 HUNTER, Stanley H. Cpl. (W-Gdns) No. 128
NATIONALITY - CANADIAN. - A.S. No. H 65-69 W. Gdns
Relation - HAMILTON J. HUNTER (Father)
Apt. [illegible] - Apts

NATIONALITY - [illegible] A.S. No H.17707 W.G.
Relation - M[illegible] H. B. EVANS.
VASSAR, MANITOBA - CANADA
DATE OF DEATH - NOV. 23rd 1943
Cause - Pneumonia

22 ROBERTSON, GILBERT ALLAN PTE. (W.G) CAMP No 247
NATIONALITY :- CANADIAN. A.S. No H-41703
RELATION :- MRS. P.J. ROBERTSON (Mother)
MAFEKING
MANITOBA
CANADA
DATE OF DEATH :- NOV. 29th 1943
Cause [illegible]

3 CHARUK, NICK, J. L/Cpl (W.G.)
NATIONALITY :- CANADIAN A.S. No. H 6557
RELATION :- MRS. SOPHIE CHARUK
TINY
SASKATCHEWAN

INGALLS, KIETH CAMPBELL, Cpl. (R.R.C.) CAMP No. 94
NATIONALITY :- CANADIAN A.S. No. E 29133
RELATION :- MRS MARION INGALLS (MOTHER)
123

(MOTHER)
CANADA

CAMP No. 420
3458

DATE

[illegible]LSHEIM, MARCUS G. PTE. 1 CLASS
NATIONALITY:- AMERICAN A.S. No. 2[illegible]
RELATION:- EDWARD J. FELSHEIM (FATHER)
600 No. LONG BEACH BLVD.
[illegible], CALIFORNIA
DEATH: DEC. 4TH 1943
[illegible]

[illegible]DAN, MICHAEL PTE. (IV.[illegible] CAMP No. 253
NATIONALITY:- CANADIAN A.S. No. H 41718
RELATION:- MRS. M. ZEDAN, (WIFE)
A[illegible]

CAMP No. 2[illegible]
No. H 6279
[illegible] TAGGART (MOTHER)
[illegible]TAGE
[illegible] LA PRAIRIE,
MANITOBA, CANADA
DATE OF DEATH:- DEC. 5TH 1943
CAUSE:- PNEUMONIA

HOLIDAY, [illegible] G. PTE 1ST CLASS U.S.M.C.
CAMP No. 309
NATIONALITY [illegible]N (NO SERIAL NUMBER)
RELATION:- MRS. U.S. HOLIDAY (MOTHER)
BOX 29
WISHTUCNA, WASHINGTON
DATE OF DEATH: DEC. 5TH 1943

3 SMITH, NORMAN. H. RFN. (R.R.C.)
NATIONALITY:- CANADIAN. A.S. No.
RELATION :- MR. T.A. SMITH, FATHER
CLAYTON,
ONTARIO, CANADA.
DATE OF DEATH:- DEC. 9TH 1943 ✓
CAUSE - BEAT BERI

4 BRINNING, WILLIAM. S. PTE. (U.S.A.) CAMP NO. 550
NATIONALITY:- AMERICAN A.S. No. 6935962
RELATION:- MRS. GRACE BROWN (MOTHER)
714 W. AVE. "B"
WASHINGTON

1 RUTHERFORD, [illegible] (W.G.) CAMP NO. [illegible]
NATIONALITY:- CANADIAN A.S. No. H 6057
RELATION:- MRS. HOLLIS RUTHERFORD
81 BRUNSWICK ST.
TRURO,
NOVA SCOTIA - CANADA
DATE OF DEATH:- DEC. 5TH/43 ✓
CAUSE:- DYSENTERY. DEBILITY

2 BAKER, GUY. PTE. (U.S.A.) CAMP NO. 532
NATIONALITY:- AMERICAN A.S. No. 16017846
RELATION:- WILLIE BAKER (BROTHER)
VIRDEN,
ILLINOIS. U.S.A.
DATE OF DEATH:- DEC. 8TH 1943
CAUSE:- DIPHTHERIA.

[illegible]ERICAN
[illegible]ATION :- MRS. SU[illegible]
320

[illegible] OF DE[illegible]
[illegible]
[illegible]LIN
[illegible]

NAT[illegible]LIN :- CAN[illegible] A.S. NO. E30244
[illegible]TION :- MRS. [illegible] PHILLIPS (WIFE)
SAW[illegible]RVILLE
QUEBEC, CANADA.
DATE OF DEATH :- DEC. 21ST 1943
DIAGNOSIS :- LOBAR PNEUMONIA.

HEUFT ERNEST. PVT (W.G.) Camp No :- 238
DATE of DEATH :- 23rd DEC 1943 - H 6254.
NAT. :- CANADIAN.
MR. ERNEST L. H[illegible] (FATHER)
473 WARSHAW AVE. WINNIPEG. MANITOBA CAN.
DIAGNOSIS :- CHRONIC DYSENTERY

DATE [illegible] 2.9 19[illegible]

[illegible] LUCIAN TAYLOR (MUTH[illegible]) ✓

EAST ANGUS [illegible] BOX 145 [illegible] QUEBEC CANADA.

CAUSE of DEATH [illegible]

[illegible] MAZEROLLE [illegible] B — [illegible] Rfm RRC

[illegible] JANUARY 1944

MAR BEN MAZEROLLE ([illegible])

PETERSVILLE - KENT COUNTY - [illegible] BRUNSWICK CANADA.

CAUSE of DEATH — MULTIPLE INJURIES (accidental)

[illegible] JACQUARD JOHN A — [illegible] Rfm RRC.

[illegible] ✓

[illegible] HARDING [illegible] 1919 Rfm RRC

DATE of DEATH [illegible] ✓

[illegible]

[illegible] MASSACHUSETTS

USA.

DISCHARGED [illegible] RECOMMENDED [illegible]

[illegible] SWORD DAVID L - B95056 [illegible] SGT
1st JANUARY 19[illegible]
Mrs DAVID L SWORD (wife)
80 ADAMS AVE TORONTO ONTARIO - CANADA.
Cause - MULTIPLE INJURIES (Accidental)

K147 SAUSON [illegible] - E29906 SGT RRC
1st JAN. 19[illegible]
Mr EDWARD SAUSON [illegible]
CHICAWAKE CO - BONAVENTURE QUEBEC CANADA
Cause - MULTIPLE INJURIES (ACCIDENTAL).

[illegible] GALVIN FREDERICK J - H [illegible] W GREN.
[illegible] 19[illegible]

---

169 - FUREY [illegible] - H 6584 PTE W GRENS
1st JANUARY 1944
Mr JAMES [illegible]
SYDNEY MANITOBA CANADA.
Cause - MULTIPLE INJURIES - (ACCIDENTAL)

170 - JONES HAROLD B - H 6488 PTE W. GRENS
1st JAN 1944
Mrs M.L. JONES (MOTHER)
328 REDWOOD AVE WINNIPEG MANITOBA - CANADA
Cause - MULTIPLE INJURIES - (accidental)

185 OLAFSON BUDUAR P - H 6869 PTE W. GRENS
1st JAN. 1944
Mr JOHN OLAFSON (FATHER)
150 ROYAL ROAD - PORTAGE - LA PRAIRIE - MANITOBA CANADA
Cause - MULTIPLE INJURIES [illegible]

[redacted]

3 #519 F[redacted]

[redacted] JANUARY 1944

MRS RUBY FELLOM (mother)

[redacted] DRIVE - BURLINGAME - CALIFORNIA

[redacted] BRI

[redacted] L 2[redacted]88 . Pte W GRENS

[redacted] JANUARY 1944

[redacted] 3[redacted]

VANT[redacted]

[redacted] - PNEU[redacted]

[redacted] RRC.

[redacted] CANA[redacted]

[redacted]

[redacted] H #21 Pte W. GRENS.

[redacted]

CAUSE - [redacted]

#5 [redacted] RRC 39

[redacted] JAN 1944

Mrs. IRENE GIBBONS [redacted]

OWEN SOUND - [redacted] ONTARIO CANADA

CAUSE - GENERAL [redacted] (Dep)

#304 REEVES [redacted] 39 CWT. USN.

2nd JANUARY 1944

Mrs. EDITH BISHOP (SISTER)

LEBANON - OHIO.

CAUSE [redacted]

[illegible] D - [illegible]

14th January 1944

Mrs Rosa Juarez (mother)

Clarke Dam, Arizona

Cause - Dementia Praecox

#597 - Waldman Arthur - 36106797 [illegible] 2nd CA (AA)

17th January 1944

Mrs Irma Waldman

[illegible] Virginia Park Detroit [illegible]

Cause - [illegible]

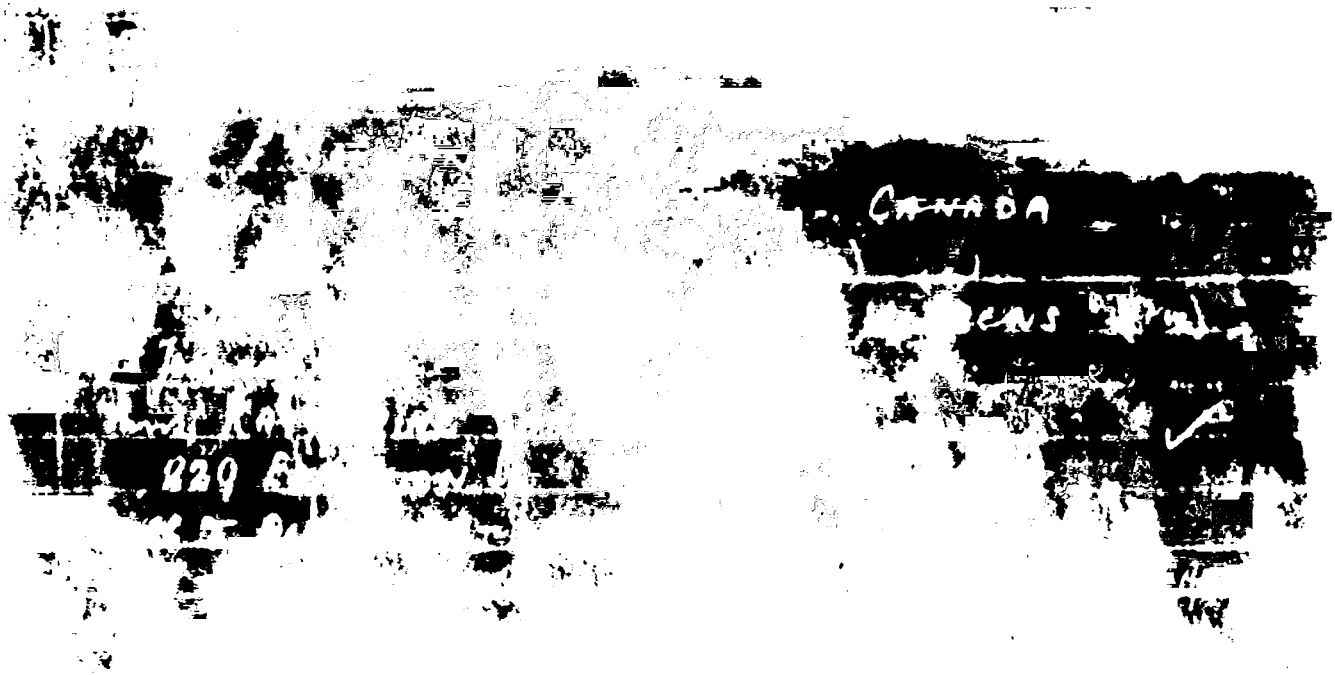
#496 Reed Albert E - [illegible] Pvt [illegible] U.S. Army

17th January 1944

Mrs [illegible] Reed (mother)

625 Jefferson Street [illegible] Texas

Cause - Dementia Praecox


CANADA

65 * 103 GIESE WAL[illegible] [illegible]
27 JANUARY
[illegible] GIESE (mother)
LIND - WASHINGTON [illegible]

66 * 108 SYVRET - DAVID - 29879 Rfm - RRC
30th JANUARY 1944
[illegible] ALFRED SYVRET father [illegible] at SHINTETSU
BELLE ANCE [illegible] CANADA
Cause - PNEUMONIA [illegible]

67. * 193 WATERHOUSE WILLIAM [illegible] - £30759 [illegible] RRC
31st JANUARY 1944
[illegible] VICTORIA WATERHOUSE (mother)
MEL[illegible]

[illegible] SHINTETSU
[illegible]

71 [illegible]

[illegible]

[illegible]

[illegible] SNEAR-[illegible] — [illegible]

[illegible] February-1944. [illegible]

[illegible] (mother) [illegible]

35 Victoria St W. Campbellton - New Brunswick

[illegible] General Debility, Beri [illegible]

[illegible]

[illegible] Barnes K. - E 30117 Rfm RRC

[illegible] 4th 1944

[illegible] Beatrice Barnes [illegible] [SHINTETSU]

[illegible] - Quebec, Canada

Beri Beri - Dysentery

70 #107. SNEDDEN John J. - B 68222 Rfm RRC.

Feb 8-1944 [SHINTETSU]

[illegible] Reginald Snedden (father)

636 Dover Court Rd. Toronto, Ont. Canada

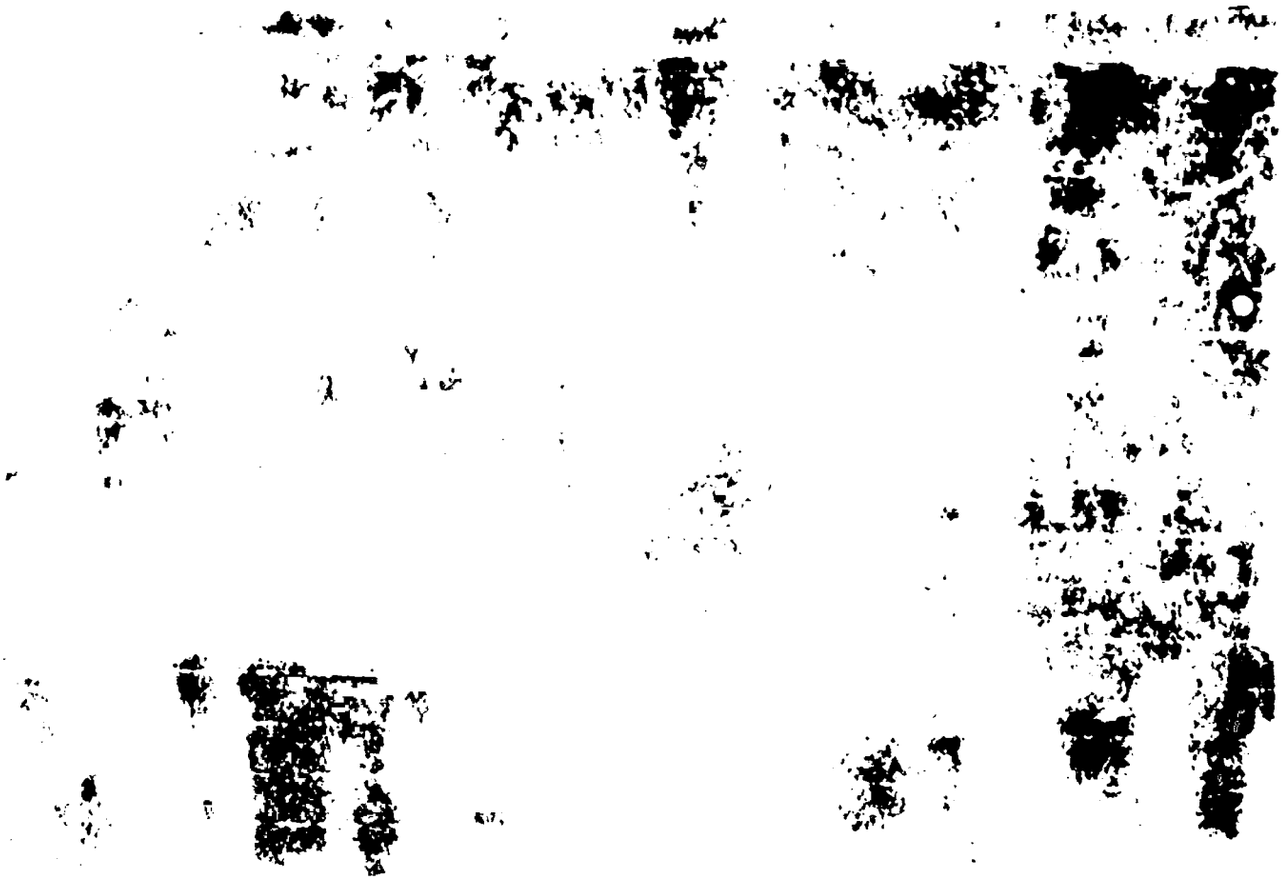
Debility - Dry Gangrene.

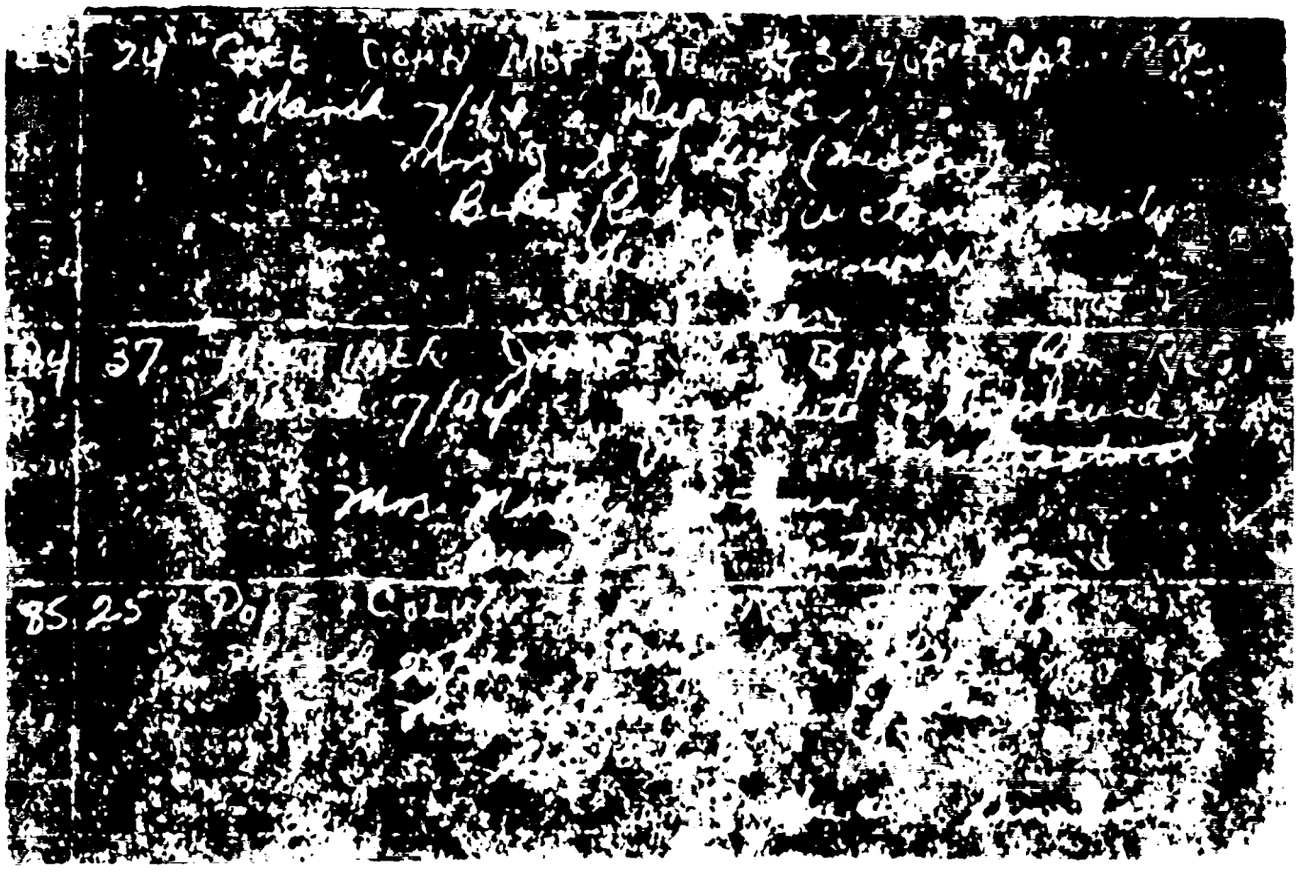
80 2 GULTA[illegible]

[illegible]

81 236 KITTERINGHAM [illegible]
March 3/44 [illegible]
Mrs R.M. Kitteringham [illegible]
[illegible]

77 49 MACLE[illegible] RODERI[illegible] M. [illegible]
March 3/44 Amsebus Dyrectory
Mrs Richard [illegible]
Paul [illegible]
[illegible]





86 222 WELSH MELVIN B. E30394 Pt. HRB.
March 30/44
[illegible]
Kentry Island
Quebec Can.

87 355 ROBINSON Wm F. 291-18-30 Ch. Mach. Mate USN
Apl 6th/44 Malnutrition Bridgeman
Mrs Nellie Robinson (mother)
1316 Avenue I Council Bluffs
Iowa

88 523 HARVEY VIRGIL C. 346-32-52 CPO. Usn
Apl 3rd/44
Mrs L Harvey (mother) [SHINTETSU]
Pt. 2 (ss)

[illegible] MORTON [illegible]
Age 27/[illegible]
Mrs [illegible]
Motapedia [illegible]

3 80 YOUNG LEWIS E H.41770 PVT WG.
May 7/44 Beri[illegible]
Mrs Annie Young (mother)
Bluebell Basic Canada

9.4 252 WOODWARD CYRIL S H6137 PVT WG
June 9/44 Amarillo Dys.
Mrs Ada Woodward (mother)
814 Alexander Ave

99 177 Gar[illegible]

[illegible]

[illegible] Branch

Man. Can.

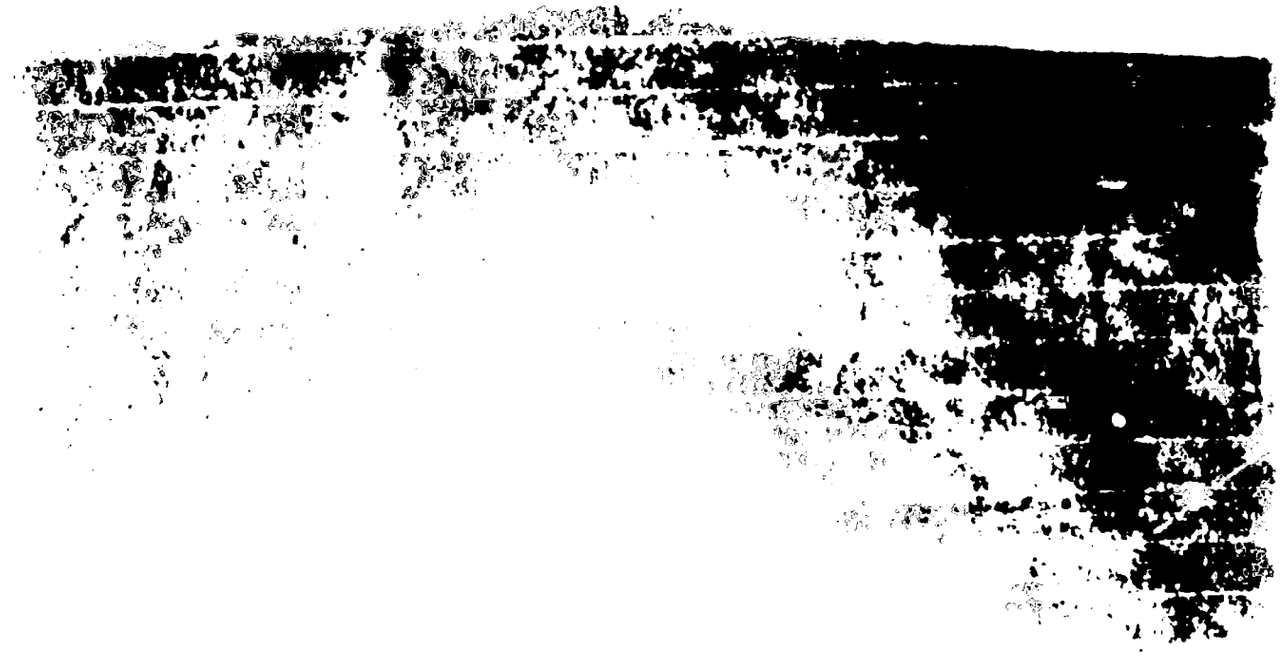
100 169 KIRK Roy LOMAY H6178 L/cpl WG.

July 14/45 Glycol poisoning

Mrs Alice Kirk (matter)

Riding Mountain

Man. Can.



DEPOSITION

CANADA
PROVINCE OF MANITOBA
TO WIT:

) In the matter of personnel held
) Prisoner of War by the Japanese
) and in the matter of the Deposit-
) ion of H-6033 Private Samuel
) BURDEN, Winnipeg Grenadiers, C.A.

I, No. H-6033 Private Samuel Burden, a member of His Majesty's Canadian Army make oath and say:

1. I am No. H-6033 Private Samuel Burden: I reside at 426 Seymour Street in the City of Winnipeg, Province of Manitoba. I am a member of His Majesty's Canadian Army and at all times pertinent hereto a member of the Winnipeg Grenadiers, C.A. In civilian life I was a house painter.

2. I was a member of "C" Company of the Winnipeg Grenadiers and took part in the defence of Hong Kong and was taken prisoner by the Japanese on Christmas day, 1941, while fighting with my Company near Aberdeen Reservoir. I remained in prison camps in the Hong Kong, Kowloon area until August, 1943, when I was sent to Niigata Camp, No. "5B". I remained at this camp until I was liberated.

3. During my entire imprisonment I was never beaten but received the odd bit of slapping around. I saw no atrocities while I was in China, but I did have the opportunity to observe two incidents of brutality which eventually resulted in the death of two of my comrades.

4. I worked in the Sinko Coalyards while at this camp ~~know Rfn. Mortimer, [illegible] of the Royal Rifles of Canada.~~ I had the opportunity to observe Rfn. Mortimer being tied up by the Japanese outside during very cold weather. He was clothed only in summer drill. Also at about the same time I saw Rfn. R.A. Smith of the Royal Rifles of Canada similiarly tied up. They were both kept out in the cold under freezing weather conditions for several days at a time. This was done as a punishment for allegedly attempting to steal Red Cross parcels which the Japanese had already stolen from us. The Camp Commandant who was commanding the camp at this time was Lieut. Yoshida, whom I identify in EXHIBIT "A" hereto attached. Exhibit "A" is a true photographic representation of the said Lieut. Yoshida. Subsequent to this punishment both of these soldiers required hospitalization. Rfn. Smith remained in hospital for a long period of time and was very ill. Rfn. Mortimer remained in hospital for a couple of weeks and eventually died. He died from gangrene, which resulted from this punishment (exposure). While Mortimer was in hospital I had occasion to visit and talk with him; he showed me his feet and at the time I saw them half of the flesh on his feet had been eaten away and the bones were exposed. His condition generally was very poor in that he had no flesh on him and seemed gaunt and yellow skinned. I know that Rfn. Smith did not die but I do not think that he ever fully recovered; at least not to the best of my ~~recollection.~~

5. The other death, which resulted from Jap brutality, was the case of Pte. G.R. McLaughlin of the Winnipeg Grenadiers, who was beaten practically every day by the various civilian guards at the coalyards. One guard in particular constantly beat him and his name was Hashimoto San. Pte. McLaughlin was suffering from dysentery and could not work but none the less this guard constantly picked on him beating him with a club when ever he was not satisfied with his work, which was practically every day. McLaughlin was finally taken to hospital where he died. Although I am not a medical man I believe that the beatings this soldier received were the direct cause of his death

PROSECUTION EXHIBIT

No 2

in view of the fact that he already was suffering from dysentery. ~~Another incident of brutality that I recall at this camp was the beating administered to an English~~ soldier, whose name I believe to be Shaw, by the last Camp Commandant prior to our liberation. I do not know this Commandant's name. He used Judo on Shaw, beating him with his fists, kicking him while he was on the ground, distorting his body as best he was able and leaving him in a very battered condition. He had to be hospitalized as a result of this beating.

6. I recall an incident that happened on New Years Eve 1943-44; this was at the end of Lieut. Yoshida's regime. There was a very flimsy made hut with a tile roof and rotten beams in which he had housed about 130 Canadian Prisoners. This hut was overcrowded about three times its capacity and without cause or warning it collapsed with all its occupants within it. I was in the next hut when this happened. Eight soldiers were killed and about sixteen were injured. It was perfectly apparent to anyone that this hut would eventually collapse and it seemed to me that soldiers were housed in here with the attemp to cause injury to them. After the accident happened no assistance was rendered to the wounded and dying except by themselves; the Japs stood around and laughed. Shortly after this incident Yoshida was transferred. I do not remember the exact length of time of the next three Commandants but the last one came to us about five months before the liberation; about March, 1945, and it was this Commandant who gave Pte. Shaw the ~~bad beating.~~

7. There are many other incidents which I witnessed, but my memory is rather hazey at this point and what I have stated above are the outstanding points of my experiences in Niigata. ~~I do know the food was unfit to eat; that the medical conditions were horrible; that everyone~~ in the camp was suffering from disease or malnutrition or both and that that they were required to work under these conditions and as a result of it many of our men died. Every day when we returned home from work we learned of someone else who had died that day. There plenty of medical supplies and Red Cross parcels delivered to the camp but we saw but very few of them. The Japs kept them for themselves and deliberately withheld the medical ~~supplies.~~

/s/ S. Burden

/s/ C H Johnson

8. Descriptions

~~Yoshida~~ ~~[illegible] tall, weighed about 150 lbs., age about 35 years old, sometimes wore a moustache and had a gruff voice.~~

Nashimoto gun — About 5'8" tall, weighed about 170 lbs., age about 40 years, wore glasses and was nicknamed "Liver Lips" due to his very prominent lips.

~~[illegible] has a little mustache, weighs about [illegible] lbs and would be about 28 years old. [illegible]~~

9. Except as herein stated I do not at this time recollect any further information of atrocities or incidents of mistreatment of Allied Prisoners of War.

Sworn before me at the City of Winnipeg)
in the Province of Manitoba this ~~28th~~) /s/ C H J.
day of March 1946. Consisting of 1st)/s/.S. Burden.....
three pages each signed by the Deponent.)(H-6033 Private Samuel Burden)
Winnipeg Grenadiers, C.A.

/s/.C.H.Johnson.....
(A Notary Public in and for the
Province of Manitoba)

Certified true copy of an original document compared by me and certified this [illegible] day of [illegible] 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

SUPPLEMENTARY DEPOSITION

C.A.D.
PROVINCE OF MANITOBA
TO WIT:

(In the matter of personnel held
(Prisoner of War by the Japanese and
(in the matter of the Supplementary
(Deposition of ex-No. H.6033, Private
(Samuel BURDEN, Winnipeg Grenadiers,
(C....

I, Samuel BURDEN, of the City of Winnipeg, in the Province of Manitoba, Janitor with the Manitoba Provincial Government, make oath and say:

1. I am ex-No. H.6033, Private Samuel Burden. I reside at 426 Seymour Street, in the City of Winnipeg, in Manitoba. I was formerly amember of His Majesty's Canadian Army and at all times pertinent hereto a member of the Winnipeg Grenadiers, C... .

2. In paragraph 5 and 8 in my original deposition sworn at the City of Winnipeg, in the Province of Manitoba, on the 1st day of March, 1946, before C.A. Johnson, a Notary Public in and for the Province of Manitoba, I referred to a Japanese named Hashimoto, who was a civilian employed as a guard with the regular Camp Staff at the Japanese Prisoner of War Camp known as 5B Niigata. Now shown to me and marked Exhibit "A" to this my supplementary deposition is a picture of the said Hashimoto showing front and side views. The picture is a true photographic likeness of him. Hashimoto was known to the Prisoners of War and was called by the Prisoners of War by the nickname of "Liver Lips".

3. This is the Japanese who beat Private G.R. McLaughlin of the Winnipeg Grenadiers practically every day with his fists and with a club at a time when McLaughlin was extremely ill. His treatment of McLaughlin in my opinion contributed to and in fact may have been the actual cause of McLaughlin's death.

Sworn before me at the City of Winnipeg, in the Province of Manitoba, this 16th day of January, A.D. 1947, consisting of one page and one exhibit each signed by this Deponent.

/s/ W.H. August
A Notary Public in and for
the Province of Manitoba

/s/ S. Burden
(ex-No. H.6033, Pte
S. Burden, Winnipeg
Grenadiers, C....

Certified a true copy of an original document compared by me and certified this 3rd day of February, 1947, at the City of Tokyo, Japan.

J.H. Dickey
(J.H. Dickey) Major
Canadian Army

PROSECUTION EXHIBIT No 3

Dominion of Canada)
Province of Ontario)
County of York)
)
To Wit:)

In the matter of alleged war crimes committed against Allied P'sW

I, B 76772, Rfn John Raymond STROUD, Royal Rifles of Canada, CA., presently attached to Malton Convalescent Hospital, Malton, Ontario, home address 723 Dovercourt Road, Toronto, Ontario, home telephone number OLiver 1925, make oath and say as follows:

1. I enlisted in the Canadian Army on the 8th day of June, 1940, at Toronto, Ontario, and was allotted regimental number B 76772 in the Toronto Scottish Regiment. On the 19th day of August, 1941, I was taken on strength Royal Rifles of Canada having volunteered for overseas service. On the 23rd day of October, 1941, I left Val Cartier Camp, Quebec, with the Royal Rifles of Canada, my present unit, and arrived at HONG KONG, CHINA, on the 16th day of November, 1941. On the 25th day of December, 1941, I was taken prisoner by the Japanese at HONG KONG, CHINA.

2. After my capture I was confined in the following enemy camps and hospitals:

NORTH POINT CAMP, HONG KONG, CHINA
29 December 1941 to September 1942
SHAMSHUIPO CAMP, HONG KONG AREA, CHINA
September 1942 to 15 August 1943
NIIGATA CAMP 5B, near the city of NIIGATA, JAPAN
2 September 1943 to 5 September 1945

3. I have the following information in my possession regarding certain war crimes which I believe should be published for the purpose of aiding the War Crimes Commission in punishing the perpetrators:

(a) Tortures, beatings or other cruelties, killings or executions

/s/JRS.
/s/J.T.S.

~~On the morning of the 24th of December, 1941, overran and took~~ the Japanese the hospital at STANLEY VILLAGE, HONG KONG, CHINA. On the 27th day of December, 1941, after the surrender of HONG KONG I was one of a burial party that went to the STANLEY VILLAGE HOSPITAL to assist in burying the dead. On arrival there we found numerous British soldiers and Hong Kong Volunteers dead in bed, they had been bayoneted or shot. I do not know the names of any of them nor can I describe them. I also learned while there that the nurses in the hospital had been raped and afterwards killed. However, I did not see any of their bodies as they had been removed prior to our arrival. Some time later I was speaking to a Hong Kong Volunteer, who was paralysed in both legs, who said that he lay wounded in bed in the next room at STANLEY VILLAGE HOSPITAL to the one in which his wife, who was a nurse at the hospital, was raped and killed and that he could hear her screams. I cannot recall this man's name but I think he was in the Signal Corps of the Hong Kong Volunteers and that he is a resident of Hong Kong.

Outside of the hospital on this date, I saw the bodies of ~~six soldiers lying at the bottom of a ravine. Their hands~~

/s/ JTShillington
(J.T. Shillington) Maj
Notary Public

/s/ John R Stroud
(John R. Stroud, B 76772)

SEAL: J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

PROSECUTION EXHIBIT

No. 4

Dominion of Canada)
Province of Ontario)
County of York)
)
To Wit:)

In the matter of alleged war crimes committed against Allied P'sW

I, B 76772, Rfn John Raymond STROUD, Royal Rifles of Canada, CA., presently attached to Malton Convalescent Hospital, Malton, Ontario, home address 723 Dovercourt Road, Toronto, Ontario, home telephone number OLiver 1926, make oath and say as follows:

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/s/ JTShillington
(J.T. Shillington) Maj
Notary Public

/s/ John R Stroud
(John R. Stroud, B 76772)

SEAL: J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

PROSECUTION EXHIBIT

No. 4

~~were tied behind their backs without shoes and their necks~~ were tied with barb wire. They all had been bayoneted. The only one that I was able to identify was Lieut SCOTT of the Royal Rifles. Lieut McDOUGALL of the Royal Rifles was in charge of the burial party that I was on. I did not see this atrocity take place and consequently am unable to name or otherwise identify the Japanese Army personnel responsible. Besides Lieut SCOTT there was one other Royal Rifles personnel who I do not know and whose identification disk had been removed; one Hong Kong Volunteer whom I cannot identify; one British Naval Officer, whose identification disk had been removed; one Chinaman who I think was a Hong Kong Volunteer and who had no identification disk upon him and one other body dressed in civilian clothes whom we were unable to identify.

At SHAMSHUIPO CAMP, HONG KONG AREA, CHINA, about the month of November, 1942, the Japanese Medical Officer, Lieut SATO, called out on parade the medical orderlies in the camp hospital, together with Major CRAWFORD, senior Canadian Medical Officer, Captain GREY and Captain RANFIELD, both RCAMC. Lieut SATO charged this medical staff with the failure of doing their utmost to save the lives of prisoners who were dying in large numbers from diphtheria and dysentery. This was nothing more nor less than a guess on the part of the Japanese Medical Officer as the Japanese had steadfastly refused to supply our medical officers with serum and medicines and the death rate had become alarmingly high. Over a hundred Canadian prisoners died during this epidemic. After making this charge he asked any of those on parade who thought that they had been doing their utmost to take a step forward and all stepped forward. Lieut SATO then slapped Major CRAWFORD and the other Medical Officers and other Japanese of Headquarters staff who were with him and who administered this punishment were the Japanese interpreter known as "KAMLOOPS" and a Japanese interpreter known as STUTTA. I cannot recall that any were knocked down or kicked on this occasion. After this wholesale slapping, Lieut SATO again asked if there was any of the hospital personnel who still thought that they had been doing their utmost to take a step forward, but that if any did he would cut their heads off. At the same time as he made this threat he drew his sword L/Cpl VARLEY of the Royal Rifles stepped forward in spite of the threat. Lieut SATO then went up to him and congratulated him on being a brave man. I would describe the Japanese interpreter "KAMLOOPS" as follows, height about five feet, ten inches tall; weight about 155 pounds; about 23 years of age; long full face, high cheek bones; black short cropped hair; did not wear glasses; teeth regular but protruded slightly; could speak English excellently with a Canadian accent. He told me he was born in Canada and educated in BRITISH COLUMBIA, CANADA. He walked with a short step and sort of shuffled. I cannot recall any other distinguishing features. I would describe the Japanese interpreter STUTTA as follows, height about five feet, one inch tall; weight about 130 pounds; about 29 years of age; round, fat, full face; black short cropped hair; teeth regular and did not protrude; I think he wore glasses occasionally; he ~~spoke English excellently with an American accent~~; he was

/s/ JTShillington
(J.T. Shillington) Maj
Notary Public

/s/ John R Stroud
(John R. Stroud, B 76772)

SEAL: J.T.SHILLINGTON
NOTARY PUBLIC
ONTARIO

~~how logged; he had a stocky build and an athletic in~~ 29
appearance; he was a fast walker; kept himself neat; STUTTA claimed to have played baseball in the United States. I cannot recall any other distinguishing features. I would describe Lieut SATO; the Japanese medical officer as follows, height five feet, four inches all; weight about 140 pounds; about 27 years of age; face round and fat, sharp features; wore glasses, black rimmed Japanese Army type; stocky and athletic build; walked quickly he could speak English slightly. I cannot recall any other distinguishing features.

About the month of July, 1943 Rfn SMITH of the Royal Rifles, Headquarters Company, was given a severe beating by the Japanese interpreter KAMLOOPS. Rfn SMITH was on duty as hut guard about 0300 hours one morning and KAMLOOPS came up to him and said that he was not performing his duty properly and that he did not salute at KAMLOOPS approach. Rfn SMITH was slapped, punched, knocked down and kicked several times by KAMLOOPS on this occasion but he did not lose consciousness. When he came in to the hut his face was bleeding and his lips were badly swollen and he was bruised considerably about the body. I did not see the beating actually take place as I was inside of the hut but I could hear it and I saw Rfn SMITH immediately on his coming in to the hut. This particular SMITH belonged to Headquarters Company, Royal Rifles and he later died at NIIGATA CAMP, JAPAN.

In the latter part of 1943 at SHAMSHUIPO CAMP, HONG KONG, CHINA, Major ATKINSON, Adjutant of the Royal Rifles, and Captain NORRIS of the Winnipeg Grenadiers, received a severe beating from the Japanese interpreter known as KAMLOOPS. They were both slapped, punched, knocked down and kicked several times and for some considerable time afterwards Major ATKINSON walked with a limp and had to use a cane. I did not see this beating take place as I was in the camp hospital at the time but it soon became general knowledge in the camp. Both of these officers, I believe, had to receive medical treatment as a result of the beating. The circumstances of the beating were as follows; A muster parade had been called for 1600 hours. Two of the night orderlies failed to turn up on parade. Their absence was not shown on the parade state submitted by Major ATKINSON and Captain NORRIS and KAMLOOPS thought that they were trying to get away with something.

At NIIGATA CAMP, near the city of NIIGATA, JAPAN, about the 1st of December, 1943, Rfn MORTIMER and Rfn Harold SMITH, both of theRoyal Rifles were accused of stealing contents of Red Cross parcels which were kept in the Japanese Administration office in the camp. They were slapped and beaten by the camp guards, then they were charged and tried by the Camp Commandant, Lieut YOSHIDA. He ordered them to be tied to the gate posts at the entrance to the camp and in front of the guard room. They were stripped of all their clothes except their pants and were tied to the gate posts with their arms around the posts at their backs. They were bareheaded, barechested, barefooted and barehanded. They were kept tied in this manner for about two days. I heard that they were fed only bean curd and water. The weather at this time was about freezing, I don't thing there was snow on the ground but there definitely was frost. Both Rfn MORTIMER and SMITH survived this exposure. I do not know the names of the Japanese guards who actually tied them to the posts nor can I now describe them but they were definitely under orders from ~~Lieut YOSHIDA, the Camp Commandant.~~ 29

/s/ JT Shillington
J.T. Shillington) Maj
Notary Public

/s/ John R Stroud
(John R. Stroud, B 76772

SEAL: J.T. SHILLINGTON
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~~I would describe Lieut YOSHIDA as follows, height about~~ five feet, four inches tall; weight about 145 pounds; about [illegible] years of age; long full face, sharp features; wore black rimmed glasses, Japanese Army type; teeth were spaced and protruded; he had thick lips; high cheek bones; he had rather a plump build, athletic in appearance, slightly pot-bellied; he wore his uniform something after the manner of a German officer; he always looked smartly dressed; he was drunk most of the time; he had a deep voice and could not speak English. I cannot recall any other distinguishing features. Attached hereto and marked Exhibit "A" is a photograph shown to me which I identify as a picture of Lieut YOSHIDA, our first Camp Commandant at NIIGATA CAMP. It is a true photographic representation of Lieut YOSHIDA. He was the Camp Commandant at NIIGATA CAMP, JAPAN, from the time of our arrival in September, 1943 until about March 1944. On our arrival at NIIGATA CAMP, Lieut YOSHIDA took from the prisoners their watches, rings, fountain pens and pencils, cigarette lighters, jewelry and money, none of which has been returned. I believe he kept everything so taken for his own use. With regard to the money he took from us, prior to our departure to JAPAN from SHAMSHUIPO CAMP, CHINA, we had been given military yen and when Lieut YOSHIDA took our money from us he said it was in order to change it from military yen to Japanese currency. None of this money was returned.

About the end of January, 1944, NIIGATA CAMP 5B, JAPAN, was split in to two and approximately half moved in to another camp about one and a half miles away, both camps were under the command of Lieut YOSHIDA. The splitting up of the camp in this manner was necessitated because of the fact that one of the huts in the original camp collapsed at midnight of the 31 December 1943-1 January 1944, killing eight Canadians and injuring seventeen others. Rfn MORTIMER above mentioned, had been moved to the second camp. Towards the end of January, 1944, Rfn MORTIMER was again accused of stealing from Red Cross parcels and was again charged before Lieut YOSHIDA with this offence and again Lieut YOSHIDA ordered him to be tied up to the gate post of the camp. He again was stripped of his clothing as above mentioned and tied in the same manner as on the first occasion. On this occasion he was left tied for about five days. There was snow on the ground and the temperature was below freezing. I do not know whether he received any food or not on this occasion. I spoke to him once or twice during the period that he was tied up when he was brought in to the latrine but he never mentioned anything about having been fed. At the time that I was speaking to him, his hands were swollen about three times normal size and were green and his feet were in the same condition. When the flesh started to come off the bottom of his feet he was moved to the camp hospital and died a few hours afterwards. His legs had been frozen to the knees and gangrene had set in. Major STEWART, RAMC, Medical Officer for the camp did everything that he could for him but nothing could be done to save him. I do not know the names of the guards who tied Rfn MORTIMER on this occasion nor can I identify or describe them. I do know, however, that they were acting under the orders of Lieut YOSHIDA. Rfn MORTIMER died as above mentioned some time during the early part of February, 1944. An American Sergeant, whose name or unit I do not know, was tied up at this same camp at just about the same time as Rfn MORTIMER, ~~and between ourselves and the numerous~~

/s/ JTShillington
(J.T. Shillington) Maj
Notary Public

/s/ John R Stroud
(John R. Stroud, B 76772)

SEAL: J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

severe beatings that he received in the guard room, he died also early in February, 1944.

At NIIGATA CAMP, JAPAN, work parties of prisoners worked on three different enterprises. One was the SHINTETSU steel foundry, another the MURITSO dock yards and the third the RINKO coal docks. About the first of February, 1944, Rfn Gerald SMEDDIN of the Royal Rifles, while suffering from dysentery and chronic starvation was forced by the Japanese to work at the RINKO coal docks. His job there was to load coal cars and help push trolleys of coal up a high trestle for dumping in to coal cars below. The trolleys contained a ton and a half of coal and the men working on this job was supposed to be able to handle one trolley. At this time the weather was below freezing and there was snow on the ground. Rfn SMEDDIN was unable to perform the heavy work assigned to him and was severely beaten by a Japanese civilian guard hired by the RINKO coal dock Company, named HOTSUMOTO. He was slapped, punched, knocked down and kicked by this Japanese and two other civilian guards whose names I do not know and who I cannot describe, also beat him with a stick. He was knocked unconscious and had to be carried back to camp. On arrival at camp he was sent to the SHINTETSU hospital, which was a hospital run by the SHINTETSU steel foundry. Apparently he had been badly frost bitten as gangrene set in his legs and he died as a result of the beating, dysentery and chronic starvation on the 8th day of February, 1944. Attached hereto and marked Exhibit "B" is a photograph which I identify as a true photographic likeness of Rfn SMEDDIN. I would describe the Japanese civilian guard HOTSUMOTO as follows, height about five feet, eight inches tall; weight about 155 pounds; about 43 years of age; long thin face, sunken cheeks, high cheek bones; teeth protruded slightly; thick lips; black short cropped hair; did not wear glasses; he could not talk English; thick, strong, muscular build; bow legged; he lived at NIIGATA; in 1944 he left the RINKO dock yards and told us that he was going in to the army. He was married and his family lived at NIIGATA. This Japanese was quite temperamental and was in the habit of beating up prisoners on the slightest provocation.

On the third day after my arrival at NIIGATA CAMP, JAPAN, in September, 1943, I was working at the RINKO coal docks and the heat was very intense. From lack of food and from the deplorable conditions of the journey to JAPAN, I went unconscious from weakness. While unconscious this Japanese, HOTSUMOTO and some other Japanese civilian guards whom I do not know nor can I identify them, beat me up by severe kicking and blows with sticks. After this beating I spent three days in the camp hospital and was treated by a medical orderly, whose name I cannot recall but he was a Newfoundlander. We had no officer in the camp at this time. Being unconscious I do not remember the beating but was told about it by other prisoners and my body was bruised and my lips were bleeding when I regained consciousness.

~~On the day of our arrival at NIIGATA CAMP, JAPAN, the prisoners were lined up on parade and Lieut YOSHIDA, the camp Commandant, told us that we were just living corpses and that we would work obediently and diligently for the Japanese Government.~~

/s/J. T. Shillington
(J. T. Shillington) Maj
Notary Public

/s/John R. Stroud
(John R. Stroud, B 76772)

SEAL: J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

~~In numerous occasions, prisoners suffering from malnutrition~~ and dysentery to such an extent that they were hardly able to work were forced to go on work parties, and they wouldbe beaten often before they left the gates of the camp and enroute to their work, in the presence of Lieut YOS. IDA. At no time did he ever make any attempt to stop the tortures and beatings to the prisoners or use his authority to alleviate the suffering. In all of the camps, numerous slappings and beatings were daily occurrences and they happened so often and to so many that little or no attention was paid to them.

(b) Use of prisoners of war on enemy military works and operations

At NIIGATA CAMP, JAPAN, during the spring of 1945, work parties were forced to work at the MURITSO dock yards, unloading aerial bombs from ships and loading them on flat cars. We also unloaded other types of ammunition from time to time and stored it in warehouses on the docks.

(c) Exposure of prisoners of war to danger of bombing

About August, 1945, at NIIGATA, JAPAN, while I was on a work party at the MARITSO dock yards, American bombers came over NIIGATA and bombed the ammunition ship in the harbour. This bombing took place about a mile away from where we were working. The Japanese herded the prisoners in to a warehouse at the dock yards, a short distance from the store house in which we had stored ammunition. The prisoners were locked in this store house and the Japanese guards disappeared in to air raid shelters. None of the prisoners were hurt or killed.

(d) Collective punishment of a group for the offence of others

At NIIGATA CAMP, JAPAN, one of the favourite forms of collective punishment was when work parties returned from work the Japanese guard would announce that it had been reported to him that certain individuals did not do their work properly or did not work hard enough and the guards would come up and down the line of prisoners and slap all of them. This form of collective punishment happened frequently.

On numerous occasions the issue of rations for the whole camp would be reduced as a collective punishment for the offence of some individual or individuals. This form of punishment happened so often I cannot now recall any specific instances. At no time were the rations ever sufficient or adequate and the prisoners were always in a state of chronic starvation.

(e) Miscellaneous

Attached hereto and marked Exhibit "C" is a photograph ~~shown to me which I identify as a true photographic~~

/s/ J.T. Shillington
(J.T. Shillington) Maj
Notary Public

/s/ John R Stroud
(John R. Stroud, B 76772)

SEAL: J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

~~representation of the above [illegible] of the Royal Rifles of Canada.~~

Sworn before me at the City of Toronto)
in the County of York)
the 18th day of February, 194[illegible])
consisting of six pages) /s/ John R Stroud
each signed by Deponent) (John R. Stroud, B 76772

/s/ J T Shillington
(J.T. Shillington) Maj
A Notary Public in and for
the Province of Ontario
Dominion of Canada

SEAL: J.T. SHILLINGTON
NOTARY PUBLIC
ONTARIO

Certified true copy of an orginal document compared by me and certified this [illegible] day of [illegible] 1946 at the City of Tokyo, Japan.

J.D.C. Boland

(J.D.C.Boland) Captain, Canadian Army
Member of Canadian War Crimes Liaison Detachment

Dominion of Canada (In the matter of alleged war crimes committed
Province of Ontario (against Allied P's W.
County of York (

To Wit: EV.5

I, John Raymond STROUD, formerly No. B. 76772 Rfn. John Raymond STROUD, Royal Rifles of Canada, now residing at 723 Doverecourt Road, Toronto, Ontario, Canada, make oath and say as follows:

1. I enlisted in the Canadian Army of the 8th day of June, 1940, at Toronto, Ontario, and was allotted regimental number B. 76772 in the Toronto Scottish Regiment. On the 19th day of August, 1941, I was taken on strength of Royal Rifles of Canada having volunteered for overseas service. On the 23rd day of October, 1941, I left Val Cartier Camp, Quebec, with the Royal Rifles of Canada, my present unit, and arrived at HONG KONG, CHINA, on the 16th day of November, 1941. On the 25th day of December, 1941, I was taken prisoner by the Japanese at HONG KONG, CHINA.

2. After my capture I was confined in the following enemy camps and hospitals:

NORTH POINT CAMP, HONG KONG, CHINA.
29 December 1941 to September 1942
SHAMSHUIPO CAMP, HONG KONG AREA, CHINA.
September 1942 to 15 August 1943
NIIGATA CAMP 5B near the city of Niigata
2 September 1943 to 5 September 1945.

3. I was discharged from the Canadian Army on the 11th day of March 1945.

4. I have the follwoing information in addition to the statements I made in an affidavit dated the 18th day of February 1946 in my possession regarding certain war crimes which I believe should be published for the purpose of aiding the War Crimes Commission in punishing the perpetrators.

5. The photograph produced and shown to me, and attached hereto as Exhibit "A" to this my affidavit, I recognize and identify as being a photograph of the civilian chief of guards at the Rinko Coal Company known to the Canadian prisoners as Hashimoto and by the nickname "Liver Lips". It is a photograph of the guard referred to in the second paragraph on page five in my previous affidavit and who was named as Hotsumoto and I identify the guard referred to as Hotsumoto and the photograph of Hashimoto to be the one and the same person and who was also known as "Liver Lips".

6. I further identify Hashimoto to be the guard called Hotsumoto or "Liver Lips" as the guard who administered a severe beating to Rfn. Gerald SNEDDING of the Royal Rifles of Canada at Niigata Cam JAPAN, in February, 1944 and is the same guard who administered a beating to me in September 1943 at this Camp.

Sworn before meat the City of Toronto /s/ John R. Stroud
in the County of York) (John R. Stroud, B. 76772)
the 15th day of January, 1947)
consisting of one page)
signed by Deponent)

SEAL /s/ Frank G. Foster
(F.G. Foster) Capt
A Notary Public in and for the
Province of Ontario, Dominion
of Canada.

Certified a true copy of an original document compared by me and certified this 3rd day of February, 1947, at the City of Tokyo, Japan.

PROSECUTION
EXHIBIT

(H. Dickey) Major,

Dominion of Canada)
Province of Ontario)
County of York)

To Wit:)

In the matter of alleged war crimes committed against Allied P'sW

I, E 30553, Rfn Frederick Orland CHAPMAN, Royal Rifles of Canada, CA., presently attached to Malton Convalescent Hospital, Malton Ontario, home address, 757 Dovercourt Road, Toronto, Ontario home telephone number LOmbard 4465, make oath and say as follows:

1 I enlisted in the Canadian Army on the 25th day of September, 1940, at Sussex, New Brunswick, and was allotted regimental number E 30553 in the Royal Rifles of Canada. On the 23rd day of October, 1941, I left Val Cartier Camp, Quebec, with the Royal Rifles of Canada, my present unit, and arrived at HONG KONG, CHINA on the 15th day of November, 1941. I was taken prisoner by the Japanese at HONG KONG, CHINA on the 27 day of December, 1941.

2. After my capture I was confined in the following enemy camps and hospitals:

SHAMSHUIPO CAMP, HONG KONG AREA, CHINA
27 December 1941 to 20 January 1942
NORTH POINT CAMP, HONG KONG, CHINA
20 January 1942 to September 1942
SHAMSHUIPO CAMP, HONG KONG AREA, CHINA
September 1942 to August 1943
NIIGATA CAMP No. 5B, near the city of NIIGATA, JAPAN
2 September 1943 to 5 September 1945

3. I have the following information in my possession regarding certain war crimes which I believe should be published for the purpose of aiding the War Crimes Commission in punishing the perpetrators:

(a) Killings, executions, tortures, beatings or other cruelties.

~~At SHAMSHUIPO CAMP, HONG KONG AREA, CHINA, about the month~~ of November, 1942, the Japanese Medical Officer Lieut SAITO, called out on parade the medical orderlies in the camp hospital and Major CRAWFORD, senior Canadian Medical Officer, Captain [illegible] and Captain BAMFIELD, both RCAMC. Lieut SAITO accused this medical staff with the failure of doing their utmost to save the lives of prisoners who were dying in large numbers from diphtheria and dysentery. This was nothing more nor less than a bluff on the part of the Japanese Medical Officer as the Japanese had steadfastly refused to supply our Medical Officers with serum and medicines and the death rate had become alarmingly high. Over 100 Canadian prisoners died during this epidemic. After making this accusation he asked any of those on parade who thought that they had been doing their utmost to take a step forward and all stepped forward. Lieut SAITO then slapped Major CRAWFORD and the other Medical Officers and other Japanese personnel of headquarters staff who were with him went up and down the line of hospital orderlies slapping them. I think the personnel of his staff who were with him and who administered this punishment were the Japanese interpreter known as KAMLOOPS and I believe the ~~Japanese interpreter known as RIGHT, was also there and took~~

/s/.J.T.Shillington..... /s/.F.O..Chapman.....
(J.T. Shillington) Maj (Frederick O. Chapman)
Notary Public E 30553

PROSECUTION EXHIBIT NO 6

~~a part in the proceedings. I doubt think, however, that any~~ of the prisoners were knocked down and kicked on this occasion. After this wholesale slapping Lieut SAITO again asked if there was any of the hospital personnel who still thought that he had been doing his utmost to take a step forward but that if any did step forward he, Lieut SAITO, would cut his head off. At the same time as he made this threat he drew his sword. L/Cpl VARLEY of the Royal Rifles stepped forward in spite of the threat. Lieut SAITO then went up to him and congratulated him on being a brave man.

I would describe Lieut SAITO as follows, height about five feet, four inches tall; weight about 136 pounds; about 40 years of age; full face, high cheek bones with slightly hollowed cheeks; he wore glasses; stocky and athletic build; I was told that he could speak English but I never heard him speak; regular features. I do not recall any other distinguishing features.

I would describe the Japanese interpreter known as KAMLOOPS as follows, about five feet, eight inches tall; weight about 165 pounds; about 28 years of age; fairly long face, high cheek bones, full cheeks; teeth protruded; coarse thick lips; his hair was longer than usual Japanese hair cut and he had it parted on one side. He was stoop shouldered; he was stocky and well built with an athletic appearance; he walked with a shuffle, more like a Chinese coolie than like a Japanese. He was slightly knock-kneed; when he walked he also kept his arms bent in from of him as if he were carrying something and he swayed as he walked. He could speak English exceptionally well with a Canadian accent, he was educated in BRITISH COLUMBIA, CANADA. I cannot recall any other distinguishing features.

I would describe the Japanese interpreter KOCHI as follows, height about five feet, five or six inches tall; weight about 135 pounds; about 53 years of age; face round but not fat; flat features, long nose, wide nostrils; complexion quite dark; black close cropped hair; wore glasses at times; spoke very good English; thin build which did not give an athletic appearance, he was not muscular or wiry; he was slightly pidgeon-toed; he walked slowly as if he were placing each foot down as he stooped forward; he had sort of a sly grin; he was developing wrinkles; he had a bit of grey hair at the temples; his clothes always looked too big for him thereby giving him a sloppy appearance; when he opened his mouth his teeth appeared to protrude. I cannot think of any other distinguishing features.

Attached hereto and marked Exhibit "A" is a photograph shown to me upon which I have indicated by the letter "O" my identification of the Japanese interpreter KOCHI. By the letter "K" I have indicated thereon my identification of the Japanese interpreter known as KAMLOOPS.

About the month of July, 1943, Rfn Norman SMITH of the Royal Rifles, Headquarters Company, whose Canadian home was in the vicinity of OTTAWA, was given a severe beating by the Japanese interpreter known as KAMLOOPS. Rfn SMITH was on duty as hut guard about 0300 hours one morning, and KAMLOOPS came up to him and said that he had not been performing his duty properly and that he did not salute KAMLOOPS as he approached. Rfn

/s/.J.T.Shillington.....
(J.T. Shillington) Maj
Notary Public

/s/.F.O.Chapman.....
(Frederick O. Chapman)
E 30553

~~SMITH was slapped, knocked down and kicked several times by~~ KAMLOOPS on this occasion but he did not lose consciousness. When he came in to the hut his nose was bleeding and his lips were badly swollen and he was bruised considerably about the body. I did not see the beating actually take place as I was inside of the hut but I could hear it and I saw Rfn SMITH immediately on his coming in to the hut. This particular SMITH belonged to Headquarters Company and he later died at NIIGATA, JAPAN from beri-beri.

About the month of December, 1942, at SHAMSHUIPO CAMP, HONG KONG, CHINA, Major ATKINSON, Adjutant of the Royal Rifles and Captain FORTIS of the Winnipeg Grenadiers received a severe beating from the Japanese interpreter known as KAMLOOPS. They were both slapped, punched, knocked down and kicked several times and for some considerable time afterwards Major ATKINSON walked with a limp and had to use a cane. I did not see this beating take place as I was in the camp hospital employed as an orderly at the time but it soon became general knowledge in the camp. Both of these officers had to receive medical treatment as a result of this beating. The circumstances of the beating were as follows: A muster parade had been called for 16.0 hours.. Two of the night orderlies failed to turn up on parade. Their absence was not accounted for on the parade state submitted by Major ATKINSON and Capt FORTIS and KAMLOOPS thought they were trying to get away with something..

At NIIGATA CAMP, near the city of NIIGATA, JAPAN, about the 1st of December, 1943, Rfn MORTIMER and Rfn Harold SMITH, both of the Royal Rifles were accused of stealing the contents of Red Cross parcels which were kept in the Japanese administration office in the camp. They were slapped and beaten by the Japanese camp guards, then they were charged and tried by the Japanese Camp Commandant, LIEUT. YOSHIDA. He ordered them up tied to the gate posts at the entrance to the camp and if front of the guard room.. They were stripped of all their clothes except their pants and were tied to the gate posts with their arms tied around the posts at their backs. They were bare headed, bare chested, bare footed and bare handed. They were kept tied in this manner for about two days. I heard that they were fed only bean curd and water. I actually saw them being fed about noon on the second day that they were tied up. The weather at this time was cold and windy and the temperature was about freezing. In the morning and the evening there would be frost. Both MORTIMER and SMITH survived this exposure. I do not know the names of any of the Japanese guards who actually tied them to the posts nor can I give a very clear description of them, however, one of them was very very bow legged and was short and stocky. The guards were definitely acting under the order of the Camp Commandant. About the end of January, 1944, NIIGATA 5B, JAPAN was split up into two and approximately half moved in to another camp about one and a half miles away. Both camps were under the command of LIEUT. YOSHIDA. The splitting up of the camp in this manner was necessitated because of the fact that one of the huts in the original camp collapsed early in the morning on the 1st day of January, 1944, killing eight Canadians and injuring seventeen others. RFN. MORTIMER, above mentioned, had been moved to the second camp and I was also in the second camp. During the

/s/.J.T.Shillington..... /s/.J.O..Chapman.....
(J.T. Shillington), Major (E.30553 Rfn Chapman J)
Notary Public

~~end of January, 1944, MORTIMER was again accused of stealing~~ from Red Cross parcels and was again charged before LIEUT. YOSHIDA with this offence and again LIEUT. YOSHIDA ordered him to be tied to the gate posts of the camp. He was again stripped of his clothing as above mentioned and tied in the same manner as on the first occasion. On this occasion he was left tied for about five or six days. There was snow on the ground at this time and the temperature was below freezing. I do not know whether he received any food on this occasion. However, about the fourth day I had the opportunity of seeing him and saying a few words to him when he was brought into the latrine and he said, "No food yet". On this occasion that I saw him in the latrine his hands and feet were badly swollen and his flesh was turning blue and the bottoms of his feet were raw and a greenish colour.. At the end of about the sixth day he was untied and admitted to the camp hospital. Gangrene had set in his feet, legs and hands.. Attempts were made by the Medical Officer, MAJOR STEWART, R.A.M.C., to amputate where it was thought the most good would result, but as a result all of his toes were amputated and parts of both feet.. He lived for about three days after being brought into the camp hospital, but the flesh on both his legs and hands began to decay and drop off. Through this period he suffered intensely. He was a brave chap, the bravest I ever saw, and I never heard him call out once during the whole ordeal.. I do not know the names of the guards who tied RFN. MORTIMER on this occasion, nor can I identify or describe them.. I do know, however, that they were acting under the orders of LIEUT. YOSHIDA. RFN. MORTIMER died as above mentioned about the sixth or seventh day of February, 1944.

I would describe LIEUT. YOSHIDA as follows:- about 5'7" tall, about 150 pounds, about 35 years of age, long full face, flat features, wide nostrils, wore glasses, black rimmed, Japanese Army type, black, short cropped hair, very thick lips, ordinary speaking voice was fast and deep, when he became excited or mad his voice became high pitched, well built, strong and muscular looking. He walked with his head held very high. He was a great showoff and drunk most of the time. He was our first Camp Commandant at NIIGATA and was there when we arrived on the 2nd day of September, 1943, and he left in the spring of 1944.. I cannot recall any other distinguishing features. Attached hereto and marked Exhibit "B" is a photograph shown to me which I identify as a picture of LIEUT. YOSHIDA. This is a true photographic representation of LIEUT. YOSHIDA. On our arrival at NIIGATA CAMP LIEUT. YOSHIDA took from the prisoners their watches, rings, fountain pens and pencils, cigarette lighters, jewellry and money, none of which has been returned. I believe that he sold all of these things and kept the proceeds for his own use.. With regard to the money he took from us, prior to our departure to JAPAN from SHAMSHUIPO CAMP, we had been given military yen and when LIEUT. YOSHIDA took our money from us he said it was in order to change it, the military yen, into Japanese currency. Non of this money was returned.

Attached hereto and marked Exhibit "C" is a true photographic representation of RFN. MORTIMER of the Royal Rifles, above mentioned.

At NIIGATA CAMP 5B, JAPAN, work parties of prisoners worked on three different enterprises, one was the SHINETSU steel foundry, another the MURITSO dock yards, and the third the RIKKO coal docks.. About the 1st day of February, 1944, RFN. Gerald SMEDDIN of the Royal Rifles, while suffering from dysentery and chronic starvation, was forced by the Japanese to work at ~~the RIKKO coal docks. The job there was to load coal cars and~~

leave in

/s/ J.T. Shillington.....
(J.T. Shillington), Major
Notary Public

/s/ F.G. Chapman.....
(L.30553 Rfn Chapman F)

push trolleys of coal on the high trestle for dumping into the coal cars below. The trolleys contained a ton and a half of coal and the man working on this job was supposed to be able to handle one trolley. At this time the weather was below freezing and there was snow on the ground. RFN. SHEDDIN was unable to perform the heavy work assigned to him because of his condition and he was severely beaten by a Japanese civilian guard hired by the RINKO coal docks whose name was HOTSUMOTO. He was slapped, punched, knocked down and kicked by this Japanese and was beaten with sticks by two other civilian guards whose names I do not know and I cannot describe them. He was knocked unconscious and had to be carried back to camp. On arrival at the camp he was sent to the SHINTETSU HOSPITAL which was a hospital run by the SHINTETSU steel foundry. Apparently he had been quite badly frozen as gangrene set into his legs and he died as a result of the beating, dysentery, freezing and chronic starvation, on the 8th day of February, 1944. I did not see this beating take place but I was told about it by RFN. John STROUD. I would describe the Japanese civilian guard, HOTSUMOTO, as follows:- about 5'8" tall, about 160 pounds, about 34 years of age, long thin face, flat features, high cheek bones, red complexion, teeth protruded slightly, had a lot of silver and gold fillings, very thick lips, black short cropped hair, did not wear glasses, he could not speak English, strong muscular build, slightly bow legged, very broad shouldered and straight. His home was in the city of NIIGATA. I cannot recall any other distinguishing features.

~~About March, 1944, at NIIGATA, Ma., of CAMP, JAPAN, RFN. BOTTIE~~ 49
of the Royal Rifles died. For about five months subsequent to his death he had been receiving beatings practically every day at his work site at the RINKO coal docks. Through this period he was suffering from dysentery, beri-beri, and chronic starvation. For some reason or other all of the guards seemed to have prejudice against him due to his inability to perform hard labour and they all beat him at intervals over this period. The worst offenders amongst the guards in beating this soldier were HOTSUMOTO, more particularly described above, BOMBO, EIPIE, HOM., and two other guards who were called "BULL DOG" and "ALLEY CAT". Their Japanese names I do not know. They were all civilian guards employed by the RINKO coal docks. The beatings would take various forms from time to time and over the full period one of the following forms of beatings happened on numerous occasions: slapping, punching, pushing, hitting with a stick, knocking down and kicking. On the day that he died he had left for work about seven o'clock in the morning and was brought back to camp about eight o'clock when he reported to the camp medical officer. He told the medical officer that he was too sick to work and that he was going to die and he died about 1330 hrs the same day. The medical officer, MAJOR STEWART, R.A.M.C., had tried to keep him from going to work on numerous occasions but the Japanese overruled him in this case as they did in numerous others.

I would describe the Japanese guard, BOMBO, as follows:- about 5'7" tall, about 150 pounds, about 35 years of age, round thin face, ruddish complextion, flat features, thin lips, teeth regular and did not protrude, did not wear glasses and could not speak English. He was very thin and wiry and gave the appearance of being athletic. His movements were smooth and alive like a cat. His face was beginning to show wrinkles. He had black short cropped hair. I cannot recall any other distinguishing features. I would describe the Japanese guard, EIPIE, as follows:- about 5'6" tall, about 145 pounds, about ~~40 years of age, black short cropped hair, slightly grey at~~

/s/ J.T. Shillington..... /s/ F.O. Chapman.....
(J.T. Shillington), Major (E.30553 Rfn Chapman F)
Notary Public

~~the temples, a long long face, flat wide nose, slightly~~ crooked, thick lips, if he did not shave he would have a heavy beard, when he talks he sprays saliva, when he laughs it sounds like a cackle. He was very flat footed and was known as the "PADDLE FOOT". His build was wiry, slightly knock kneed, very quick tempered. His home was in the district of NIIGATA city between the city and the NIIGATA prison camp. I cannot remember any other distinguishing features. I would describe the Japanese guard, HOMO, as follows:- about 5'4" tall, about 132 pounds, about 35 to 40 years of age, black short cropped hair, slim round face, fairly high cheek bones, small nose, flat features, teeth regular and did not protrude but had a lot of gold and silver fillings. He was known to the prisoners as "THE GOON". He was very slight in build and did not give the appearance of strength. He walked with a quick, flat shuffle. He could not speak English. He had a high pitched voice. He was quite a trader and usually had something on him to trade. This guard was actually not too bad a Japanese and I never saw him hit any other prisoner. I do not believe that he would have hit RFN. POTTIE except that other guards were around and he had to keep up face. I would not be surprised if this guard was quite willing to give evidence against the other guards. I cannot recall any other distinguishing features.

I would describe the Japanese guard known as "BULL DOG" as follows:- about 5'7" tall, about 155 pounds, about 33 years of age. He had a round fat face, high cheek bones, teeth very protruding, coarse thick lips, black short cropped hair, and his face looked like that of a bulldog, husky build and gave the appearance of being athletic. He could not speak English. I cannot remember any other distinguishing features.

I would describe the Japanese guard known as "ALLEY CAT" as follows:- about 5'5" tall, about 135 pounds, about 35 years of age, high forehead, long face, protruding lower jaw, wore glasses, black rimmed Japanese Army type, flat features, teeth were even and did not protrude. However, one or two at the side were crooked. He had a perpetual grin like an alley cat. Slender build, muscular and wiry, walked with a quick shuffle. I cannot remember any other distinguishing features.

(b) Use of P'sW on enemy military works and operations

Work parties of prisoners from SHAMSHUIPO CAMP, HONG KNOG AREA, CHINA, were forced to work on the KAITEK airport just outside of KOWLOON city. At the same time as this work was in progress the Japanese air force were using the airport operationally. At NIIGATA CAMP, during the spring of 1945, work parties were forced to work at the MURITSO dock yards unloading aerial bombs from ships and loading them on to flat cars. Other types of ammunition were also unloaded from time to time and stored in warehouses on the docks.

(c) Exposure of P'sW to danger of gunfire, bombing, torpedoing, or other hazards of war

About August, 1945, at NIIGATA, JAPAN, while I was on a work party at the RINKO coal docks, American bombers came over NIIGATA and bombed an ammunition ship in the harbour. This bombing took place about a mile from where we were working. The Japanese left the prisoners right out on the docks while they ran back to air raid shelters. None of the prisoners ~~were hurt or killed.~~

/s/ J.T. Shillington.....
(J.T. Shillington), Major
Notary Public

/s/ F.O. Chapman.....
(E.30553 Rfn Chapman F)

(d) Collective punishment of a group for a fence of others

~~At [illegible] of collective punishment was when work parties returned from work the Japanese guard would announce that it had been reported to him that certain individuals did not do their work properly or had not worked hard enough. The guard would then go up and down the line of prisoners and slap all of them. This form of collective punishment happened frequently. On numerous occasions the issue of rations for the whole camp would be reduced as a collective punishment for the offence of some individual or individuals. This form of punishment happened so often I cannot now recall any specific instance. At no time were the rations ever sufficient or adequate and the prisoners were always in a state of chronic starvation.~~

Sworn before me at the City of Toronto)
in the County of York)/s/ F. O. Chapman.....
the 22nd day of February, 1946,)(E.30553 Rfn Chapman F)
consisting of 7 pages)
each signed by Deponent)

/s/ J.T. Shillington.....
(J.T. Shillington), Major
A Notary Public in and for
the Province of Ontario
Dominion of Canada

J.T. Shillington
Notary
(Seal)
Public
Ontario

Certified true copy of an original document compared by me and certified this ___ day of ___ 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

Dominion of Canada
Province of Ontario
County of York

In the matter of alleged war crimes committed against Allied P's W.

To Wit:

I, SE.30553, Pte. Frederick Orland CHAPMAN, Royal Canadian Army Service Corps, presently stationed at Camp Borden, Ontario, Canada, make oath and say:

1. I enlisted in the Canadian Army on the 25th day of September, 1940, at Sussex, New Brunswick, and was allotted regimental number 330553 in the Royal Rifles of Canada. On the 23rd day of October, 1941, I left Val Cartier Camp, Quebec, with the Royal Rifles of Canada, my present unit, and arrived at HONG KONG, CHINA on the 16th day of November, 1941. I was taken prisoner by the Japanese at HONG KONG, CHINA, on the 27th day of December, 1941.

2. After my capture I was confined in the following enemy camps and hospitals:

SHAMSHUIPO CAMP, HONG KONG AREA, CHINA
27 December 1941 to 20 January 1942
NORTH POINT CAMP, HONG KONG, CHINA
20 January 1942 to September 1942
SHAMSHUIPO CAMP, HONG KONG AREA, CHINA
September 1942 to August 1943
NIIGATA CAMP No. 5B near the city of NIIGATA, Japan
2 September 1943 to 5 September 1945

~~3. I have the following information, in addition to the statement~~ I made in an affidavit dated the 22nd day of February 1946, in my possession regarding certain war ~~crimes~~ which I believe should be published for the purpose of aiding the War Crimes Commission in ~~punishing the perpetrators.~~

4. The photograph produced and shown to me and attached to this affidavit as exhibit "A" I recognise and identify as being the photograph of the chief civilian guard at the Rinko Coal Company, in Japan, known to the Canadian prisoners by the name of Hotsumoto and by the nickname of "Liver Lips".

5. I further recognise Hashimoto to be the guard referred to as Hotsumoto, or "Liver Lips" as being the guard who administered a beating to Rfn. Gerald Sneddin of the Royal Rifles of Canada in February 1944 at Niigata Camp, Japan. It was shortly after this beating that Rfn. Sneddin died on the 8th day of February 1944. ~~In March 1944 at Niigata Camp, Hashimoto was one of the guards who administered a severe~~ beating to Rfn. Bottie of the Royal Rifles of Canada and it was only a ~~short time after~~ this beating that he died ~~in the same month.~~

6. Approximate around February 1944 at Niigata Camp, while workin on the trestle at the Rinko Coal Yard, Rfn. G.R. McLaughlin was pushing a loaded coal car immediately in front of me. McLaughlin at this time was suffering from dysentry, advance state of beri-beri an starvation. He was in such a weakened physical condition that he di not have the strength to push the car. I had tried to get his car moving by bumping it with my car. I saw the civilian Hashimoto, also known as Hotsumoto or "Liver Lips", coming up the track to my rear. McLaughlin was unable to get his car moving so he took McLaughlin in front of McLaughlin's car, started to give him a beating by slapping, punching and when McLaughlin fell down, Hashimoto began to kick him. McLaughlin laid in a stunned condition on the track until Hashimoto dragged him to the side of the track. Hashimoto then forced McLaughlin to go in the direction of the Mess Hall and was slapping and hitting McLaughlin with a stick, using foul language at the same time.

SEAL /s/ F.G. Foster, Capt
Notary Public

/s/ Frederick O. Chapman
E. 30553

PROSECUTION EXHIBIT No. 7

McLaughlin went to Hospital a few days after this beating. When I last saw McLaughlin in March, he was only skin and bones, and he died some time later.

~~9. Towards the end of November, 1943, Hashimoto administered a~~ beating to me. I had just been out of Hospital for a few days and was assigned to carrying coal in baskets. Hashimoto filled the basket to such an amount that I was forced to drop ~~it. Hashimoto stopped and punched me until I fell to the ground. He then left me.~~

Sworn before me at the City of Toronto
in the County of York
the 15th day of January, 1947,
consisting of 2 pages
each signed by Deponent.

/s/ F.O. Chapman
(U.30553 Rfn Chapman F

SEAL
/s/ Frank G. Foster
(F.G. Foster) Capt
A Notary Public in and for
the Province of Ontario
Dominion of Canada

Certified a true copy of an original document compared by me and certified this 3rd day of February, 1947, at the City of Tokyo, Japan.

J.E. Dickey

(J.E. Dickey) Major
Canadian Army

CANADA
PROVINCE OF MANITOBA
TO WIT:

DEPOSITION

) In the matter of personnel held
) Prisoner of War by the Japanese
) and in the matter of the Deposition
) of H.6852, Pte. William Rankine
) MALTMAN, Winnipeg Grenadiers, C.A.

I, No. H.6852, Private William Rankine MALTMAN, a member of His Majesty's Canadian Army, make oath and say:

1. I am H.6852, Private William Rankine MALTMAN. I reside in the Postal District of Minitonas, in the Province of Manitoba. I am a member of His Majesty's Canadian Army, and at all times pertinent hereto a member of the Winnipeg Grenadiers, C.A.

2. On the 25th day of December, 1941, I was taken prisoner by the Japanese. ~~I was wounded on the 21st day of December, 1941, by a piece of shrapnel in my leg. It was sore but I was still able to carry on.~~ After the surrender we were marched from Mount Austin to Victoria Barracks, a distance of five or six miles. During the march my leg became more troublesome and on the 29th day of December, 1941, I was taken to Bowen Road Hospital for three or four days. From Bowen Road Hospital I was taken to St. Alberts Convent until February, 1942.

3. At St. Alberts Convent Hospital there was no Japanese medical personnel and all treatment was by Allied medical personnel. Towards the end of my stay in the hospital medical supplies were running short. One of the causes of this was that Japanese officers and N.C.O.'s would come into the hospital quite frequently, go to the medical supply room and take away some of the medical supplies. I have seen them do this.

/s/ W R. Maltman

4. Towards the end of my stay in St. Alberts Convent Hospital, that is to say during the first week in February, I was well enough to be up and around, and together with about six others from the hospital, including Pte. Schayler and Pte. Carter, I took a walk to the vicinity of Mount Nicholson, where our Company had been fighting about 21st December. In this vicinity we found the dead bodies of approximately twenty Winnipeg Grenadiers who apparently had been killed in action and had not been buried. I was personally able to identify the following: Lieut. Hugh J. Young, Lieut. Hooper, Lieut. David, Sgt.Major Fryatt, Sgt. Foster, Sgt. Albert Woods, Cpl. N. C. Eckles, L/Cpl. Edgley, Pte. N.C. Walker, Pte. Raymond Meades, Pte. Lawrie, Ptes. Little, Girard and Larsen. They were all members of "B" Company, Winnipeg Grenadiers, with the exception of Lieut. David, who was attached to "B" Company, being in charge of the trench mortars. When we returned to the hospital we notified Capt. Bennett, Protestand chaplain, and a Roman Catholic padre captain. Both these officers were Imperials. We returned that afternoon with the aforementioned padres and buried the bodies. At this time the bodies were in a state of decomposition and were badly bloated. All the bodies would be in an area of about one hundred yards in diameter.

SEAL: F.J.KILLEEN NOTARY PUBLIC MANITOBA
/s/ F J Killeen

5. On the 10th day of February, 1942, I left the hospital and went to North Point Camp on the Island of Hong Kong. While I was at this Camp Lieut. Wada was the Camp Commandant. On the 19th of August, 1942, four Winnipeg Grenadiers, Sgt. Payne, Pte. Adams, L/Cpl. Berzenski and Pte. Ellice, escaped. About three weeks later some of us were in conversation with one of the guards, nicknamed "Vancouver". I do not know his Japanese name. We asked him what had happened to the men who had escaped. He told us that the four who had escaped had been captured and executed. He did not tell us where. I also got the same

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~~information from an interpreter at the Camp named Koche,~~ or Cochc, about the same time. This Koche was an interpreter at this Camp throughout my stay at North Point. I believe he was a civilian but wore a Japanese soldier uniform. He was well known in the Camp. He was a fairly old man, about fifty, and spoke very good English with a sort of Oxford accent. "Vancouver" was an ordinary type of Jap soldier, probably a little taller than the ordinary Japanese.

6. Because of this escape the Japanese punished S/Major Adams, S/Sgt. McNaughton and one or two other senior Grenadiers by imprisoning them in a room and requiring them to stand for long periods at attention and long periods of kneeling. I know this because S/Sgt. McNaughton told me what had happened. A few nights after Sgt. Payne and the others had escaped the Japanese were still checking up on the personnel of the Camp and paraded the whole Camp in the rain for practically the whole night. We were on parade for approximately eight hours and did not get back into the huts until about 0830 hours. During the parade a number of the men passed out and the Japanese at first would not permit anyone to do anything for them or to remove them from the Parade Square. Later permission was given to take them to the M.I.R.

7. Also, apparently as a result of this escape we were grouped by the Japanese into groups of five, and later ten, and forced to sign an affidavit that if we heard anyone in our group discussing or planning an escape we would report this to the Japanese and if we failed to do so or if anyone did attempt to escape the whole group would be executed. I understand that a member of the Royal Rifles of Canada, named Porter, an elderly man, refused to sign and as a result he was imprisoned. While imprisoned he was abused and suffered considerably, and in the end he signed in order to stay alive. I received this information from Porter himself.

's/ WR Maltman

8. In September, 1942, I was in the North Point Camp Hospital with dysentery and was released on the 26th September, 1942, and that day we moved to Camp "H", Sham Shui Po, where I remained until 5th March, 1943, at which time I was sent to Bowen Road Hospital

9. While at Sham Shui Po I recall one day when we were out on parade for roll call. Apparently two men had not been wakened in time and were absent from the parade. Capt. Norris and Major Atkinson, of Brigade staff, were taken off parade by the Japanese interpreter called "Kamloops Kid" to a room in the M.I. hut in the vicinity of the parade, and were there given a beating. I understand that it was "Kamloops Kid" who beat them. I did not actually see this beating but I did see Capt. Norris after he came out of the hut and at that time he showed the marks of a severe beating about the face. He was bruised and bleeding. I also saw Major Atkinson limping badly.

10. On the 5th day of March, 1943, I was ill with cardiac beri beri and was taken to Bowen Road Hospital, where I remained until 24th June, 1943. On this occasion conditions in the hospital were very much worse and there were shortages of medical supplies and food. The impression that we got was that the Japanese did not care whether we lived or not and never did anything to improve conditions.

11. On the 24th day of June, 1943, I returned to Sham Shui Po Camp and remained there until the 15th August, 1943, when I embarked for Japan. ~~This was on a very small~~ ship and the men were very crowded. ~~Each man had space not more than his own width and three feet long. It was~~

FJ KILLEEN
SEAL: NOTARY PUBLIC MANITOBA
's/ F J Killeen

~~impossible for all the men to sleep at one time so we arranged to sleep in relays. We stopped a week in a harbour in Formosa and purchased pork and some fruit to supplement the rations given us by the Japanese.~~ We disembarked at Osaka on the 1st September, 1943, and from there we went by train to Niigata Camp 5 B in the Tokyo area. Lieut. Yoshida was in command here. I remained in this Camp until liberated on 5th September, 1945.

~~12. When we first went to this Camp we were quartered in one big frame building.~~ There were no medical facilities other than ~~a Japanese~~ doctor, and it was difficult to get to see him because of ~~the rations~~ of the guards. The food was in very short supply all the ~~time and~~ it was ~~only supplemented by Red Cross foods on a very small scale.~~ We were forced to work loading coal from the boats to a dump on the ground and the particular job that we were given was pushing the coal cars along the trestle, which was some thirty feet above ground level. ~~On this job we were not permitted to wear shoes and this was a hardship~~ for many of the men for they were suffering from dry beri beri. ~~Because of these hardships~~, lack of food and overwork, the ~~men~~ were not fit and some of them fell or jumped from the trestle and sustained injuries which necessitated rest in Camp.

13. While at this camp ~~Sgt.~~ Mortimer, R.R.C., was tied to a stake outside the Guard Room, dressed only in shorts and shirt. This happened in January, 1944, and there was at this time about six inches of snow on the ground. He was kept tied to the stake for approximately a week and gangrene set in in his feet and hands and spread. He was subsequently released and taken to hospital, where he died ~~as a result of this exposure. This was done on the orders of the Camp Commandant, Lieut.~~ Yoshida. Three of the guards that I recall were Hasamoto, Big Legs and The Nigger. In January, 1944, Hasamoto beat me with a stick one day for failing to carry a basket of coal which was too much for my strength. I had had a recurrence of the heart trouble that I had in Hong Kong, and told him that the load was too much for me to carry up the plank to the car. He beat me with a hard wood stick in the shape of a heavy sword and forced me to take up the badket. At the top of the plank I collapsed and was carried down from the car. He thought that the trouble was because I was cold and he put my hands into the flames from the fire-pot, but I was able to pull them out before they were burned. I was taken off work and put on rest for about six weeks.

s/ WR. Maltman

~~14. While at this Camp, on New Years morning, 1944, one of the huts in which~~ approximately one hundred and fifty men were quartered, collapsed and a number of them, including nine Canadians, were killed.

15. During my stay at Niigata Camp there were four Camp Commandants. ~~The fourth Commandant, Lieut. Kato, took over as Camp Commandant in September, 1944. This Commandant~~ appeared to lose his temper on any small breach of discipline and to fly into a terrible rage. One one occasion I heard about an American soldier who was demonstrating to one of the guards how weak his muscles were and the guard, thinking he was going to be struck, reported the incident to the Camp Commandant, Lieut. Kato. Lieut. Kato personally went down to the Guard Room in the evening and beat the American soldier, who at that time was standing outside the Guard Room. He beat him until he fell to the ground and then kicked him, and as a result of this ill-treatment the American soldier was put in the hospital. The only part of this incident that I personally saw was the beginning of the beating by Lieut. Kato, and the American soldier lying on the ground after the beating was completed. It

F.J. KILLEEN
SEAL: NOTARY
PUBLIC
MANITOBA
s/ FJ Killeen

definitely was not good policy to watch a beating while it was taking place and therefore the only part I saw was the beginning. I was looking out of my hut window at the time and afraid of being caught watching the beating I left the window. I also heard the same night from conversation in general amongst the Prisoners of War that Major Boyle, a major of the American Marines, was also beaten by Lieut. Kato following his beating of the American soldier. I understood that Lieut. Kato told this Major that he was responsible for the discipline of his men in the Camp and that he had to see that his men obeyed the regulations. He was then beaten. I did not actually see this Major being beaten but on the following day was informed by Sgt. Rance of the Hong Kong Volunteer Defence Corps that the above had taken place. I personally saw this Major Boyle the next day and his eyes were black and blue.

16. On another occasion the Camp Commandant ordered a roll call in the Camp. This apparently was the result of a report that some white men had been seen in the City of Niigata. We were turned out of a large hut where we were attending a concert. The Commandant was outside and he yelled to us in English "Run". Some of the men did not hear, or did not understand what was required, and the Commandant, Lieut. Kato, went over to Pte. Fowler, W/G, and drew his sword and hit Pte. Fowler with the broad side of his sword on the forearm, breaking the sword.

17. Except as herein stated I do not at this time recollect any further information or incidents of any atrocities against or mistreatment of Allied Prisoners of War.

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this 26th day of February, 1946, consisting of four pages each signed by the Deponent.

/s/ W R Maltman
(H.6852, Pte. William Rankine MALTMAN, Winnipeg Grenadiers, C.A.)

F.J. KILLEEN
SEAL: NOTARY PUBLIC
MANITOBA

/s/ F. J Killeen
A Notary Public in and for the Province of Manitoba.

Certified true copy of an original document compared by me and certified this 11 day of June 1946 at the City of Tokyo, Japan

J D C Boland
(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

DEPOSITION

CANADA
PROVINCE OF MANITOBA
TO WIT:

) In the matter of personnel held
) Prisoner of War by the Japanese
) and in the matter of the Deposit-
) ion of P-28078 Sgt. Arthur Hilton
) HUNTER, Royal Canadian Army Service
) Corps, C.A.

I, No. P-28078 Sgt. Arthur Hilton HUNTER, a member of His Majesty's Canadian Army, make oath and say:

1. I am No. P-28078 Sgt. Arthur Hilton HUNTER; I reside at 590 Balmoral Street, in the City of Winnipeg, in the Province of Manitoba. I am a member of His Majesty's Canadian Army, and at all times pertinent hereto a member of the Royal Canadian Army Service Corps, C.A.

2. I was serving with the Royal Canadian Army Service Corps, attached to the Royal Army Service Corps at the University of Hong Kong, Hong Kong, when taken prisoner by the Japanese on December 25th, 1941, the time of capitulation. Within a week I was taken to Sham Shui Po for about a month and then moved to North Point Camp. From North Point Camp I was taken to Bowen Road Hospital about the 15th of September, 1942, as a patient suffering with diphteria, and remained in hospital as a patient until near the end of January, 1943, when I was discharged and sent to Sham Shui Po. I remained at this Camp until sent with the second Canadian draft to Japan on August 15th, 1943. This draft disembarked at Osaka and I was sent with a portion of the draft to Niigata "5B", where I remained until November, 1944. I was then sent to Shinagawa Hospital as a patient suffering with beri beri and dysentery. ~~I remained a patient in this hospital until April, 1945, at which time I was discharged and sent~~ to Omeri Camp in Tokyo. On May 30th, 1945, I was moved to Camp 10D, Sendai area, where I remained until liberated.

3. The Camp Commandant at North Point Camp was Lieut. Wada. At this Camp I knew Cpl. Tocami, who was the Camp Ration Corporal. He was responsible for bringing in the ration supplies. It also appeared he had quite a bit to do with the quantity and the variety of the rations. On four or five occasions I have seen Cpl. Tocami taking the ration truck to the Japanese camp headquarters, which were on the hill just outside the Camp, and unload meat and fresh vegetables there before delivering the rations to the Camp. Whether or not the supplies left at the Camp headquarters were the Prisoner of War rations I cannot say. We were very short of rations at this time.

4. On board the boat taking the second Canadian draft to Japan was a quantity of Red Cross food stuffs in bulk. The Prisoners of War did not receive any of thesefood stuffes except on the first and last days of the seventeen day voyage, but during the voyage I saw a group of six or seven Japanese Army personnel eating Red Cross food stuffs. This was on four or five different occasions. Cpl. Tocami, formerly the ration ~~corporal at North Point Camp, was one of these~~

SEAL:
WILLIAM HOWARD
AUGUST
NOTARY PUBLIC
MANITOBA

/s/
A H Hunter

/s/
W H August

PROSECUTION
EXHIBIT

5. When we first arrived at Niigata the draft of three-hundred was put in a barracks located in the suburbs of Niigata. We were housed in buildings belonging to the Rinko Coal Company. On December 24th, 1943, we were all moved from this camp to a new camp about two miles away. On New Years Eve, the 31st day of December, 1943, or early New Years Morning, the 1st of January, 1944, one of the huts in the new camp collapsed killing eight Canadians. Later, somewhere about the 18th of January, 1944, we were all returned and held in buildings belonging to the Rinko Coal Company and immediately next to the buildings which we had occupied before. From these Rinko buildings about seventy Prisoners of War were sent to the Shintetsu Barracks. I remained in the Rinko barracks until some time in April, 1944, when I was returned with other Prisoners of War to the new camp where the hut had previously collapsed, and remained there until November 1944, when I was transferred to Shinagawa Hospital in Tokyo.

6. I arrived at Niigata somewhere about the 3rd day of September, 1943, and I was immediately detailed with other Prisoners of War to work at Coal Docks owned and operated by the Rinko Coal Company. These docks were about twenty minutes walk from the camp. When we first started to work at the Coal Docks all of the prisoners were forced to work in their bare feet. This lasted for a week or more. Nearly all of the prisoners at the end of the week were suffering from bruised, cut and infected feet. After this the party of men working on the trestle were issued with grass sandals to protect their feet. These sandals were of no use and the men's feet continued to get cut and infected. Shortly after this the men gradually were allowed to wear their boots on this work.

SEAL:
WILLIAM HOWARD
AUGUST
NOTARY PUBLIC
MANITOBA

/s/ A H Hunter

/s/ W H August

7. About the latter part of September, 1943, I was in a very weakened condition due, I think, mainly to lack of food and the type of food I was being given. My bowls were very loose and I had difficulty in getting from camp to work and back to camp again. I paraded sick several times but the Japanese Medical Orderly, whose name I do not know, would not listen to my complaints and continued to send me out to work. One day, towards the latter part of the day, as I was pushing a coal truck on the trestles I fainted from exhaustion and fell across the tracks. I was told that a Japanese civilian guard, employed by the Rinko Coal Company and who was called Hasamoto, kicked me several times as I lay on the tracks and threw a pail of water on me. When I came to a few minutes later I was soaking wet and Hasamoto was standing over me. I was in a very dazed and semi-conscious condition at the time and I do not remember whether or not Hasamoto beat me after he hauled me to my feet. I have been told that he beat me with a stick. I was taken off the trestle by Hasamoto and allowed to sit on a bench for possibly five or ten minutes. After this one of the regular Japanese camp guards, named Saito, came up. Hasamoto was standing in front of me at the time and Saito and Hasamoto started talking together in Japanese. After a minute or two Saito turned around and using a stick, which he carried, which was about three feet long and a little thicker than a broom handle, made a thrust at me bayonet fashion. The end of the stick hit me in the face and glanced off over my right eye

and I do not remember anything clearly that happened after that time. I was taken back to camp that night but was forced to return to work the next day by the Japanese authorities. The next day my body was so sore and bruised all over that every movement caused pain.

8. ~~Following this incident I was forced to work~~ at the coal docks every day until November, 1944, except for about three weeks in November, 1943, when I was laid up because of having injured my hand on one of the coal trucks. In October, 1943, the weather started to get cold and shortly after the rainy season set in followed by the winter. Many of the Prisoners of War had no footwear; others feet were so swollen they could not get what shoes they had on and others had footwear that was so dilapidated that it was of little or no use. No attempt was made by the Japanese to remedy this situation. During the entire winter of 1943-44 the Prisoners of War going to work at the Rinko Coal Docks were forced to get along with what footwear they had or were able to scrounge and as a result several men had to go to work and had to work in their bare feet. I personally worked that whole winter in a pair of grass sandals that had been issued to me when I was working on the trestle ant the coal docks. The weather during that winter was very cold and raw. There was snow on the ground, as near as I can remember, from the middle of November, 1943, to some time in March, 1944. Many of the prisoners suffered from frozen feet during this period.

SEAL:
WILLIAM HOWARD
AUGUST
NOTARY PUBLIC
MANITOBA

/s/ A H Hunter

/s/ W H August

9. Some time around the latter part of November or early part of December, 1943, I saw Rfmn. Mortimer of the Royal Rifles of Canada, standing with his hands behind his back and tied to the gate post of the camp for long periods of time; exposed to rain, wind and cold. My recollection is that another Prisoner of War by the name of Smith, who I believe also was of the Royal Rifles of Canada, was tied to the other gate post at the time. Some time later, I believe it was in the latter part of January, 1944, shortly after our return from the new camp to the Rinko buildings, I again saw Rfmn. Mortimer tied to a stake outside the camp guard room. It was quite cold at the time and I believe there was snow on the ground. I understand that during this second punishment Mortimer had his feet frozen causing gangrene to set in. I was advised that he was admitted to hospital as a result and that he died shortly after. C.P.O. Dixon, U.S. Navy, was the officer in charge of the hospital at this time. Rfmn. Carbon, R.R.C. was and assistant at the hospital.

10. About 0100 hours, January 1st, 1944, one of the huts at the Rinko Barracks collapsed, killing about eight Canadian Prisoners of War. In my opinion the collapse of the hut was due to faulty construction, the roof, which was made of slate, being too heavy for the supports. I understood the following Canadians were killed as a result of this collapsing hut:

S/Sgt. Sword, R.S.A.S.C.
Pte. Furey
Pte. Jones
~~Sgt. Samson~~

~~all Winnipeg Grenadiers, Sgts. Roland Ramsay,~~ R.C.C.S. was one of those who received injuries. Following the collapse of this hut we were moved back to the Rinko buildings in Niigata and remained there until about the 2nd of April, 1944, when we were moved back to the new camp where the building had collapsed.

11. I do not remember the names of any of the Camp Commandants at Niigata. The first Camp Commandant, who was ther when we arrived on the 3rd of December, 1943, and who stayed until some time, I believe, about the middle of February, 1944. He was a Lieutenant in the Japanese Army; was approximately 5'7" in height, would weigh approximately 150 to 160 pounds and I would estimate his age to be about thirty-five years. He was clean shaven and wore glasses. He had a very arrogant bearing at all times. My impression was that he endeavoured to imitate the Prussian officers. He was drunk a considerable part of the time and had a weakness for saki. Now shown to me and marked EXHIBIT "A" to this my affidavit is a true photographic likeness of ~~the first said camp commandant.~~

SEAL:
WILLIAM HOWARD
AUGUST
NOTARY PUBLIC
MANITOBA

/s/ A H Hunter

/s/ W H August

12. Hasamoto referred to before in this deposition and who was concerned in the beating I received at the Rinko Coal Docks was a Japanese civilian foreman employed by the Rinko Coal Company. He was about 5'7" or 8" tall; weighed 160 to 170 pounds and I would estimate him to be between thirty and thirty-five years old. He was clean shaven and did not wear glasses. He was fairly stocky in build and was commonly called "Liver Lips" by the Prisoners of War. He got this nickname due to the fact that he had a large mouth with thick protruding lips. He was noticeable for the enormous amount of silver in his teeth.

~~13. Saito, here and before referred to and who~~ was concerned in my beating, was a civilian employee of the Japanese Army and who acted as a regular member of the Japanese Camp Staff at Niigata. Saito was a member of the Camp Staff and was in charge of the work party going each day from the camp to the Rinko Coal Docks. Saito was of wiry build; approximately 5'6" in height. He would weigh about 150 pounds and I believe would be about twenty-nine or thirty years of age. He wore dark horned rimmed glasses. He had a very small indistinct mustache but otherwise was clean shaven. He had a very sharp and high pitched voice.

14. I do not know the exact location of Camp 10D Sendai area. It is somewhere between forty and eithty miles northof the City of Sendai. There were just two Candaians in the draft sent to this Camp; Rfmn. George Borden Chanell, R.R.C., and myself. The others were Imperials and Americans.

15. I do not recall the name of the Camp Commandant but Sgt. Onadura was the 2 I/C. At this camp we ~~were forced to work at the iron foundry. I do not know~~

[redacted]

16. Except as herein stated I do not at this time recollect any further information of atrocities or incidents of mistreatment of Allied Prisoners of War.

Sworn before me at the city of Winnipeg in the Province of Manitoba, this 26th day of March, 1946, consisting of five pages each signed by the Deponent.

.../s/.A.H.Hunter.....
(P-28078 Sgt. Arthur Hilton HUNTER)
Royal Canadian Army Service Corps, C.A.

SEAL:
WILLIAM HOWARD AUGUST
NOTARY PUBLIC
MANITOBA

/s/ A H Hunter

....../s/.W.H.August.....
(A Notary Public in and for the Province of Manitoba)

BACK OF PICTURE ATTACHED TO THIS AFFIDAVIT.

This is Exhibit "A" referred to in the affidavit of P-28078 Sgt. A.H. HUNTER sworn before me this 26 day of March, 1946.

/s/ W H August

(A Notary Public in and for the Province of Manitoba)

SEAL: On front of picture.
WILLIAM HOWARD AUGUST
NOTARY PUBLIC
MANITOBA

/s/ A H Hunter (on back of picture)

Certified true copy of an original document compared by me and certified this 4th day of June 1946 at the City of Tokyo, Japan.

J.D.C. Boland

(J.D.C. Boland) Capt., Canadian Army
Member of Canadian War Crimes Liaison Detachment.

SUPPLEMENTARY DEPOSITION

CANADA
PROVINCE OF MANITOBA
TO WIT:

(In the matter of personnel held
(Prisoner of War by the Japanese and
(in the matter of the Supplementary
(Deposition of No. P;28078, Sergeant
(Arthur Hilton HUNTER, Royal Canadian
(Army Service Corps (AF).

I, No. P.28078, Sergeant Arthur Hilton HUNTER, a member of His Majesty's Canadian Army (AF), make oath and say:

1. I am No.P.28078, Sergeant Arthur Hilton Hunter. I reside at 139 Edmonton Street, in the City of Winnipeg, Province of Manitoba. I am a member of His Majesty's Canadian Army (AF) and at all times pertinent hereto a member of the Royal Canadian Army Service Corps.

/s/WHA

2. I made a deposition herein at Winnipeg, Manitoba, which deposition was sworn before W.H. August, a Notary Public in and for the Province of Manitoba, on the 26th day of March, 1946, and in paragraph 7 thereof I referred to a beating administered to me by a Japanese civilian guard named Hasamoto, who was employed by the Rinko Coal Company, at Niigata, Japan, where I was forced to work as a Prisoner of War by the Japanese. Now shown to me and makred Exhibit "A" to this my supplementary deposition is a photograph of the said Hasamoto showing front and side views. The photograph is a true photographic likeness of him. Hasamoto was nicknamed "Liver Lips" by the Prisoners of War and was usually called by that nickname.

3. Hasamoto administered many beatings to the Prisoners of War but I only remember particulars of one beating which I saw him administer. To the best of my recollection and belief this beating which I saw Hasamoto administer was in or about the month of January, 1944. On the day in question Pte. Maltman, W.R., of the Winnipeg Grenadiers, was also a Prisoner of War of the Japanese Docks. Maltman was ill at the time, suffering from a heart ailment and also I believe from tuberculosis which he had contracted, and he had been ill for some considerable time. He was very weak and was having difficulty in doing the work this particular day, which consisted of carrying baskets of coal up a trestle and loading them into a coal or gondola car. Hasamoto was acting as guard of the work party and he ordered Maltman to pick up and carry up the trestle a bamboopole with a basket or hamper attached to each end. These hampers were usually carried by placing the bamboo pole over your shoulders and raising the hampers from the ground and carrying them by balancing the pole across your shoulders. Pte. Maltman endeavoured to lift the hampers as ordered but they were too heavy for him, and after trying in vain to lift them he turned and told Hasamoto that he could not pick up the load. Hasamoto then flew into a rage and beat Maltman over the head and shoulders which a heavy stick which he, Hasamoto, was carrying at the time. Hasamoto continued to beat Maltman until Maltman finally did manage to lift the hampers and stagger up the trestle to the car. Maltman collapsed at the top of the trestle and was carried down on to the dock by some of the Prisoners of War who were near him at the time. I saw them take Maltman over to the fire which was burning there and they formed a group around the fire. Maltman was so ill that he could not work any more that day and was so sick afterwards that he was unable to work for a period of some six or seven weeks.

/s/WHA
AHH

SEAL /s/ W.H. August /s/ A.H. Hunter

PROSECUTION EXHIBIT

4. I saw Pte. Maltman's hands as he was being carried from the coal car to the dock. The fingers were extended and spread. They were also curved like claws and appeared to have become rigid.

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this 15th day of January, A.D. 1947, consisting of two pages each signed by the Deponent.

Seal /s/ W.H. August
A Notary Public in and for the
Province of Manitoba

/s/ A.H. Hunter
No. P. 28078 Sgt. Hunter,
A.H. , R.C....S.C. (AF)

Certified a true copy of an original document compared by me and certified this 3rd day of February, 1947, at the City of Tokyo, Japan.

J.H. Dickey
(J.H. Dickey) Major
Canadian Army

DEPOSITION

CANADA
PROVINCE OF MANITOBA
TO WIT:

In the matter of personnel held Prisoner of War by the Japanese and in the matter of the Deposition of H-6027 Sergeant Robert MANCHESTER, Winnipeg Grenadiers, C.A.

/s/ WHA
IGM

I, No. H-6027 Sergeant Robert MANCHESTER, a member of His Majesty's Canadian Army make oath and say:

1. I am No. H-6027 Sergeant Robert MANCHESTER; I reside at Suite 34 Morecambe Lodge, 391 Balmoral Street in the City of Winnipeg Province of Manitoba. I am a member of His Majesty's Canadian Army and at all times pertinent hereto a member of the Winnipeg Grenadiers, C.A.

2. I was taken Prisoner of War by theJapanese on the 23rd day of December, 1941, and held by the Japanese as a Prisoner of War until I was liberated on the 5th day of September, 1945.

3. As such Prisoner of War I was moved from Sham Shui Po Prison Camp to Japan in August, 1943. I left Sham Shui Po Camp on the second draft of Canadian Prisoners of War to leave that camp and I was taken by ship to Osaka in Japan reaching there on or about the first day of September, 1943. There were 350 Canadian Prisoners of War in this draft also 25 Dutch and 126 British Prisoners of War. At Osaka in Japan 225 Canadian Prisoners of War, including myself and also 25 Dutch Prisoners of War were taken to Camp "58" at Niigata. The remainder of the draft was left at Osaka and I do not know where they went.

4. ~~I do not remember the name of the ship on which I~~ travelled to Japan. It was a small freighter of about twenty-two hundred tons. Sergeant Major Adams, CSM TUGBY, CSM CAULDWELL all of the Winnipeg Grenadiers and CSM McCarron of the Royal Rifles of Canada were on the same ship with me. There was only one Allied officer Prisoner of War on board with us; he was Sub. Lieut. Bushof the Royal Navy.

5. Two or three days before I left Camp Sham Shui Po I saw a number of cases of Red Cross bully-beef and M & V being taken away by truck from the store room in which the Prisoner of War Red Cross parcels and supplies were held. When I was taken as prisoner on board the ship for Japan I was quartered in the after-hold and I saw stored in the after-hold of this ship approximately two dozen cases of Red Cross bully-beef and M.&V. which, I believe, were the same cases which I had seen taken two or three days before from the camp. Captain Cruze of the R.A.S.C. Captain Bush of the R.C.A.S.C. and Lieut Billings of the R.C.C.S. would be able to give information as to this particular lot of Red Cross cases as they were in charge of the movement of such supplies from camp. This Red Cross food, with the exception of one tin of bully-beef that was divided between every four men, was not distributed to the Prisoners of War on board ship. I saw the Japanese Corporal, who was in charge of the draft of Prisoners on boardship come in to the hold periodically and remove a case of this Red Cross food from the hold. This Japanese Corporal had his quarters in a cabin on the deck of the ship and three other Japanese N.C.O.s shared his quarters with him. I saw all of these Japanese N.C.O.s at different times drinking the liquid of ~~cans of Red Cross M. & V. and throwing the cans with the~~

PROSECUTION EXHIBIT
no. 11

SEAL

/s/ W.H. AUGUST

/s/ Robert MANCHESTER

~~contents overboard. I also saw Japanese sentries, on~~ duty on deck, drink the liquid from the cans of M. &V. and throw the cans with their solid contents into the gutter which ran around the edge of the deck. On one occasion I saw two of the Allied Prisoners of War who were on deck at the time, try to salvage some of the cans which had been discarded by these sentries, and for doing this the Japanese sentries gave them a sound slapping and took the cans away from them and threw the cans overboard.

6. The Japanese Corporal to whom I have referred in paragraph 5 hereof as having been in charge of the Prisoners of War on this ship, was about 5'10" in height, would weigh approximately 160 pounds, and was approximately 25 years of age. He was clean cut and was always well groomed. He appeared to be more cultured than the usual Japanese soldier. I do not know what branch of the Japanese Army he belonged to, but I was told by Sgt. Arthur W. Hance of the Hong Kong Volunteer Defence Corps, who spoke Japanese fluently, that this Japanese Corporal was on his way home to Japan to be promoted to the rank of Sergeant.

7. I arrived at Camp "5B" Niigata on the 3rd day of September, 1943. At this time all of the Prisoners of War were quartered in one camp in buildings belonging to the Rinko Coal Company and which were located about twenty minutes walk from the Rinko Coal Company docks. At this time the camp was not known as Camp "5B" but was known as the Rinko Camp, and we remained in this camp as one group until on or about the 24th day of December, 1943, when we moved as a group to a new camp located some two and a half miles away. This new camp had just been completed and so far as I know was constructed for the sole purpose of housing Prisoners of War and it became known as Camp "5B" Niigata. We remained in this new camp until on or about the 18th day of January, 1944, when all of the Prisoners of War were again moved out of this camp due, I believe, to one of the buildings having collapsed on the 1st of January, 1944. On the 18th of January, 1944, when we were moved out of the new camp the Prisoners of War were divided into two groups; one group, consisting of those Prisoners of War who had been detailed to work at the Rinko Coal Company docks and also those who had been detailed to work at the Marutsu Shipyards, were taken back to Rinko Company buildings which had just been completed and which had been built right alongside the Rinko buildings occupied by us on our first arrival in Japan, the other group of prisoners, consisting of men who had been detailed to work at the Shintetsu Steel Foundry, were moved to a different camp in the Shintetsu area and later became known as Camp "15D" Niigata. The group which remained in the Rinko Company buildings stayedthere to some time in April, 1944 when they were again moved back to the camp vacated on the 18th January, 1944. Both the Rinko camp and this new camp I have called throughout this deposition Camp "5B" Niigata.

8. I arrived at Camp "5B" Niigata on the 3rd day of September, 1943. ~~The Camp was under the command of Lieut. Yoshida, who was to the best of my recollection and belief a member of the Japanese 24th Army.~~ Lieut Yoshida remained Camp Commandant from the 3rd day of September, 1943, until on or about 5th February, 1944, when he was replaced by 2nd Lieut. Nimota, also of the 24th Japanese Army. During his tour as Camp Commandant 2nd Lieut Nimota was promoted to the rank of a Lieutenant. He remained Camp Commandant until on or

SEAL
/s/ WM AUGUST
R MANCHESTER

~~about 30 July 1944 when he was replaced by Lieut.~~ Takiuchi who was also a member of the Japanese 24th Army. Lieut. Takiuchi remained as Camp Commandant at 5(b) until on or about 9th day of September 1944 when he left the camp and according to reports which I received, became Adjutant to Col. Suzuki who was Commander in Chief of all Prisoner of War Camps in the Tokyo area. Lieut. Takiuchi on two subsequent occasions returned on a tour of inspection to 5(b) in the capacity of Adjutant to Colonel Suzuki. Lieut Takiuchi was replaced as Camp Commandant on or about the 9th of September 1944 by 2nd Lieut. Kato who was also a member of the Japanese 24th Army. Second-Lieut. Kato was promoted to the rank of Lieutenant during his tour as Camp Commandant and remained Commandant from the 9th of September 1944 until on or about the 23 August 1945. It was rumoured amongst the Prisoners of War in camp that he had been removed by Japanese authorities and taken to Tokyo shortly after V.J. day for fear of retaliation against him by the Prisoners of War. Lieut. Kato was replaced by a 2nd Lieutenant whose name I do not know as he was only Camp Commandant for some two weeks until we were liberated.

9.
Lieut. Yoshida: was about 5'8" or 9 inches in height; weighed approximately 150 or 160 pounds and was about 25 years of age. He wore glasses and was clean shaven. He wore his uniform very smartly and appeared to me to pattern himself after the German officer. Now shown to me and marked Exhibit X to this my affidavit is a true photographic likeness of the said Lieut. Yoshida. He was brutal in his treatment of the Prisoners and expressed himself as being very much against all Prisoners of the white race and was responsible for many beatings, cruelties and deaths of Prisoners of War which occurred during his tour as Camp Commandant.

Lieut. Nimoto: was about 5' 8 or 9 inches in height; would weigh about 160 pounds; I estimate his age to have been about 45 years. He was clean shaven and wore glasses periodically. He was not particular about his dress and appeared in camp on numerous occasions not fully clothed. He seemed to understand the lot of the prisoners and increased the rations; cut down the hours of work; allowed more men "at rest"; put a stop to practically all of the beatings of the Prisoners of War and in general improved the lot of the Prisoners.

Lieut. Takiuchi: was about 5' 9" in height; weighed approximately 170 pounds and was about 30 years of age; he was clean shaven; did not wear glasses; was very smart and athletic; very military in his appearance and bearing; smartly dressed at all times.

Lieut. Kato: was approximately 5' 9" in height; would weigh about 160 pounds; was approximately 25 years of age; he was clean shaven and wore glasses. He had a sullen look on his face at all times and always carried his sword. He was very military in his bearing and a strict disciplinarian. Lieut. Kato was also brutal in his treatment of the Prisoners of War ~~and administered several severe beatings to prisoners.~~

S.L.

/s/ W. AUGUST /s/ Robert MANCHESTER

~~During his tour as Camp Commandant, the beatings of Prisoners increased considerably.~~

10. Shortly after my arrival at Camp 5(b), I think it was on the 5th or 6th September 1943, I was detailed as the Allied N.C.O. to supervise the work party which had been detailed for daily work at the Rinko Coal Company Docks. This was the first work party of Prisoners of War to be sent to the Company docks. These docks were situated approximately a twenty minutes walk from camp and the work party was marched from camp under the supervision of a Japanese by the name of Saito. Saito had accompanying him, as guards of the party, four civilian employees of the Rinko Coal Company who arrived that morning and each morning following at camp to escort the prisoners out to the docks. ~~The footwear of all of the Prisoners of War who comprised this party was in very bad condition~~ and on ~~arrival~~ at the coal docks, Saito, after consultation with the four ~~civilian~~ guards, ordered all of the prisoners to take off their ~~boots and~~ socks and to work in their bare feet. No one was ~~excepted.~~ All of ~~the Prisoners of War including myself were forced to and did remove their boots and socks.~~ For the first two days, all of this party of prisoners worked at pushing the coal trucks on the trestles. On the second day this working party was split up into three small groups. One group carried coal from the dumps to railway cars where it was loaded on to the dars. The second group was put to work shovelling coal in open barges and the third group remained on the trestle pushing coal trucks. This grouping of men at work at the Rinko Coal Docks continued to the end of the War. ~~The prisoners doing all of this work, i.e. all of the~~ groups were forced to work in their bare feet and continued to work in their bare feet for about six or seven days when this grass sandals were supplied to all of the prisoners on the work party irrespective as to where he worked, on the ground, on the barges or on the trestles. The weather during this first week was very cold and wet and the prisoners feet suffered terribly as a result. All parts of their feet became very badly cut, bruised and infected by dirt which got into the cuts. The thin grass sandals offered little protection after they were issued and the men continued to get cankerous sores and poison in their feet. We were all forced to wear these grass sandals at work for a period of a further week when the regulations were eased off and the men were gradually allowed to wear their own footwear at work. I did not know whether Lieut. Yoshida who was Commandant at that time, knew that the Prisoners of War were being forced to work in their bare feet. It was ordered by Saito at the Docks after consultation with a Japanese civilian, named Kajima and the Rinko Coal Company guards. Kajima was the Superintendent of work for the Rinko Coal Company and the guards referred to took their orders from him. I am of the opinion that Saito and Kajima were directly responsible for making the prisoner s work in their bare feet and later in sandals. Sandals were supplied by Kajima on the behalf of the Rinko Coal Company. Kajima spoke English perfectly and about the second or third day after the work party started, he came down to the docks to look the Prisoners of War over. I personally spoke to him at that time about the condition of the men's feet and ~~asked that they be allowed to put on their own footwear.~~

SEAL

/s/WH AUGUST /S/ Robert MANCHESTER

~~Kajima told us at that time that the men would not be~~ allowed to wear any footwear and that the reason for this was that it was a form of punishment. On another occasion I spoke to Kajima about the food given to the men at work and asked him if the food could not be increased because the men could not work properly on the amount of food given them. He replied that we were Prisoners of War taken prisoners by the Japanese and that due to this we were their slaves and our bodies ~~belonged to them to do with as they saw fit.~~

11. Saito, referred to in paragraph 10 hereof, was a civilian employee of the Japanese government, working with the Army on Prisoner of War camp work. He was a permanent members of the staff at Camp 5(b) Niigata. It was generally understood that he had been in the Japanese Army and had seen some service and had either been discharged or placed on a reserve status and given work in prison camps. He wore a light drill uniform somewhat different to the regular Army uniform, and had on his arm a red circle on which was imposed a white star. He was approximately 5'3" in height, weighed about 140 pounds, and I believe would be about 30 years old. He was clean shaven except for a very light mustache, and wore thin rimmed glasses at all times. He had a very high pitched voice when he spoke and was sometimes called "Squealer" by the prisoners. He is to be distinguished from another Japanese who was on the camp staff and had to do with the clothing stores and who was called Saeto. The Japanese referred to as Saito in this paragraph was employed in camp as the senior Japanese camp guard in charge of the Rinko Coal Company work party of Prisoners of War from the 3rd September, 1943, to about March, 1944, when he was removed from camp and, I believe, transferred to Shintetsu.

~~Kojima was a Japanese civilian and was Superin~~tendent of Works forthe Rinko Coal Company at the Rinko Coal Company docks. Kojima was about 5'6" in height and weighed about 140 pounds. He was approximately 45 years of age. He wore glasses and had a full black beard and mustache. He was nicknamed "Whiskers" and also "Rasputin" by the prisoners.

12. After the first two weeks at the Rinko Company Coal docks the men were gradually allowed to wear their own footwear. However, a great many of them had either no footwear of their own, or their footwear was so badly dilapidated as to be of no use whatsoever as a protection against the weather. The biggest part of the Canadian Prisoners of War at the camp who were going each day to the Rinko Coal Company docks to work were practically walking on their bare feet at the time. I was present when Sgt. Rance of the Hong Kong Volunteer Defence Corps, who was a Prisoner of War with us and who spoke Japanese fluently, asked Okuda, one of the Japanese medical officials, for footwear for the men as their feet were on the ground. Okuda told him at the time that there was no replacement for the footwear and that the prisoners would have to get along with what they had. As a result I personally know that No. B.17046 Sgt. James Martin, and No. A.44596 Rfmn Harold E. Gibbons, both of the Royal Rifles of Canada, whose footwear was completely ruined, had to walk from the camp to the Rinko coal docks in their bare feet ~~during the months of September, October and November~~

~~of 1943, and to work at the docks during the whole~~ 29
of that time in either their bare feet or straw sandals. Sgt. Martin developed beri beri during this period and I saw him marching to work in his bare feet which had swollen to the size of small hams. Sgt. Martin was forced to work at the coal docks in this manner until the early part of December, 1943, at which time he was admitted to the camp hospital because of his physical condition. He died about two months later. I saw him several times in the camp hospital, where I visited him. He was swollen from the hips down to his feet until his legs and feet were as big around as telephone posts, and I am firmly convinced that he died as a result of the beri beri which he contracted while forced to work in his bare feet and from the ill effects of his treatment received at that time. Rfmn. Gibbons was forced to work approximately the same length of time as Sgt. Martin, and I believe he was admitted to hospital some time in December, 1943, suffering from dysentery, and exposure. He remained in hospital about amonth, when he was released by a Japanese medicalorderly, Pte. Takahashi, and returned to the hut in which I was quartered long before he was in any condition to be discharged from hospital. He had been quite sick with dysentery ever since our arrival at Niigata and as a result of his weakened condition about a week after his release from the camp hospital he went right out of his head. I saw him leave the hut one morning I believe early in January, 1944. It was snowing outside at the time , and I did not notice Gibbons particularly except that he left the hut. Shortly after the work party had gone two Prisoners of War brought Gibbons back into the hut. I do not remember the names of these prisoners. They told me that Gibbons had wandered after the work party, had been stopped by the Japanese sentries at the gate, and that they had been detailed by the sentries to return Gibbons to his hut. When I noticed Gibbons' condition I immediately had him taken to the camp hospital. Gibbons died that afternoon.

13. During the first two or three weeks that the work part went to the Rinko coal docks and were forced to work in bare feet and later in straw sandals, that is in September, 1943, there were no prisoners who had their feet frozen as a result thereof. However, in November and December of 1943, and January and February of 1944, I saw many Prisoners of War with their feet badly frozen due to the dilapidated condition of their footwear. I cannot recollect the names of any of the prisoners whose feet were frozen at this time, but ~~there were a great many.~~

~~14. All during the term of Lieut. Yoshida's office~~ as Camp Commandant, that is from the 3rd of September , 1943, to about the 5th of February, 1944, not only the more healthy Prisoners of War, but also a great many of the seriously sick prisoners, were forced to work daily. Supervision of the medical work in camp was in the hands of the Japanese medical orderly referred to before, Pte. Takahashi, who remained in Camp 5 (b) from the date of our arrival until approximately the end of July, 1945, as camp medical orderly. He was promoted Lance Corporal just shortly before he left ~~the camp. Although he had other Japanese soldiers~~

29

SEAL /s/ WH AUGUST /s/ Robert MANCHESTER

~~and N.C.O. is working with him as medical orderlies,~~ 28
Some of whom were senior in rank to him, Takahashi seemed to have authority and control over all of the medical orderlies who worked in camp with him and even seemed to have some control over all of the Camp Commandants. He alone of the medical orderlies had the final say as to who of the prisoners was to to work each day, and who was to be allowed to go sick. Each day Takahashi issued instructions as to how many men were to work, how many men were to be sick, and how many men were to be allowed out at rest, and refused to allow our own Allied medical officers to use their discretion as to which men were to be allowed to remain away from work. It was general knowledge in the camp that he had charge of the supply of medicines in camp and that he would only issue a certain amount each day for use among the Prisoners of war. I was personally present on different occasions when the Allied medical officer asked Takahashi for certain additional medicine, and heard Takahashi refuse to supply the medicine, saying that it was not needed. It was usual to hold a sick parade after the men returned from work each night and I have on many occasions been present on this sick parade when the Allied medical officer, after examination, would mark some of the prisoners unfit for work. I have seen Takahashi, who was also present on these occasions, cancel the medical officer's directions and say that the prisoner in question was fit to work and that he would report for work the next morning. After these medical inspections Takahashi would make out "parade states" for the next day showing how many were to be in hospital, how many were to be allowed at rest, and what prisoners were to be sent out to work the next day. Many of these prisoners were in no condition to ~~work and the following morning were so weak that they could not get out of bed.~~ 29 I have seen Saito, who might be referred to as the "Rinko Saito," and a Japanese guard named Okuda, come in to the prisoners' huts in the morning and pull these men who were too weak to get out of bed, onto their feet and force them to fall in on the parade square with the work party. At times several of these men collapsed on the parade square before they moved off to work, and usually the Japanese guard would detail the kitchen staff to come out and carry these men into their huts.

~~13. At this time also all of the prisoners' clothing~~ 29
was in bad condition. We had all arrived at Niigata with summer drill only, except for a very few who had managed to save a part of a battle dress uniform, but the great majority had only summer drill. In most cases the men had one change of clothing. No one had more than one change. In October, 1943, some Americans from the Phillipines arrived as prisoners in camp and shortly thereafter Lieut. Yoshida called a clothing parade and all of the Canadians were forced to exhibit all their clothes. At that time the Japanese staff, on orders from Lieut. Yoshida, took from the Canadian Prisoners of War, everything except those articles which they, the Japanese, considered it necessary for the prisoners to keep, and as a result all of the Canadian Prisoners of War were left with one outfit only. No one was left anything into which to change should for any reason his clothese become wet. In addition to this
SEAL 29 ~~the Japanese issued each Japanese army raincoats,~~

/s/ WH AUGUST /s/ Robert MANCHESTER

~~which were too small for the men and which offered~~ no protection against the rain but appeared to let water in quicker than our own clothes did. At the coal docks the Rinko Coal Company supplied a limited number of grass capes to work in. These were in effect cookie capes which tied around the throat. These capes would keep the water out better than the raincoats, but after an hour's work in the rain or snow they were of no use and the moisture penetrated right through them. During the months of September, October and November, 1943, it rained continually. In November, 1943, the snow came and it snowed periodically from then until the end of February, 1944, when the rains started again. The rains kept up during the period of March and April, 1944. During this time the Prisoners of War were forced to march to the coal docks every day of the week except for three days a month when the individual had his personal rest day. The prisoners were forced to work outside in the rain and snow and were not allowed to take any shelter at any time during working hours, nor were they given time to change their wet clothes had a change been available. On the days that it rained or snowed the mens' clothing became sodden in about an hour after they commenced to work in the morning. Some times by the time we got to the docks we were soaked through. We were, however, forced to work in our soaked clothes until we returned to camp at night. In camp there were little or no facilities for drying clothes, with the result that the next day the men put on their wet garments of the day before and went to work in garments already wet before they put them on.

16. The food during the whole of the time that we were working at the Rinko Coal Company Docks, in my opinion was entirely insufficient for the men to work on or even to keep up their strength had they not been working. In the morning for breakfast, at Camp, we got a small bowl of watery red rice supplemented by about one-half cup full of watery stew made out of either dried fish or greens. We were supposed to take our noon meal with us, but the Japanese Camp officials at no time allowed us sufficient time to have our breakfast and wash our dishes that we had to carry our noon meal out in. The mess equipment which the prisoners had was in very poor condition. Most of us were using old tin cans which we had scrounged, and it was in these cans that we had to carry our noon meal to the docks. The noon meal consisted of a small bowl of watery rice and about a half-cup full of some watery stew which was given to us for breakfast, and this had to be mixed together and carried out to work in the tin cans which we were using for mess equipment. As a result of the poor equipment and of not having sufficient time to properly clean it, during the greater part of the time the noon meal went sour before it was eaten and the men were either unable to eat it or if they ate it, it upset them. Dysentery became very prevalent and I believe it was due in main to the conditions under which we ate our noon meal. The evening meal on our return from work was chiefly the same although sometime a small cup of boiled beans were substituted for rice. The men became very weak and lost weight continually and in my opinion, it was due chiefly to the food which ~~was given us at this camp.~~

SEAL /s/ WHAUGUST /s/Robert MANCHESTER

~~17. I believe it was in November, 1943, that~~ No. H.41703, Pte. Gilbert Robertson, of the Winnipeg Grenadiers, died as a result of exposure and weakness. He had been forced by the Japanese to work at the coal docks from the time of our arrival until about two weeks before his death, when he was admitted to Camp hospital with pneumonia. I visited him on numerous occasions while he was in hospital. He was completely fagged out and got weaker until he died. In my opinion his sickness and death were a direct result of his weakened condition and to his having been forced to work with insufficient clothing to protect him from the elements.

18. In or about the month of December, 1943, No. H.6254, Pte. Ernest Heuft, of the Winnipeg Grenadiers, died from dysentery. Pte Heuft contracted dysentery shortly after he reached Niigata. He was forced to work at the coal docks from the time of his arrival at Niigata on September 3rd, 1943, until about two weeks before his death, when he was allowed to remain in Camp as a rest patient in his own hut. By this time Heuft was so weak that he could not get out of his bed. A day or two after he was allowed to stay in Camp, Major Fellows of the American Army, who had arrived in Camp with an American draft about the 6th of October, 1943, advised me that he had gone to see Heuft in his quarters on the day that he, Major Fellows, was speaking to me, and at that time he had been accompanied by the Japanese Medical Orderly, Pte. Takahashi. Major Fellows further advised me that Heuft had lost control of his bowels and had dirtied his bed and that Takahashi had thereupon forced Heuft to take his blankets to a pump which was in an annex of the building and very cold, and there strip and wash himself and his blankets in ice cold water. Major Fellows also advised me that Heuft had been so weak that he had to crawl with his blankets from his bed to the Annex to wash them and himself and that afterwards Takahashi had forced Heuft to move his quarters to a very cold outside latrine and to stay there. I visited Heuft while he was lying in this latrine. It was very damp and wet and the cold was severe. Heuft was kept in this outside latrine for two days, during which time I visited him periodically. On the third day he was taken into the Camp hospital. He died the same day. The action of the Japanese Medical Orderly Takahashi in forcing Heuft to wash in ice cold water and to lie in the outside latrine, was taken inspite of the protests of Major Fellows, who by this time was acting as Camp Administrative Officer for all of the Allied Prisoners of War.

19. No. B.29810, Sgt. W.R. Pope, of the Royal Rifles of Canada, died at Niigata as the result of dysentery and beri beri. To the best of my recollection and belief, his death occurred in January, 1944. Sgt. Pope had been forced to work at the Rinko Coal docks from the time of our arrival in Camp in September, 1943, to about two or three weeks before his death, when he was admitted to hospital. Sgt. Pope had contracted dysentery and beri beri about a month after our arrival at Niigata Camp. I would say he contracted it some time early in October, 1943. Inspite of this, he had been forced to work continually at the coal docks. As a result he grew weaker and weaker until finally he was admitted to the hospital. I am of the opinion that had he been looked after when he contracted his illness ~~and properly nourished, that he would have lived and~~

SEAL /s/ WH AUGUST /s/ Robert MANCHESTER

~~that his death was due to his having been forced to work~~ in his weakened condition.

20. No. L.22816, Pte. Albert Boulding, of the Winnipeg Grenadiers, died at Niigata Camp. I am not sure of the exact month of his death, but I believe it was in January, 1944. In my opinion the cause of his death was complete exhaustion. He was one of my work party and had been forced to work at the Rinko coal docks from the time of our arrival in September, 1943, to the day before his death. He got noticeably weaker as he worked at the coal docks and one day towards the latter part of 1943 he told me that he did not think he would be able to keep up much longer and that he was so weak he could hardly stand and was afraid he would drop in his tracks. I have previously sent him over to the Japanese Medical officials in Camp in an effort to get him off work. He had also reported periodically on sick parade. Pte. Takahashi, the Medical Orderly, refused to admit him to hospital or to let him rest because he could see nothing wrong with him. I also personally took Boulding to both Saito and to Kojima, the Rinko Col Company Superintendent and showed Boulding's condition to these Japanese. They also refused to do anything to let him off work. One morning in January, 1944, on Boulding's rest day, one of the boys in Boulding's hut, came to me and said that something was the matter with Boulding. Boulding had been working at the Rinko Coal Company docks the day before and I immediately went over to his bunk to see what was the matter. He seemed to be in a sort of coma and I could not rouse him. Assisted by one of the other prisoners I carried him over to the Camp Hospital and placed him in bed there. He died the same day. I believe his death was due to complete exhaustion, and to his having been forced to work in that condition.

21. No. H-6654 Cpl. Roy T. Lovell was taken ill with dysentery about the third week in September, 1943. He was one of the original work party to start work at the Rinko Coal Docks the first week in September, 1943, and was working on the docks when he contracted dysentery. He was forced to continue working at the docks although suffering from dysentery and the resulting weakness therefrom until some time in December, 1943, when he was admitted to Camp Hospital. He remained in hospital approximately three weeks and before he was cured he was discharged and again sent back to work at the coal docks. He was still suffering from dysentery when he returned to work. Although sick with dysentery he was forced to work until the end of January, 1944, when he was again admitted to hospital. He died a short time later; I believe some time in February, 1944, from dysentery and general weakness. I am of the opinion that had he been allowed to rest and had received proper food and medical attention from the Japanese he would not have died. The dysentery cases had become so prevalent in camp that Saito had begun carrying stomach powders in his pockets to the coal docks each day. Saito told me at the time he started to do this, which, to the best of my recollection, would be around the end of October 1943, that if any of the men were suffering from dysentery and weakness at work I was to bring them to him at the noon hour. I did so on numerous occasions and on each occasion Saito would poke the individual so paraded in the stomach with the stick, which he carried and some times he gave the individual the powder and some times he refused to give it. However, in every case of men so parade, Saito struck the men about the head or body ~~either with his hand, fist or stick. Some time he~~

SAL

/s/ WH AUGUST /s/ Robert MANCHESTER

~~kicked them. In each case he told the men they had~~ no business being sick and that he should not be sick. It soon developed that the men refused to report to Saito for this medicine.

22. In my opinion, in addition to the responsibility of the Camp Commandant, Lieut. Yoshida, who knew that the treatment referred to herein was being meted out to the Prisoners of War, the responsibility for this treatment lay directly to the Japanese Medical Orderly Takahashi, the Rinko Guard Saito, the Japanese Sergeant named Eto, who acted as Second in command to Lieut. Yoshida from September 3rd, 1943, to approximately the end of May, 1944, and to a Japanese guard named Okuda who remained at Camp "5B" from the 3rd of September, 1943, to some time in February, 1944.

Pte Takahashi was a member of the 24th Japanese Army and was the Medical Orderly at the camp referred to throughout this deposition and the only Japanese of that name in camp. He was about 5'5" in height, weighed approximately 170 pounds. His age was approximately thirty-five years. He was clean shaven and wore dark rimmed glasses with heavy lenses at all times. He was well educated, appeared to have slightly higher than the average Japanese degree of culture and at all times exhibited a strong personality overriding his seniors in rank with whom he came in contact.

Saito, referred to in this paragraph, has previously been described herein as the "Rinko Saito".

Sgt. Eto was a member of the 24th Japanese Army and acted as second in charge of the camp during the whole of the time that Lieut. Yoshida acted as Camp Commandant. Sgt. Eto was approximately 5'4" in height and weighed approximately 160 pounds. He was about thirty years of age, was clean shaven and wore glasses. His bearing was very regimental at all times. He had two or three gold teeth in the front of his mouth; I think they were on the upper jaw.

Okuda was a civilian in the employ of the Japanese Government as Prison Camp Guard. He had some previous service with the Japanese Army and had either been discharged or retired and given work in the prison camps. He was on duty at Camp "5B" from about the 3rd of September, 1943, to some time in February, 1944. He was about 5' in height and weighed approximately 130 pounds. I would estimate his age to be thirty years. He was clean shaven with a small wisp of a mustache, which could hardly be called a mustache and wore glasses on occasions.

/s/ RM
WHA

Takahashi was primarily responsible for naming the prisoners who went out to work each day. St. Eto, Saito and Okuda were the Japanese camp guard who followed up Takahashi's instructions and who were responsible for hauling the sick men out of their beds and forcing them to work each day. I have seen them all do it on different occasions.

23. Some time during the month of September, 1943, I do not remember the exact date, I was present when Sgt. Arthur Hunter of the Royal Canadian Army Service Corps was beaten and kicked at the Rinko Coal Docks by a Japanese civilian guard named Hasamota. This guard was commonly known to the Prisoners of War as "Liver Lips".

SEAL /s/ WH AUGUST /s/ Robert Manchester

He was about 5'6" tall, weighed approximately 160 to 170 pounds and I would estimate his age to be about thirty-five. He was clean shaven and did not wear glasses. He was a stocky individual and got his nickname from the fact that he had a large mouth and large protruding lips. The circumstances surrounding this beating were that Sgt. Hunter was suffering from dysentery and was in a very weak condition. On this particular day he was pushing a coal truck on the trestle and he fainted while doing so. He fell on the track behind the truck and while he was lying there Hasamota, who was track boss and who was supervising the work there, came up and gave him two or three hard kicks with the toe of his boot and tried to rouse him. Sgt. Hunter did not move and Hasamota then got a bucket of cold water and threw it on him. This did not rivive Hunter immediately and Hasamota again kicked Hunter quite hard several times as he lay on the tracks and when Hunter finally stirred Hasamota pulled him up by the collar and hit him severely several times with a wooden stick something like a broom handle but a little thicker and about three feet long. This was done because Hasamota thought at the time that Hunter was faking his weakness. After the beating Hunter was allowed to rest for approximately half an hour and was then forced to work again. This beating was witnessed by all of the Canadian Prisoners of War who were working on the trestle at the same time.

~~24. In November, 1943, I am not sure of the exact date~~ but I believe that it was in the month of November, 1943, Rfn. Smith of the Royal Rifles of Canada, whose Christian names and number are unknown to me and Rfn. James Mortimer also of the Royal Rifles of Canada were accused of stealing Red Cross supplies from the Japanese Camp Staf office I saw these prisoners paraded before the Camp Commandant, Lieut. Yoshida and when they were brought out of his office I saw them taken to the Guard Room. I was told by Sgt. Rance of the Hong Kong Volunteer Defence Corps, who acted as interpreter before Lieut. Yoshida on that occasion, that Smith and Mortimer had been sentenced by Lieut. Yoshida to a punishment of seven days on bean curd and water; and to spend seven nights in the Guard Room without any sleeping facilities, clothes other than what they were wearing or blankets and that during the daylight hours they were to be tied to the gate which led out of camp. I saw them moved into the Guard Room for the nights on each of the seven days. During the daytime for the next seven days I saw them tied to the gate posts at the main gate of the camp. Their hands were tied behind their backs and they were then fastened to the gate post tightly enough so that there was no room for them to move around. All that they were allowed to wear during this period and all that they did wear was a "k.d." shirt, light shorts and a pair of socks. They were not allowed any other protection. The weather during that seven days was cold and wet; it rained during almost every day and the rain was occasionally mixed with sleet. During the first two mornings of this punishment when Smith and Mortimer were brought out of the Guard Room and before they were tied to the gate posts they were taken right on to the Parade Square with their hands tied behind their backs. This happened on both mornings when the work parties were assembling on the Parade Square before moving off to work and was in full view of the camp. Smith and Mortimer were then beaten by the guards with their fists and were thrown to the ground and kicked viciously while they were lying there. ~~They were then hauled to their feet by the guards~~

SEAL /s/ WHAUGUST /s/ Robert MANCHESTER

between ten and fifteen minutes on each of the first two mornings before they were tied to the gate posts. The remaining five mornings, to the best of my knowledge, they were taken straight from the Guard House to the gate posts. The Camp Commandant's office was right at the Parade Square and he was in his office during both of the mornings that these beatings were carried out and I am sure he must have seen them. It was in full view of the office. I saw the faces of both of these prisoners after their beatings and although I could not see any cuts, their faces were covered with heavy bruises. They also developed bad colds during this seven day punishment and immediately on their release from the Guard Room were taken to hospital where they each spent approximately one week recovering from the effects of the punishment. I do not know the names of the guards who did the actual beating, they were just ordinary Japanese sentries which were moved from camp to camp after a short stay in each camp.

25. Sometime in January 1944, just after we had returned from the new camp to the Rinko building, Pte. James Mortimer of the Royal Rifles of Canada was again charged with theft of Red Cross goods from the office of the Japanese Camp staff. Now shown to me and marked Exhibit "Y" to this my deposition, is a true photographic likeness of the said Rfmn Mortimer. I did not see Mortimer taken into the Camp Commandant's office for this offence but I visited his several times in hospital after he was released from his punishment and I also saw him in the latrines on several occasions while he was doing the punishment. Mortimer during these visits told me that he had been tried by Lieut. Yoshida, the Commandant, for theft of Red Cross goods and that Lieut. Yoshida had sentenced him to be tied outside to a stake in full view of the Camp for a period of ten days and that in addition Lieut. Yoshida sentenced him to be placed on bean curd and water which was to be given him twice daily. Mortimer punishment started immediately. The day that this sentence was passed on him by Lieut. Yoshida and for several succeeding days, Mortimer's hands were handcuffed behind his back; a stake was driven in the small compound next to the guardroom and Mortimer was tied by his handcuffed hands to this stake by a rope of fifteen feet in length. His dress during this time consisted of socks; a K.D. shirt and a thin pair of shorts. He had no other clothes on him. The weather was very cold and raw at the time and there was about three inches or more of snow on the ground. I saw him tied this way every day for several consecutive days. At night during these days, I saw him taken back to the guardroom where he was confined in a cell without blankets. His socks wore out shortly after his punishment began. His feet swelled up to the size of a small ham and he stood in his bare feet in the snow for the greater part of his sentence. I saw his feet frozen either the first or the second day that he was tied out. After that I saw the skin and flesh of his feet burst and become discoloured. Also about the third day after he had been tied to this stake, his hands became badly swollen. I saw them one day when his wrists had swollen so badly that the handcuffs were down in the flesh approximately one inch. The Japanese guards were forced ultimately to cut the handcuffs off his wrists and to tie his hands with rope. Mortimer told me later that they had left the handcuffs on his wrists until they were unable to get them off by unlocking them and they had to be cut off. Mortimer was still doing this punishment when

SEAL /s/ WH AUGUST /s/ Robert MANCHESTER

~~Lieut Yoshida was removed as Camp Commandant. The~~ new Commandant, 2/Lt Nimota immediately upon his arrival in camp after Yoshida's departure ordered the punishment to stop and for Mortimer to be taken to the hospital. I visited Mortimer in hospital almost every day during the month following his release. Gangrene had set in in his feet and legs. The flesh receded from his feet and during the latter part of the month that he lived, I saw his toes. The flesh had receded from them leaving the bare bones protruding for from 1 1/2 to two inches. Mortimer died approximately one month after he had completed this punishment and the cause of his death was gangrene resulting from his punishment. He suffered terribly during his entire stay in hospital. Mortimer throughout the whole of the time I visited him protested that he was innocent of the charge for which he had been sentenced to this punishment by Lieut. Yoshida and I firmly am of the opinion that the whole matter was concocted by some members of the Japanese Camp staff, and that Mortimer did not have a fair trial. This punishment was witnessed by the whole camp and Mortimer was given medical treatment by Major Stewart of the RAMC; Major Fellows of the American Army who was an Artillery officer and to whom I have referred to before in this deposition, was acting as Camp Administrative officer at the time. Both of these officers have full knowledge of all the details in this atrocity. The compound in which Mortimer was tied during his punishment was right at the main gate of the camp and in full view of everyone who entered or left the camp. The Camp Commandant, Lieut Yoshida lived outside the camp area and it was his practice to come to camp in the morning around 0800 hours. His hours of leaving camp were very irregular and he invariably went in and out of the camp several times each day and I am sure he must have seen Mortimer tied to the stake and doing his punishment there. I am more than sure that Lieut. Yoshida must have noticed the condition of Mortimer's hands and feet while tied there.

/s/WHA
RM

26. Shortly after we moved from the original Rinko camp to the new camp in December 1943, an American named Titman who I understand was Pte. Titman, Gerald, K. A.S. No. 17025590 of the 31st Infantry Division, U.S. Army was charged with stealing a rice box of one of the Japanese civilian workmen who were still at work in the new camp. I do not personally know the particulars of the trial, nor do I know the terms of the sentence given to Titman. Both Major Fellows of the American Army and Sgt. Rance of the Hong Kong Volunteer Defence Corps told me that Titman had been tried for this offence by Lieut. Yoshida. This was sometime in January 1944, a few days prior to the 18th of January of that year when we were moved back to the Rinko buildings. I did see Pte. Titman doing his punishment for this alleged offence. He was tied to the fence which ran around the camp at a point opposite the guardroom. He was tied right up close to the fence and his hands were tied behind his back. He was wearing a Japanese greatcoat, a light shirt, and a pair of K.D. trousers and my recollection is that he had only socks on his feet. The weather was extremely cold and there was three inches of snow on the ground at the time. I saw Titman tied in this manner for two days and during that two days I saw ~~the guard when they were taking him in and out of~~

SEAL /s/ WH AUGUST /s/ Robert MANCHESTER

~~of the guard room, beat him about the head and face~~
with their fists and rifle butts. I think it was on
/s/WHA the third day of this punishment that there was a
RM considerable stir amongst the Japanese camp guard.
I approached to see what the trouble was and noticed
that Titman was not tied to the fence at that time.
I saw part of the rope that had tied him, lying on
the ground nearby and I could see his tracks which
led in the snow through a hole in the fence from
which a board had been removed, and off in the
distance outside, I came to the conculsion that
Titman had escapted. It was rumoured in camp at the
time that Titman had been told by the Japanese that
he was going to be shot for his alleged offence of
stealing the rice box. I saw Lieut. Yoshida, Saito,
a Japanese guard named Isumi, and one other
Japanese guard whose name I do not remember, start
out of camp at this time on a tricycle motorcycle in
pursuit of Titman. About two hours later these
Japanese returned in the motorcycle and I saw them
dismount. They reached into the motorcycle and
hauled Pte. Titman out. He was trussed up with his
hands tied behind his back with rope. The rope was
then brought up, looped around his neck and down his
back and fastened to his hands again. His head, face
and hands were covered with blood. His clothing
was badly torn and he had all the appearance of
having received a severe beating. He was so weak he
could not get out of the motorcycle himself. Titman
was hauled to his feet and I saw Lieut. Yoshida strike
him viciously in the face several times with his fist
until Pte. Titman fell to the ground. Lieut
Yoshida then kicked Titman many times with all the
force he could until Titman could move no longer.
Saito also hit Titman with his fist at this time and
kicked him when he was on the ground. Lieut. Yoshida
/s/WHA and Saito then left and Isumi and the remaining
RM guard, together with four other guards who had come
up at this time, again proceeded to beat Titman
mercilessly with their fists and rifle butts and two
of them hit him over the head with the flat of their
bayonets. Titman was in a semi-conscious condition
when the guards hauled him back into the guard room
and threw him on the floor of the cell there. Two
or three days later we were all moved back to the
Rinko Coal Company buildings again. Titman was
taken back to the guard room at the Rinko building.
Two or three times after we returned to the Rinko
buildings I saw the guard beat Titman in the guard
room. About a week later one of the Japanese guards
came to me in my quarters and told me to come to the
guard room with him. When I arrived at the guard
room with the guard he pointed to Titman's cell and I
went over there. Titman was lying on the floor of
his cell in an exhausted condition. His face was
badly bruised from the beatings he had received. He
told me that he wanted to go to the latrines and that
he was unable to walk. I picked Titman up in my
arms and started to carry him to the latrines. He
was very thin. In fact he was almost just skin and
bones and it required no effort on my part to pick
him up in my arms, although normally he would be
a fairly big man, I think about 5'11" in height. I
had only moved a few steps away with him when this
same guard came up and ordered me to put Titman down
and make him walk, and I was compelled to do so. I
~~took Titman's arm and held it around my neck and with~~

SEAL /s/ WH AUGUST /s/ Robert MANCHESTER

~~my other arm around his body I assisted him while he~~ GA
walked to the latrines. However, he was so weak he could not walk back even when assisted in this manner. An American Prisoner of War, whose name I believe was Pennington (I am not sure of the exact spelling of this name) was standing in the hallway of the latrines and I asked him to assist me in getting Titman back to his cell. Pennington and I made a chair with our hands and hoisting Titman up we carried him back to the cell. The latrine was about fifty yards from the guard room, and while we carried Titman this distance the Japanese guard who had originally come to fetch me, walked behind us the entire distance from the latrines to the guard room. During the whole of the way he kept hitting Titman on the back of the head with a round club which he carried, something like a broom handle, but slightly larger and about three feet long. This guard also clubbed Pennington and myself over the head with his club to hurry us along. When we reached the guard room Titman's head was split open from the blows. Blood was running down his face and he was in a semi-conscious condition. There was no bed in his cell, nor were there any blankets, and we laid him on the floor. Before Pennington and I left the cell three other guards came into it. I am not sure of the exact number, but my recollection is that there were three guards in addition to the guard who accompanied us. They all started to strike Titman around the face and head with their clubs. We were powerless to do anything and we watched this for several seconds and then one of the guards ordered me to go down to the galley and get Titman's breakfast. I left for the galley and returned with his breakfast approximately fifteen or twenty minutes later, and when I went into his cell Titman was lying on the floor. I examined him closely and I am satisfied that he was dead at the time that I returned with his breakfast. His head was badly cut from the clubs and his face was covered with bruises. His head and shoulders were lying in a pool of blood which Titman had lost as a result of thebeating. I do not know the names of any of the guards involved in this beating of Pte. Titman in the guard room. They were Japanese Army soldiers and were changed periodically. My recollection isthat they were all members of the Japanese 24th Army. The guard who beat Titman on the head while we were carrying him back from the latrines was about 5'4" in height, was quite stockily built and would weigh about 140 pounds. He was about 30 years of age, wore no glasses and was clean shaven. He had no distinguishing marks that I can remember. I am unable to describe any of the other guards who participated in this beating. Isumi, who was concerned in the beating of Pte. Titman at the new camp immediately after his escape and recapture, was a Japanese civilian who had seen some service in the Japanese Army and subsequently placed on Prisoner of War camp staff duty. He was on the staff at Camp 5(b) Niigata from the 3rd of September, 1943, to about August, 1944, and his duties seemed chiefly to be the drawing and distribution of rations in camp. He also drove the tri-cycle motorcycle referred to on most occasions. Isumi was about 5'4" in height, weighed approximately 140 pounds, and I believe was about 35 years of age. He was clean shaven except for a small black mustache, and wore glasses on occasions. He had one of his arms missing GA ~~at about the elbow and wore an artificial arm in its place.~~

/s/ W. R. August /s/ Robert Manchester

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~~It was general knowledge throughout the camp that he~~ had been a Sergeant-Major in the Japanese Army andhad lost his arm in action. Titman's death was known throughout the entire camp almost immediately, but no action was taken by Lieut. Yoshida or any Japanese official to punish anyone in connection with the death of Pte. Titman. To the best of my recollection and belief Titman's death from this beating occurred about the 25th day of January, 1944.

27. Second Lieut. Nimoto, who replaced Lieut. Yoshida about the 8th of February, 1944, improved the lot of the Prisoners of War in camp considerably and matters were not too bad until on or about the 9th September, 1944, when Lieut. Kato arrived and took over the post as Commandant of the camp. Lieut. Kato was particularly noted for the shortness of his temper. He was continually flying into a rage and striking out blindly irrespective of who or what was near him. For this reason he was nicknamed "The Mad Hatter" by the prisoners. I think it was on the first day after his arrival in camp that I saw Lieut. Kato beat No.E.30478 Rfmn. Michael O. Caron of the Royal Rifles of Canada. The circumstances of this beating were as follows: A parade was being held which was part of the ceremony when the retiring Camp Commandant turned over the camp to Lieut. Kato. All of those who were sick in their quarters were ordered to attend on this parade as well as the men who were not sick. On this day Rfmn. Caron was a bed patient in his quarters. I believe he had malaria, or some similar disease. Pursuant to the order he fell in on parade with the rest of the prisoners. Lieut. Kato was making a speech from a small stand in front of the prisoners when Rfmn. Caron for some reason bent slightly forward and rubbed his leg. Lieut. Kato immediately ran from the platform and grabbed Rfmn. Caron and started to beat him over the head with his fists. He then struck Caron with his sword sheath until Caron fell to the ground. Kato then kicked him viciously until Caron became unconscious. Two men were then fallen out and carried Rfmn. Caron to his quarters. I saw Caron afterwards and he was bruised but there were no cuts on him. My recollection is that he was admitted to hospital for something like two weeks on account of an injury to his stomach caused by the kicks administered by Lieut. Kato.

28. I saw Lieut. Kato wound with his sword No. H.6244 Pte. Roy Fowler of the Winnipeg Grenadiers. To the best of my recollection and belief this happened in May, 1945. It happened on a rest day in camp. Permission had been given to the prisoners to hold a concert during the evening and the night roll call had been ordered for an hour later than the usual roll call. In the middle of the concert and before the time appointed for night roll call we were suddenlyordered to return to our quarters for roll call. We were all moving across the parade square towards our own quarters when Lieut. Kato came out of his office. He appeared to think we were not moving smartly enough and drew his sword and started to wave it around. Fowler happened to be near him at the time and Lieut. Kato struck at Fowler. His sword caught Fowler in the forearm (I believe it was the left forearm) and it cut a wound in it approximately three inches long. No. E.30567 Rfmn. Fred Briard of the Royal Rifles of Canada was near Fowler at the time. Lieut. ~~Kato, after hitting Fowler, swung at Rfmn. Briard and~~

/s/ W.F. August /s/ Robert Manchester

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~~struck him over the elbow with the flat of his sword.~~ It was a steel sword but it broke from the force of the blow on Briard's arm.

29. I saw Lieut. Kato beat an English soldier who I believe was Corporal Shaw of the Imperial Army. To the best of my recollection this happened in July, 1945. On the day of the beating Shaw was a member of a work party which went to the Maritsu Dock Yards. I was told that Shaw had been engaged at moving pig iron at the docks that day, when one of the civilian foremen came to him and told him not to pick the heavy pieces that he was working at, but to pick the lighter pieces which he was better able to handle. Shaw turned around quickly and a Japanese camp guard, who was in the vicinity, accused Shaw of having attempted to strike the civilian foreman. I was also told that Shaw was beaten by the Camp guardwhile at the dock yards at that time. I did not see anything personally until Shaw was brought back to Camp that evening. He was brought in and stood outside the guard room which was about ten or fifteen feet away from the hut in which I was quartered. I saw Cpl. Shaw standing outside the guard room and I was curious to know the reason why he was kept there and I watched to see what would happen. I stood by an open window in my hut which was about ten to fifteen feet away from Shaw and as I watched, Lieut. Kato came out of his office and walked up to Shaw. I heard him ask Shaw what he had been doing at the dock yards and I heard Shaw reply that he had not done anything and that he was innocent of any offence. Lieut. Kato worked himself into a violent rage and told Shaw that he would make an example of anyone who attempted to strike a foreman and that if anyone struck any one of the Japanese personnel, he would be killed. Lieut. Kato then proceeded to strike Shaw with his fists about the head and face until he had knocked him to the ground. He then had Shaw hauled onto his feet by the guards and he then again proceeded to beat him over the head and face with his fists until Shaw fell to the ground a second time. Lieut. Kato then proceeded to kick Shaw violently in all parts of the body, in fact the kicking was so violent that Lieut. Kato actually trampled Shaw. Kato was wearing a pair of short spurs at the time and Shaw's face and ears were severely cut, one eye was forced outof the socket and was down part way on his cheek. By this time Shaw was unconscious and a bucket of water was thrown on him by the guard. When Shaw revived slightly, he was again hauled to his feet and Lieut. Kato then asked him if he had learned his lesson.. Shaw was in too dazed a condition to reply.. This sent Lieut. Kato into a further rage and he again beat Shaw over the head with his fists, knocking him to the ground and he then kicked him until he was unconscious and motionless. . Shaw was allowed to lie on the ground for something like twenty minutes. I still watched to see what would happen. Lieut. Kato stood in the vicinity watching him. A few minutes later an American officer who had recently been brought as a prisoner of war and who I believe to have been Major Boyle of the American Marines, was brought to the scene. My recollection is that Major Boyle had a few days previous to this incident brought into camp from a Tokyo Camp, a draft of prisoners of war, which included Corporal Shaw. Lieut. Kato when Major Boyle arrived at the scene of Shaw's beating, told him that Shaw was one of his men ~~and that as such he was responsible for his discipline.~~

/s/ W.H. August /s/ Robert Manchester

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~~Whereupon Lieut. Kato then proceeded to beat Major Boyle~~ with his fists until Major Boyle fell to the ground. Lieut. Kato then kicked Major Boyle until he was unconscious. Major Fellows of the American Army was then brought to the scene of this beating and I heard Lieut. Kato tell Major Fellows that he understood that they had no discipline in the camp from which Major Boyle had come, and pointing to Major Boyle and Corporal Shaw lying on the ground, told Major Fellows that that is what would happen for any further breaches of discipline and that he, Lieut. Kato, would have complete discipline even if it meant killing every Prisonerof War in Camp. Corporal Shaw was taken to hospital as a result of the injuries received from this beating and remained in hospital for a period of some two months. He was released from hospital just shortly before we were liberated. Major Boyle was badly shaken up but was not taken to hospital and so far as I know did not receive any serious injury.

30. About one week before V-J Day in August, 1945, I understand due to the coal shortage, Lieut. Kato ordered a detail of Prisoners of War to cut the winter's supply of wood in a bush about onemile distant from the Camp. On August 16th, 1945, all work projects were stopped excepting the work at this bush and from August 16th, for the next four or five days every prisoner of war who was not actually sick in hospital or sick in quarters, was forced to work on this wood project. All of the wood had been cut prior to V-J day and after V-J Day, this work consisted of carrying pine logs between 4' - 6' in length and between 6" - 1' in diameter, from the bush to Camp. Every prisoner of war forced to work at this, had to make eight trips daily; four in the morning and four in the afternoon. This work was not stopped until all of the cut wood had been cleared out of the bush and brought to camp, which was about the fifth day after V-J day.. Lieut. Kato was responsible for ordering this work and it was supervised by S/Major Uchida, who was second in command of the Camp under Lieut. Kato from Approximately April 11th, 1945, to the day we were liberated. S/Major Uchida was approximately 5'2" in height, weighed about 140 lbs. and I believe would be around 35 years of age. He was clean shaven, but had a very dark jaw and shaved only every third or fourth day. He wore glassesoccasionally and was known to the Prisoners of War as "Cyclone Pete" also as "Pete the Tramp". I believe his full description was: Kanemasu UCHIDA, 23 HOQ Ioku-Naka-Itabasi-Ku-Tokyo, Japan. He was responsible for a great many beatings, some of which were witnessed by me, but I cannot remember the details of them or who the recipients were. On a great many occasions, when the men returned from work I have seen him force them to do a half-hour of some drill while he gave commands in Japanese. If anyone made a mistake in drill, S/Major Uchida would go down the line and strike each of the prisoners of war on parade with his bamboo sword. The blow struck was usually a heavy blow on the head and on several occasions I have seen him knock men to the ground in this manner. I have also seen Uchida line up alleged offenders in front of the Camp guard room and strike them with his bamboo sword and with his fists until they fell to the ground in a semi-conscious condition.. He would then have them hauled to their feet and would repeat the beating until the ~~men again fell to the ground. His bamboo sword was a~~

/s/ W.H. August /s/ Robert Manchester

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~~double handed sword, and the blade was round all the~~ way down. ~~The blade~~ was also split and often when Uchida hit a man over the ~~face~~ with his sword, the blade would spread where it was split and ~~pinch the manis face, cutting it.~~

31. ~~I saw S/Major Uchida strike No. H.6891,~~ Private George Nobiss of the Winnipeg Grenadiers. I believe this happened in or about the month of July, 1945. On this particular day when I fell in on the early morning parade for roll call, I saw Nobiss standing in front of the guard room. After the parade was dismissed I saw S/Major Uchida go up to Nobiss and after speaking to him for a minute Uchida hit Nobiss a vicious blow with his fist in the mouth. Nobiss fell to the ground as if he had been hit by an axe and lay still. I saw Nobiss lying on the ground for approximately five minutes when he was sent back to his quarters. I was in charge of the group that Nobiss should have been in and Nobiss came up to me when he was released and reported that he had been taken to the guard room by a Japanese sentry early that morning for some alleged offence, and that later S/Major Uchida had come up to him and told him that he, Nobiss, had disobeyed the rules of the Camp and would be punished for it, whereupon, S/Major Uchida had struck the blow which I witnessed. I examined Nobiss's face at the time. His mouth was very badly swollen, both the upper and lower lips were cut and lacerated and were bleeding freely. Nobiss' teeth had gone through both his lower and his ~~upper lips, and all of his front teeth were loose.~~

32. In September, 1943, I saw No. L-6167, Private John Sellars of theWinnipeg Grenadiers, beaten at the Rinko coal docks by one of the Japanese civilian guards, whose name was Kiato and who was called "Big Legs" and also "Muscles", by the prisoners. On the day of the beating Sellars was loading coal from the dump into railway cars; this was done by carrying a basket from the dump up a plank into the car and after the coal had been dumped, walking down another plank and back to the dump. As Sellars walked with his empty basket down the plank from the railway car, he slipped and fell off the plank. The edge of the plank struck him in the ribs, bruising him badly and cutting the flesh along his ribs. He was in considerable pain at the time and commenced to cry. Kojima, the Rinko Coal Company Superintendent was there at the time and I went over and asked him to come over and examine Sellars as I thought Sellers probably would not be able to work any more that day, as as we walked over towards Sellars Kiato or " Big Legs" took a run at Sellars, hauldd him to his feet and using a judo hold, threw Sellars violently to the ground. He repeated this two or three times before Kojima and I reached the scene, whereupon, he stopped. I told Kojima that no more work could be gotten out of the men with this kind of treatment and that it should be stopped immediately. I also suggested that Sellars should be allowed off work for the day. Kojima told me at that time that what the guards did with the prisoners was their own business and walked away, whereupon, "Big Legs" struck Sellars with his fists in the face two or three times more, and sent him back to work.

~~33. Kiato was about 5'6" in height, weighed approximately 180 lbs., and would be about 30 years~~

/s/ W.H. August /s/ Robert Manchester

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~~age. He was very broad and thick and quite like a~~ wrestler. His legs were like tree trunks and his arms were also huge. This was how he acquired the name of "Muscles" and "Big Legs". He was clean shaven at all times and did not wear glasses. He had a scar in his right thigh about ten inches in length and it was rumoured amongst the prisoners that it was a wound received in battle. He was only employed with the Rinko Company a very short time. I think it was the latter part of September, 1943, that he appeared in a Japanese Army uniform and at that time he told me that he had been called up by the Army and was going to Hong Kong.

34. In addition to the members of the Japanese Camp Staff at Camp "5B" Niigata, who I have already described the following is a partial list of Camp Staff members at that camp and are the names which I recollect:

Sgt. Muto was a member of the Japanese 24th Army and was second in command from approximately September 9th, 1944, to April 11th, 1945. He was about 5'4" in height, was very slim and I would think would weigh about 135 pounds. He was clean shaven and always wore heavy dark glasses. He was very regimental in his bearing and action. He appeared to be reasonable and I believe endeavoured to assist the Prisoners as far as was permitted by the Camp Commandant.

Cpl. Hataki-yama was a Medical Corporal in Camp and I believe was there from December, 1943, to July, 1945. Although senior in rank to Pte. Takahashi he assisted and left the responsibility and management of the sick to Takahashi. He was about 5'4" in height, would weigh approximately 160pounds and was somewhere about thirty-five years of age. He was darker in complexion than the average Japanese. His jaws were very dark from a blue beard which showed beneath the skin. This resulted in him being nicknamed "Blue Beard" and the "Nigger" by the Prisoners of War. He was stocky, had a broad face and wore glasses at all times. He was noted for being drunk the greater part of the time.

Tomoka was a civilian employee of the Japanese Government placed on Prisoner of War camp duties. He was at Camp "5B" Niigata from approximately August, 1944 to April, 1945. He replaced Isumi in his duties drawing and distributing rations. He was about 5'6" in height, weighed approximately 170 pounds and was about thirty-five years of age. He was clean shaven and did not wear glasses. He was always clean, neat and very soldierly. I do not believe he was implicated in any beatings or ill treatment of the Prisoners of War. My recollection is that he was considered better than the average Japanese by the Prisoners of War.

Abe succeeded Tomoka in the duties of drawing and distribution of rations I believe in April, 1945, and remained in camp in that capacity to the day of liberation. He was about 5'6" in height, weighed approximately 150 pounds and would be about thirty years of age. He was clean shaven and wore glasses at all times. I do not remember Abe as being responsible for any beatings or ill treatment of the Prisoners of War. He was a civilian employed in ~~Prisoner of War Camp Staff duties.~~

/s/ W.H. August /s/ Robert Manchester

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Saito was also a civilian employed in Prisoner of War Camp Staff duties. He was at Camp "5B" from about the 3rd of September, 1943, to the day of liberation as Quartermaster in charge of clothing. He was about five feet in height, weighed approximately 135 pounds and would be about thirty years of age. He was clean shaven and wore glasses on occasions. He was known to all of the Prisoners of War as a good fellow and it was generally felt that he was doing all that he could to improve the lot of the prisoners. It was rumoured throughout camp that he was a Christian.

Shiba was a member of the Japanese 24th Army and was employed as camp interpreter from the 3rd of September, 1943, to August, 1945. He was about 5'3" in height, weighed approximately 130 pounds and would be about twenty-five years of age. He was clean shaven and did not wear glasses. He was a very quiet spoken man and even though he acted as camp interpreter at all times he spoke very poor English. He appeared to be of an effeminate nature and was not implicated in any beatings or brutalities as far as I know.

Yoko-yama was a Japanese civilian employed as a permanent camp guard in the Prisoner of War camp. He came to "5B" Niigata, I believe, some time in April, 1945 and was there to liberation. He was about 5'6" in height, weighed approximately 170 pounds and would be about thirty-five years of age. He had a very coarse brown complexion and was clean shaven. He did not wear glasses. He was a very stocky built man and was rumoured to be a Japanese professional wrestler. He was nicknamed "The Wrestler" by the Prisoners of War. Although I have no personal knowledge of the fact I was told that he severely beat an American soldier whom I believe to have been Ernest Lafranier of Handin, Montana of the 1st Battery 59th Coast Artillery, American Army.

35. On the first of January, 1944, shortly after we had moved from the original Rinko buildings to the new camp, at 0140 hours one of the huts in the new camp collapsed killing eight prisoners of war. The names of these men, to the best of my recollection, are as follows:

H-6483 Pte. Harold Jones	all of the Winnipeg Grenadiers
H-6269 Pte. B.P. Olafson	
H-6384 Pte. Joseph Furey	
H-6848 Pte. Fred Colvin	
F-42667 Rfn. A.J. Jacquard	all of the Royal Rifles of Canada
E-30555 Rfn. E. Mazerolle	
E-29903 Sgt. L. Sauson	
B-95036 S/Sgt. D. Sword	Brigade Headquarters

The cause of the collapse of the hut and the resulting deaths, so far as I was able to ascertain, was faulty structure. It was the custom of the Japanese when erecting this type of a building to do so without using nails; the joints were all mortised together. This building was approximately fifty feet long by about fifteen feet wide. It was built with lumber sides, had a slate roof and was set on wooden posts which were set ~~on the surface of the ground. The joists which ran~~

/s/ W.H. August /s/ Robert Manchester

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~~across the top of the buildings were too light in my~~ opinion for the work they were intended to do. They were made of dry posts 4" x 4" or dried pine trees. The construction was not strong enough to carry the weight of the slate roof and as a heavy fall of snow had accumulated on the roof it gave way and the hut collapsed. I saw the workmen working on this hut prior to its collapse. They were civilian employees of the Rinko Coal Company. Also one day at the docks of the Rinko Coal Company, shortly prior to our moving to this camp, the Superintendent of Works, Kojima, advised me that we would soon be moving into a camp which he, Kojima, had built. To thebest of my knowledge and belief these buildings were built by the Rinko Coal Company and no inspection of them was made by any of the Japanese officials until after the collapse of this hut when the Japanese Army made an investigation.

36. In October, 1943, I saw forty-two British Red Cross parcels together with some British Red Cross bulk supplies consisting of meal, some cocoa, sugar and two cases of boots arrive at Camp "5B". This was not issued by the Japanese at this time. However, on Christmas Eve, 1943, fifty articles including cans of M. & V., bully-beef, jam, individual packages of tea, sugar and puddings but not totalling in all more than fifty articles of everything combined, was divided amongst the Prisoners of War. There were approximately 300 Prisoners in camp at that time. About January 17th, 1944, a shipment of American Red Cross parcels arrived and at this time one parcel was divided between two men. The remainder the Japanese kept in their own store room. In March, 1944, one parcel was divided between seven men. About June, 1944, a further shipment of Red Cross parcels arrived in camp. At this time a distribution of two parcels to be divided amongst five men was made. About November 16th, 1944, a further shipment of Red Cross parcels arrived but no distribution was made until the 24th of December, 1944, when one parcel was issued to each man. On the first of January, 1945, a further distribution of one parcel to each man was made. On or about the 11th day of March, 1945, Lieut. Kato had the group leaders, including myself, paraded before Major Fellows. Major Fellows had a typed order, which was signed by Lieut. Kato and which was later posted on the bulletin board ordering a grouping of the men according to their work value and directing a distribution in accordance with the man's grouping. The following is the grouping as near as I can recollect:-

"A"	Class	(excellent workers)	1½ parcels per man
"B"	"	(good workers)	1 parcel per man
"C"	"	(not quite so good as "B")	3/4 parcel per man
"D"	"	(fair workers)	½ parcel per man
"E"	"	(not quite so good as "D")	¼ parcel per man

Lieut. Kato in thetyped order ordered that men not fit for work or who had been absent from the job two months prior to the distribution or who were considered poor workers should get no parcels. The group leaders were ordered to submit a list stating the status of each man in his group and to submit it to Lieut. Kato for the

/s/ W.H. August /s/ Robert Manchester

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~~purpose of being checked by the Japanese staff as to the~~ class each prisoner was to be placed in. I submitted such a list covering my group. There was an American group occupying the same hut as my group and the American group leader and his assistant and my assistant and myself held a conference and it was agreed that all of the parcels received in our hut would be pooled. Every man in our hut, as a result of the pooling, got a complete Red Cross parbel. I know that some Prisoners of War in other groups did not get any Red Cross food of any description at this time. In April, 1945, Lieut. Kato by written order posted on the bulletin board ordered that the remaining parcels were to be distributed to the officers, group leaders and the men sick in hospital. Twenty parcels I believe were divided in this manner amounting to approximately one-half parcel to each individual of the class covered by the order.

37. A great quantity of the Red Cross supplies which arrived in camp between October, 1943, and the end of June, 1944, was pilfered by the Japanese and only a part was ever distributed to the Prisoners of War. During the months of October, November and December, 1943, after the first shipment of Red Cross parcels arrived, it was a common occurrence to see Sgt. Ito, Okuda, Saito and Takahashi sitting in the office, which they all used in common, drinking Red Cross tea and each with a can of Red Cross condensed milk also eating Red Cross chocolate bars. Lieut. Yoshida's office was in the same building and adjoined the staff office and I am sure that he had knowledge that the Japanese personnel, referred to herein were consuming Red Cross supplies. The sentries and the camp staff in general smoked American cigarettes, which must have come from Red Cross supplies and it was not uncommon to see them take some article of Red Cross food out of their pockets. This continued to about the end of June, 1944. I personally did not notice any more pilfering after that time.

38. Except as herein stated I do not at this time recollect any further information of atrocities or incidents of mistreatment of Allied Prisoners of War.

SWORN before me at the City of Winnipeg in the Province of Manitoba, this 7th day of March, 1946. Consisting of 24 pages each signed by the Deponent, also two Exhibits.

/s/ WH AUGUST
A Notary Public in and for the Province of Manitoba

SEAL

/s/ Robert Manchester
(H.6027, Sgt. R MANCHESTER)
Winnipeg Grenadi rs, CA)

Certified a true copy of an original document compared by me and certified this 11th day of February, 1947, at the City of Tokyo, Japan.

J. R. Pritchard

(J.R. PRITCHARD)
Captain Infantry
Summary Court

CANADA)
PROVINCE OF ONTARIO)
TO WIT:)

IN THE MATTER OF personnel held prisoner of war by the Japanese and in the matter of the deposition of C.40614 Rifleman William Harvey GAGNE, Royal Rifles of Canada.

I, Ex-Rifleman William Harvey Gagne, C.40614, formerly a member of His Majesty's Canadian Army, make oath and say,-

1. I am Ex-Rifleman William Harvey Gagne, C.40614. I reside at the village of Brighton, in the Province of Ontario. Prior to the 25th of November, 1945, I was a member of HisMajesty's Canadian Army and at all times pertinent hereto a member of the Royal Rifles of Canada.

2. I was serving with Headquarters Company Royal Rilfes of Canada, at Mount Parker, Hong Kong, when taken prisoner of war by the Japanese on December 19th, 1941. Within the course of the next few days I was taken to Argyle Street Barracks on the mainland, where I was detained until early January 1942, at which time I was sent to Sham-Shui-Po Camp. I remained at Sham-Shui-Po Camp until sometime in February 1942, at which time I was sent to North Point Camp, remaining there until being sent to Bowen Road Hospital sometime in September 1942. I remained a patient at Bown Road Hospital for about three months and when was sent back to Sham-Shui-Po Camp sometime prior to Christmas 1942. I remained at Sham-Shui-Po until sent with the second Canadian draft to Japan on the 15th October 1943. This draft disembarked at Osaka and a portion of the draft proceeded by train to Niigata Camp. I remained at Niigata Camp until liberated and was evacuated by the Americans to Yokahama in September 1945. Niigata Camp was known as Rinko Camp 5B. It was situated on the west coast of Japan about 250 miles from Yokahara. During my stay at this camp there four or five different Japanese Camp Commanders, but I do not recall their names. The prisoners of war of this camp were forced to work either in the Rinko Coal Yards, Maritsu Dock Yards or the Shintetsu Foundry. I was forced to work at the Rinko Coal Yards. Shortly after our arrival at this camp I was sent to work at the Rinko Coal Yards and my work at times was pushing coal cars on an elevated trestle. While on this work the Japanese did not permit us to wear our boots. They had to be left on the ground. This situation lasted for about a week or ten days, but during that time a great many of the prisoners of war on this type of work, including myself, suffered extremely from sore and injured feet.

3. During 1944 I was in a very weakened condition from dysentry and endeavoured on several occasions to be excused from work at the coal yards, but was always refused. When being paraded to work one morning in this weakened condition I collapsed on the way and was immediately subjected to a severe beating with sticks by two of the guards. This beating consisted of eight or ten blows across the body and head with sticks. I was then taken back to the camp by the same guards and permitted to go to my own hut and rest. One of these guards was called Sato. I do not recall the name of the other, but I think his name was Hashimoto. Sato was a member of the regular Japanese camp staff. He was about 35 years of age, 5 feet 6 inches tall, weighing about 145 pounds, clean shaven, wore glasses, had sharp features and he did not speak English.

/s/ W. H. Gagne

/s/ G. Longman
Magistrate

PROSECUTION EXHIBIT

no. 12

The other guard, Hashimoto, was a civilian, was about 35 years of age, approximately 5 feet 9 inches tall, weighing about 175 pounds. Nearly all his teeth were silver plated.

4. ~~At this camp sometime between the end of January and May 1944~~ Rifleman Mortimer, Royal Rifles of Canada, died in the camp M.I. Room as a result of gangarine caused by frozen feet. Mortimer apparently had committed some offence and as a punishment was tied to a stake in front of the camp guard house. This was during the cold weather. There was snow on the ground. I saw him tied to this stake on different occasions over a period of days. He was very poorly clothed. He was only wearing a shirt and a pair of pants. His feet were bare. While undergoing this punishment his feet became frozen and he was admitted to the M.I.R. I subsequently saw him in the M.I.R. on various occasions prior to his death, and his feet were in an advanced stage of gangarine. His flesh was falling away and the bones of his toes were exposed. This was the condition of both feet. He was being attended by Major Stuart, R.A.M.C.

5. I also recall an American soldier whose name I do not remember dying about the same time as Mortimer as a result of brutal treatment he received at the hands of Japanese guards. I was not a witness to this treatment, but it was general knowledge throughout the camp that he had been brutally treated.

6. On another occasion, I don't recall the date, Sgt-Major Myatt, a Canadian, who was working at the Rinko Coal Yards found that he was too weak to do the work he was required to do and one of the Japanese civilian managers of the mine, seeing Myatt was not doing his work, came over to where he was and hit him with his fist several times knocking him down. I don't know the name of this Japanese civilian, but I understand he was one of the assistant managers of the coal yards.

7. Some of the other prisoners of war at this camp were Major Stuart, RAMC., Sgt Manchester and Sgt Neil, Winnipeg Grenadiers, ~~and Sgt Beall of the Royal Rifles of Canada.~~

8. The draft sent to Niigata consisted of approximately three hundred Canadian and some Imperials. We were the first prisoners of war to occupy this camp. About a month after I arrived at the camp a draft of about two hundred Americans arrived at the camp.

SWORN before me)
At Brighton, Ontario,)
On the 8th day of May,) /s/ L. W. H. Gagne.....
A.D. 1946.)

/s/ G. Longman

Magistrate
of and for the
Province of Ontario.

Certified true copy of an original document compared by me and certified this 11 day of June 1946 at the City of Tokyo, Japan.

(J D C Roland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

C.N.D.

PROVINCE OF ONTARIO

TO WIT:

IN THE MATTER OF personnel held prisoner of war by the Japanese and in the matter the deposition of C 40614 Rifleman William Harvey GAGNE, Royal Rifles of Canada.

I, Ex-Rifleman William Harvey Gagne, C 40614, formerly a member of His Majesty's Canadian Army, make oath and say:

1 I am Ex-Rifleman William Harvey Gagne, C 40614. I reside at the village of Brighton, in the Province of Ontario. Prior to the 25th of November, 1945, I was a member of His Majesty's Canadian Army and at all times pertinent hereto a member of the Royal Rifles of Canada.

2 I was taken prisoner of war by the Japanese on the 19th day of December, 1941. From October 1943 until I was liberated by the Americans in September 1945, I was detained at Niagata Camp which was known as Rinko Camp 5B.

3 I was forced to work at the Rinko Cola yards.

4 On the 6 May 46 I signed an affidavit giving particulars of being beaten by two Japanese guards. The sticks used in beating me were approximately three feet in length and were oval shaped, with a diameter of approximately one or one and a half inch. I believe that the sticks used were made of hard wood.

5 I was beaten eight or ten times across the body and head with these sticks, and all the blows were given with considerable force. After the beating I had three or four lumps on my head. I suffered headaches for a week or ten days. My back was sore for two or three days.

6 As I have previously sworn on 8 May 46, the Japanese guards who beat me as aforesaid, were known to me as "Sato", and I believe the name of the other guard who was a civilian was "Hashimoto".

7 The double photograph now shown to me and marked as Exhibit "A", and attached to this my affidavit is a profile and full-face picture of the civilian guard whom I knew as "Hashimoto" and who was also referred to as "Liver Lips". This is the civilian guard who beat me as aforesaid.

SWORN before me at COBOURG, Ontario, on the 13th day of January, 1947.

SEAL /s/ A. D. Crowe
A Notary Public in and for the Province of Ontario

/s/ WH Gagne

Certified a true copy of an original document compared by me and certified this 3rd day of February, 1947, at the City of Tokyo, Japan.

J.H. Dickey

(J.H. Dickey) Major
Canadian Army

PROSECUTION EXHIBIT

no. 13

DEPOSITION

Canada
Province of Manitoba
To Wit

In the matter of personnel held Prisoner of War by the Japanese and in the matter of the Deposition of H 6452 Pte. George LeBLANC, Winnipeg Grenadiers, C.A.

I, No.H6452 Pte. George Le BLANC, a member of His Majesty's Canadian Army, make oath and say:

1. I am, No. H 6452 Pte. George Le BLANC; I reside at 630 Jessie Avenue in the city of Winnipeg, Province of Manitoba. I am a member of His Majesty's Canadian Army and at all times pertinent hereto a member of the Winnipeg Grenadiers, C.A.

2. I was taken prisoner on the 25th December 1941 at Aberdeen Reservoir. From there we went to Mount Austin Barracks and about the end of the month we moved to to Sham-Shui-Po. On the 23 January 1942 we moved to North Point. On 24 September 1942, I was admitted to Bowen Road hospital and from Bowen Road I returned to Sham-Shui-Po on 24 November 1942. On 15 August 1943, I left on draft for Japan landing at Nagasaki, arriving at Niigata September 3, 1943. I remained at Niigata until liberated.

(Seal)
CLARENCE
HOWARD JOHNSON
NOTARY PUBLIC
MANITOBA

~~3. On the boat going to Japan, I saw Japanese guards~~ drinking the juice from cans of Red Cross supplies and throwing the cans containing the remaining solid food overboard.

4. Lieut. Yoshida was the Commandant at Niigata. Attached hereto to this my affidavit is a picture of the Japanese officer who was the Commandant at Niigata and who I recognize as Lieut. Yoshida. (Photo marked Exhibit "A" and attached to affidavit). His description is as follows: Height 5' 8"; Weight: 145 pounds: Age 24 years; wore glasses at times; Clean shaven. He ~~spoke English fairly well.~~

5. Except for a period of two months sickness, I was employed at Rinko Coal Yards. Some of the members of the staff at Rinko were as follows: "

~~Big Legs, who was in charge of the trestle crew. He~~ was a well-built, stocky man of about 30 years of age. He weighed about 190 pounds ~~and~~ 5' 6" in height. He rolled his pants up and he had tremendously thick legs, ~~hence his nick name. He did not speak English.~~

Liver Lips: was in charge of a group of men also. He was a Japanese civilian. He was about 5' 11" in height; weighed about 160 pounds; was probably 30 or 40 years of age. He did not wear glasses, and was clean shaven. He had large protruding lips from which he derived his nickname.

/s/ G. La Blanc

~~The Nigger: was another foreman at the yards.~~ He was stocky in build; very short; about 5' 8" in height; 145 pounds in weight and about 35 years of age. He was very dark complexioned and had the general appearence of a negro. He was a very intelligent fellow, much smarter than the other Japanese.

/s/ C. H. Johnson

The Bulldog: was a foreman also at the yards. He was about forty years of age; 5' 6" in height and weighed about 150 pounds. In general appearance he resembled a bull-dog. He did not speak English. He did not wear glasses and usually was clean shaven.

PROSECUTION EXHIBIT

no. 14

~~6. About the month of October, 1943, while I was~~

~~[illegible] at the Coal Yards, Big Legs accused me of~~ lighting a match. I denied it and he then hit me with a stick about 3' long, thicker than a broom handle, over the head and shoulders. He knocked me to my knees and I blacked out and when I came to and rose , he hit me again telling me at the same time that I was lying. After a few minutes he left me alone and I went on with my work.

7. Paddle Foot was a foreman in charge of a gang also. He was about 5' 10"; thin; a high strung man. He weighed about 150 pounds and was 45 to 50 years of age. He was clean shaven and did not wear glasses. He knew only the odd English word. He walked with a limp hence his name.

8. Around November, 1943, the date of which I am unable to remember, Paddle Foot beat me. Had two sets of baskets on a long pole, carrying them into the mess as I went to eat dinner. I also had a shovel. He told me to pick up another basket. That was impossible and I told him so. He then hit me with the same kind of a pole that Big Legs had used against me. He swung ~~the pole and hit me between the eyes drawing blood.~~

(Seal)
CLARENCE
HOWARD JOHNSON
NOTARY PUBLIC
MANITOBA

9. I recall the beating received by Pte. Woodward, C. of the Winnipeg Grenadiers. Around the end of September 1943, he claimed he was ill and it was generally known that he was ill. He was put out to work at the Coal Yards and this particular day was working under Liver Lips. He told Lips he couldn't work and he took after Woodward and hit him with a stick, his fists and knocked him down to his knees where he kicked him. He got up and repeated that he was unable to work so he kept hitting him and when he fell, Lips pulled him up to his feet. Woodward went back to work for a while and then went into the Mess hall.

10. I also recall the beating of Pte. McLaughlin in or about the month of October 1943. We were working night shift at the time. McLaughlin was being shoved around by a coolie and McLaughlin made a remark which was understood by the coolie who reported it to Sato San the head of the yard. Sato san came down to where Mc Laughlin was working and gave him a terrible beating with sticks and his fists and when he was down he kicked him. When McLaughlin came into the mess for supper, the Japanese would make a pretense of giving him rice ball and when he reached for it they would withdraw it and beat him. That night he didn't get a rice ball. Mc Laughlin always seemed to be getting beaten. He was apparently numbered by the Japanese and was the object of almost continuous slapping by guards.

/s/ G LeBlanc

/s/ C. H. Johnson

~~About November 1943, I recall that Rfm. Mortimer~~ and Rfm. Smith were tied to posts outside the guard room just outside the gate. I remember seeing them tied there as I came and went from work and I believe they were there for about thirty-six hours. It was very cold, with snow and sleet and if I remember correctly they were dressed only with shirt and shorts and no shoes. I did not see Mortimer again being ill-treated but I heard later that he had died as a result of exposure ~~and beating received.~~

~~12. I saw numerous Japanese personnel in possession~~ of articles from Red Cross parcels - cigarettes, tins of bully-beef, etc. The division of parcels was on the basis of ability to work. A No. 1 worker would receive maybe a parcel and one half while a sick prisoner or one unable to work so hard got only half a parcel.

13. Except as herein stated, I do not at this time recollect any further information of atrocities or incidents of mistreatment of Allied Prisoners of War.

Sworn before me at the City of Winnipeg)
in the Province of Manitoba, this 1st)/s/.George.Le.Blanc.....
day of March 1946, consisting of) (H 6452 Pte. G. LeBlanc)
three pages, each signed by the Deponent) Winnipeg Grenadiers, C.A.

(Seal)
CLARENCE HOWARD JOHNSON
NOTARY PUBLIC
MANITOBA

/s/.C.H.Johnson.....
(A Notary Public in and for the
Province of Manitoba).

Certified true copy of an original document compared by me and cetified this ____ day of ____ 1946 at the City of Tokyo, Japan.

(J D C Boland) Capt Canadian Army
Member of Canadian War Crimes Liaison Detachment

SUPPLEMENTARY DEPOSITION

C.N.D.
PROVINCE OF MANITOBA
TO WIT:

In the matter of the Supplementary Deposition of ex-No. H.6452 Private George LE BLANC, Winnipeg Grenadiers, C....

I, GEORGE LE BLANC, of the City of Winnipeg, in the Province of Manitoba, Welder's Helper, make oath and say:

1. I am ex-No. H.6452 Private George LE BLANC. I reside at Suite 2, Edwin Apts., River Avenue, Winnipeg, Manitoba. I was formerly a member of His Majesty's Canadian Army, and at all times pertinent hereto a member of the Winnipeg Grenadiers, C....

2. On the 1st day of March, 1946, I made an original deposition in this matter, which deposition was sworn before C.... Johnson, a Notary Public in and for the Province of Manitoba, at Winnipeg, Manitoba, on the said 1st day of March, 1946.

3. In paragraph 9 thereof I referred to a beating administered to Private C. Woodward of the Winnipeg Grenadiers around the end of September, 1943, by a Japanese civilian foreman of the Rinko Coal Company, nicknamed "Liver Lips" by the prisoners of war. Now shown to me and marked Exhibit "A" to this my Supplementary Deposition is a photograph showing the front and side views of the said "Liver Lips". It is a true photographic likeness of him. He is the man referred to by me in paragraph 9 of my said original deposition as "Liver Lips", and he administered the beating referred to in said paragraph 9 to Private C. Woodward of the Winnipeg Grenadiers.

4. The proper Japanese name of "Liver Lips", identified by me in Exhibit "A" hereto, was Hashimotosan. When the prisoners of war had occasion to address this Japanese they always addressed him as Hashimotosan; or Hanchow, which means boss, but in referring to him between themselves the prisoners of war always referred to him as "Liver Lips."

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this 13th day of January, A.D. 1947 /s/ G.L.

/s/ W.H. August
A Notary Public in and for the Province of Manitoba

/s/ G. LeBlanc
(Ex-No. H.6452 Private
(George LE BLANC, Winnipeg
(Grenadiers, C....)

SEAL

Certified a true copy of an original document compared by me and certified this 28th day of January, 1947, at the City of Tokyo, Japan.

J.H. Dickey
(J.H. Dickey) Major
Canadian Army

PROSECUTION EXHIBIT

No. 15

COPY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
MILITARY INTELLIGENCE SECTION, GENERAL STAFF
ALLIED TRANSLATOR AND INTERPRETER SECTION

CERTIFICATE OF DEATH

1. NAME and IDENTIFICATION NO.: McLAUGHLIN, George Robert, No 244 TOKYO Prisoner of War Sub-Camp No 5.
2. SEX: Male
3. NATIONALITY: Canadian
4. RANK OR STATUS: Private
5. DATE OF BIRTH: 19 May 17
6. CAUSE OF DEATH (Specify whether by illness, suicide, toxic poisoning etc.): Illness
7. NATURE OF ILLNESS: Beriberi and acute pneumonia
8. DATE OF ILLNESS: 27 Nov 43
9. DATE OF DEATH: 1830 hours, 20 Dec 43
10. PLACE OF DEATH: TOKYO Prisoner of War Sub-Camp No. 5 NIIGATA-Ken, NIIGATA-Shi, NUMADARE, 4692 banchi

I, the undersigned hereby certify the foregoing to be a true report to the best of my knowledge.

DATE: 20 Dec 43

(s) NAGATA, Ichiro
2nd Lt., Army Medical Corps,
TOKYO Prisoner of War Sub-Camp No 5.

W.M. Stewart,
Major Reme

JA 35
1 October 46

I, the undersigned, hereby certify the foregoing to be a true translation of the original document.

(s) James Nakagawa
ATIS GHQ

CERTIFIED TRUE COPY

(J.D.C. Boland) Major
12 Feb 47

PROSECUTION EXHIBIT
no. 116

COPY

Doc. No. 22527 JB

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
MILITARY INTELLIGENCE SECTION, GENERAL STAFF
ALLIED TRANSLATOR AND INTERPRETER SECTION

CERTIFICATE OF DEATH

1. NAME and IDENTIFICATION NO.: SMEDDEN, John Jerald, No. 1107. TOKYO Prisoner of War Sub-Camp No 5, annex

2. SEX: Male

3. NATIONALITY: Canadian

4. RANK or STATUS: Private

5. DATE OF BIRTH: 6 May 21

6. CAUSE OF DEATH (specify whether by illness, suicide, toxic poisoning): Illness

7. NATURE OF ILLNESS: Acute pharyngitis, beriberi, paralysis of heart.

8. DATE OF ILLNESS: 7 Dec 43

9. DATE OF DEATH: TOKYO Prisoner of War Sub-Camp No 5, Annex, NIIGATA-Ken, NIIGATA-Shi, AKIBA Dori 2-63

I, the undersigned, hereby certify the foregoing to be true report to the best of my knowledge.

DATE: 8 Feb 44 (s) OZAWA, Goichiro ( )
2nd Lt Army Medical Corps
TOKYO Prisoner of War Sub-Camp No. 5

Edwin S KAGG
Major MC

JA 36

1 Oct 46

I, the undersigned, hereby certify the foregoing to be a true translation of the original document.

/s/ James Nakazawa
ATIS GHQ

CERTIFIED TRUE COPY

(J.D.O. BOLAND) Major
12 Feb 47

PROSECUTION EXHIBIT

no. 17

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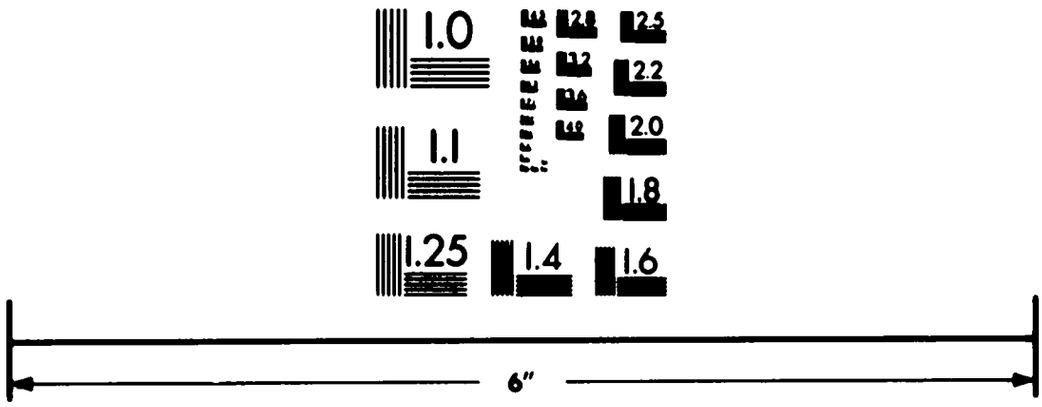

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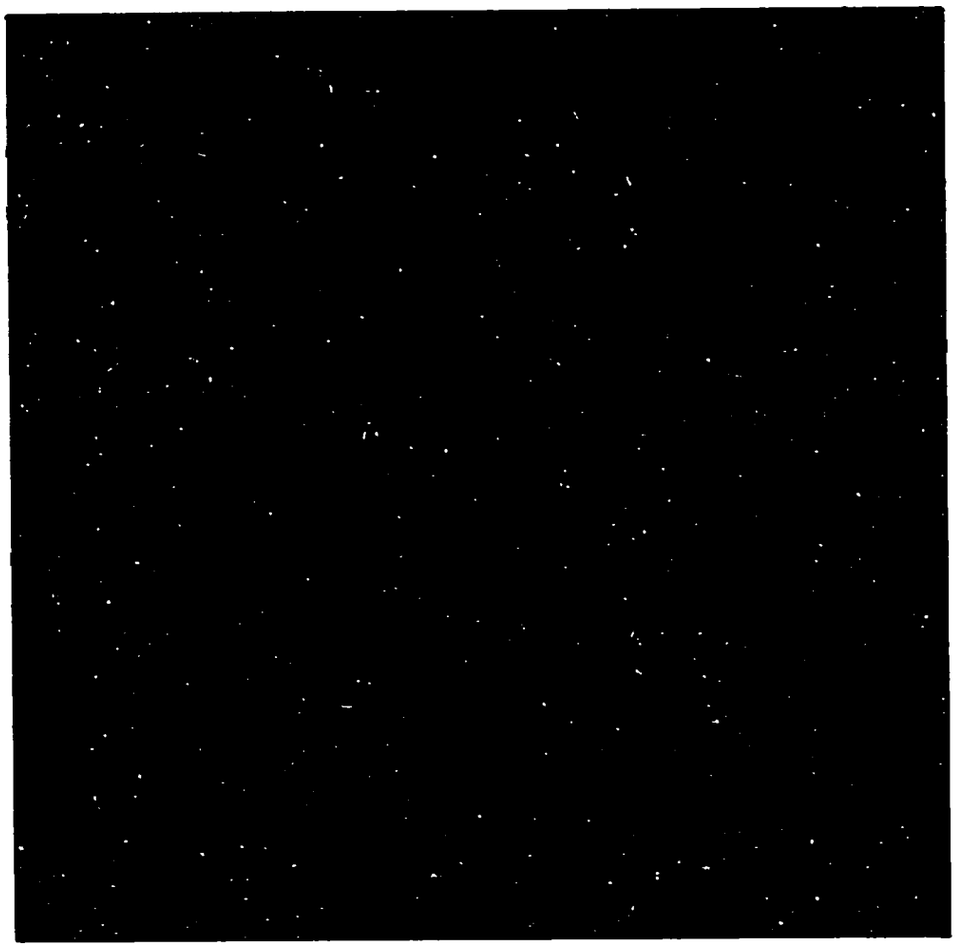

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